



**Report of an Announced Inspection of  
Adult Prisoner Transport Services**



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of Adult Prisoner Transport Services**

Office of the Inspector of Custodial Services  
Level 27, 197 St George's Terrace, Perth WA 6000  
November 2001

**ISSN 1445-3134**



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# The Inspector's Overview

## THE POTENTIAL BENEFITS AND THE TANGIBLE HAZARDS OF CONTRACTING OUT PRISONER TRANSPORTATION SERVICES.

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### THE HISTORICAL CONTEXT: SETTING THE PARAMETERS OF A COMPLEX PROJECT

In 1997 the then Coalition Government decided to contract out, or privatise, a raft of justice support and prison administration functions. The best known and most controversial of these was to be a 750-bed medium security prison for males; this facility (Acacia Prison) was commissioned and commenced operations in May 2001. Less contentious at the time was the so-called CSCS (court security and custodial services) Contract (referred to as “the Contract” in the remainder of the Report). Included in those custodial services was responsibility for the bulk of prisoner movements around the State.

The variety and extent of such movements is not always fully understood. They include: police lock-up to prison; prison to prison by way of transfer or for inter-prison visits; prison to court and vice-versa; prison to hospital or to some other medical centre and vice-versa; prison to funeral location and back; prison to mental hospital and back; juvenile institution to or from similar venues. In Western Australia, overlaying this is the fact that the distances can be enormous – for example, from Kununurra to Broome, which is over 1,000 kilometres by road – and the locations sometimes inaccessible by standard road transport.

The objective of contracting out was to free up personnel so as to enable them to carry out their “core functions” – indeed, the whole project is colloquially known as the “core functions project”. Thus police officers previously tied up in prisoner transportation could henceforth get on with policing, corrections personnel with corrections, juvenile justice workers with juvenile custody and rehabilitation work, and so on.

When State entities set out for the first time down the privatisation track, they may lack the commercial background and expertise to do so faultlessly. Recognising this, the Government of the day put together a strong team of Department of Justice<sup>1</sup> personnel and external business experts to deal with the substantive issues. To safeguard itself against possible allegations of due process failures, the Department also appointed an external probity auditor. The contracting arrangements certainly met every procedural standard, with the tender evaluation process being impeccable. Nevertheless, in retrospect some suspicion arises that the successful bidder – AIMS Corporation – may either have been “low-balling” to obtain the contract<sup>2</sup> or had simply under-estimated the scope of the contracted tasks. The latter possibility was lent credence by the fact that the Department’s data systems were later found to be deficient; thus the service specifications had been too low.

Whether due to low-balling or genuine under-estimate or a composite of these factors, a contract that does not carry within it a viable commercial margin will be under stress from the outset, with consequential impact upon services. During the first year of the Contract (1 August 2000 – 31 July 2001), both contracting parties devoted a great deal of time and effort to trying to relieve this stress. This is discussed fully in Chapter 3 of the Report.

<sup>1</sup> At the time of the contracting processes, the Department was known as the Ministry of Justice. As from 1 July 2001, its correct designation is the Department of Justice, and that terminology has been used throughout the remainder of this Report.

<sup>2</sup> Low-balling is a recognised phenomenon in dealings between the public and private sectors. There are well-documented cases of a contractor putting in a low bid and ‘negotiating’ a hefty price hike once the public sector enterprise has become dependent on it for the continuation of an essential service.

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This Office has been very much aware of the contract issues between the parties. They have been so intense at times that they have distracted attention on both sides – Department and Contractor – from safety and duty of care issues. These issues certainly do not seem to have been given adequate attention.

In July 2001, a report examining certain commercial aspects of the Contract was tabled in Parliament. The AIMS Resource Management Audit Report compiled by KPMG for the Department of Justice Internal Audit Branch highlights many deficiencies of the commercial operation of the Contract. For its part AIMS, it must be put on record, challenges the accuracy of many of the KPMG findings.

However, the concerns that the Audit Report raised with regard to inadequate resource planning, management, training and reporting practices have far more wide-reaching implications than just commercial efficacy, transparency and accountability. The inadequacies have the clear potential to create shortfalls in the delivery of adult prisoner transport services and negatively impact on safety and duty of care issues. In this context, it was decided that the Inspector's Report would concentrate upon safety and duty of care matters, and how they impact upon the quality of prisoner services.

### SAFETY, DUTY OF CARE, VEHICLE DESIGN AND MOVEMENT PROCEDURES: THE ALARM BELLS RING.

On 4 October 2000, as part of my program of familiarisation visits to every prison in the State, I had gone to Karnet Prison. It was there that I had my first encounter with the AIMS<sup>3</sup> transportation system. A Mazda van<sup>4</sup> was about to be loaded with prisoners for medical escorts. The locked compartment contained two inward-facing metal benches with no restraints or grab handles to prevent passengers from sliding around as the vehicle braked. There was no natural airflow and very little natural light, for the back window was very closely gridded. The compartment was claustrophobic and cramped. An elderly Aboriginal prisoner, scheduled in the near future for transportation to Bunbury Prison, told me that he had been ill on his last journey because of the shaking and discomfort of the van and, more particularly, because he had no sense of where he was or what land he was passing through because there were no windows.

It was evident even from such a brief encounter that safety, comfort and duty of care issues were taking second place to security – an impression that was fortified when it emerged that even minimum-security prisoners were handcuffed at all times when not in the vehicle. I wrote to the Department of Justice Contract Manager at once, raising my concerns. The tone of the reply confirmed that custodial and technological matters were very much in the forefront of Departmental attention at that time, with prisoner service standards very much a subsidiary concern. The AIMS fleet, I was told, was “fitted with the latest electronic technology, permitting:

- vehicles to be tracked anywhere in the state;
- direct communication with vehicles anywhere in the state;

<sup>3</sup> At that time, the Contractor was still incorporated under the name Corrections Corporation of Australia. It was re-named AIMS in December 2001, and is referred to by that name throughout.

<sup>4</sup> For details of the AIMS fleet, see the Table in Paragraph 2.15.

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- monitoring of vehicle operational systems (and hence monitoring of compliance with road regulations, scheduled pause breaks etc.);
- immediate security alerts (in the event of unscheduled door openings etc.); and
- continuous visual (CCTV) and verbal (PA) monitoring of prisoners”<sup>5</sup>.

Vehicle design allowed for better segregation of prisoner categories – male and female, protection and security rating – and this is obviously a safety issue, as well as a custodial one. However, the issue of passenger safety was, it was said, a “judgement call”. The Contract Manager stated:

“The installation of safety restraints requires a judgment be made between the risk of restraints being used as a weapon, or as a means of self-harm, and ... the risks associated with injury to the human body from sudden vehicle movements. As you are aware, restraints have not been fitted, although mounting points have been incorporated to accommodate any future decision to install restraints. At least two other states have moved to install restraints, with mixed results. We are in dialogue with those states and will use their feedback in our considerations on future directions in Western Australia<sup>6</sup>.”

The Contract Manager ended by stating that he “did not at this time intend to change the fit-out of the current vehicle fleet” but that, within the limitations of current vehicle design, he would closely monitor that the Contractor took greater account of the needs of individual prisoners.

### THE FOLLOW-UP

The nature of inspecting a continuous service is in itself continuous – longitudinal rather than cross-sectional. Between February and June 2001, Inspections Officers when visiting prisons on liaison visits or for formal inspections also took the opportunity to inspect vehicles, interview prisoners at the end or the start of a journey, interview other prisoners who had recently completed a journey, interview AIMS staff, question Department of Justice personnel about the operation of the system, and so on. Court officers were also consulted. In addition, Inspections Officers carefully measured and tested vehicles at their various bases.

In a sense, the Inspection is a test of the Contract Manager’s hopes that close monitoring of the Contractor would lead to service improvements as to comfort, dignity and care. Our broad conclusion is that those hopes have not borne fruit.

In another sense, the Inspection sought to ascertain whether the “limitations of the present vehicle design” are still acceptable. The Department did not elaborate what feedback it had received from the two other Australian states that had introduced restraints<sup>7</sup>. Our own view, unequivocally, is that some way of improving passenger safety must be found; the limitations of the current design are not acceptable.

<sup>5</sup> Letter from the Service Procurement division of the Department of Justice, 24 October 2000.

<sup>6</sup> Ibid.

<sup>7</sup> In its response of 9 October 2001 to the second draft report, the Department stated that “alternative methods of seat restraint have been...tested in other Australian jurisdictions with little success.” However, this point is not documented or supported by clear evidence.

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In that regard, reference must be made to the manner in which the parties have finessed their responsibilities to confront this issue. The “parties”, in this context, means not just the contracting parties – the Department of Justice and AIMS – but also the WA Department of Transport, as the statutory authority vested with the authority to grant or deny licences for motor vehicles to operate on WA roads.

The saga is quite complex, and is dealt with comprehensively in Chapter 2 (2.12 – 2.33) of this Report. In essence, the position is this: AIMS has a contractual obligation in relation to safety, comfort and duty of care issues involving passengers, as well as a common law duty of care. The Department of Justice likewise has an obligation as Contract Manager to ensure compliance by AIMS with the contractual obligations, as well as a non-delegable duty of care to passengers – whose status remains that of prisoners of the State. The Department of Transport, for its part, has a duty to ensure that vehicles licensed for use on the roads comply in terms of passenger safety, as well as many other engineering factors, with the *Vehicles Standards Regulations 1977*. It is also the body with statutory responsibility for road safety generally.

While strictly complying with its statutory obligations, Transport never turned its mind to this key issue. It failed to actively seek out information to ensure vehicle design was safe for prisoners as passengers, thereby failing to recognise the impact of design on conditions within vehicles. Its approval procedures appear to have been passive and formulaic, based simply on what has happened before rather than on an objective assessment of risk and needs.

AIMS Corporation, in turn, was thus able to indicate to the Department of Justice that the vehicles had been authorised for road use by the Department of Transport – that authorisation thus meaning that AIMS had met its contractual obligations. The Department of Justice chose not to look behind that authorisation, despite being the authority ultimately responsible for the safety and well being of prisoners in its care. In the midst of this bureaucratic fandango, prisoner safety and care issues got left out.

During the period of the Inspection, however, Transport came to a greater appreciation of its role in the prisoner transportation process and how the interaction of design and operational issues can lead to negative impacts on prisoner care, safety and wellbeing. Transport has stated that it recognises that improvements can be made, and to this end has made a proposal to the Department of Justice, the Police Service, AIMS and Worksafe to form a working group<sup>8</sup>. The working group’s role will be to examine the registration process for these prisoner transportation vehicles, consider the need for mandatory annual inspections and review the standards that are currently applied.

The establishment of such a working group is in itself a vindication of the Inspection process. It is hoped that progress will be made towards safer, more acceptable transportation conditions for prisoners, and that these can eventually form the basis of a national standard.

In a final sense, our Inspection is concerned to find a balance between the prisoner-citizen and the state. The norm in Australian society is that we seek to maximise in-vehicle passenger safety. Indeed, we mandate it and invoke the criminal law as a sanction to compel citizens to protect their own safety and those of their passengers – it is an offence in all states for a driver to permit passengers to

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<sup>8</sup> The Department of Justice has now informed the Inspector of its willingness to participate in this group.

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travel without wearing seat belts. How can it be appropriate to differentiate so radically between the citizen and the prisoner-citizen?

### BENEFITS AND HAZARDS

The benefits of contracting out have been tangible: the scope and extent of service needs have become more visible, revealing that previously they had been artificially suppressed; personnel, particularly police, have indeed been freed up to perform their core functions; a single provider has been able to integrate the service to a marked degree; and, for all its complexities, accountability has been very much enhanced.

But the hazards have to this point offset those benefits. Divided responsibilities have enabled questions of passenger safety, dignity and reasonable comfort to be evaded. The Department and the Contractor have focused on commercial issues and have reached such a stage of mutual disillusionment that service quality is at risk, and neither party has monitored service quality in an appropriate way.

Service quality cannot be checked from Brisbane (where AIMS has its head office) or St George's Terrace (where the contract management group of the Department of Justice operate) alone. Monitoring has to be done also at the coalface – at transportation points from Esperance to Kununurra. This Office has carried out its Inspection in this way, and in doing so has surprised and shocked the parties. Indeed, our first draft report caused so much consternation that it was decided to give parties the opportunity to comment on a second draft report.

Even so, there is still an element of denial on all sides, at least in the formal submissions – though the establishment of the working group suggests that the substance of our criticisms has hit home. The bottom line is that both AIMS and the Department of Justice have a duty of care. If one is in breach, that does not somehow legally exonerate the other. Justice, in particular, must understand that it is the party of last resort. That being so, it carries not only a legal but also a political responsibility for this service.

In summary, the process of contracting out has irrevocably brought transparency to the quality and required extent of services. It is impossible to stuff the genie back into the bottle. The services will continue to require greater resources than were previously allocated to them. Unless they are improved in ways identified in this Report, however, they will constitute a legal and political risk for Government and an affront to the human dignity of prisoners.

Richard W. Harding  
**Inspector of Custodial Services**

*30 October 2001*

# Chapter 1

## THE PROMISE OF CONTRACTING

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### HISTORY OF THE COURT SECURITY AND CUSTODIAL SERVICES CONTRACT

- 1.1 The cost and quality of adult prisoner transport services provided by the Department of Justice have been under discussion over a number of years. These services were the subject of review in 1989, 1992 and 1995. In September 1996 a Cabinet Sub-Committee on Public Sector Management endorsed the establishment of a Western Australian Police/Ministry of Justice Core Functions Project Committee. As a result of findings of this Committee in May 1997, the then Ministerial Cabinet confirmed a proposal to proceed to a phase of market testing. Expressions of Interest were subsequently called in July 1997<sup>9</sup>, and the Request for Proposal (RFP) was issued in April 1998<sup>10</sup>.
- 1.2 In September 1998, Cabinet approved the commencement of negotiations with Corrections Corporation of Australia Pty Ltd (CCA) with the intention to proceed to contract, subject to the passage of enabling legislation. That legislation, the *Court Security and Custodial Services Act* in conjunction with the *Court Security and Custodial Services (Consequential Provisions) Act 1999*, was passed in December 1999. The contract with CCA was executed in January 2000 for the negotiated price of \$11,725,465 for the first year of operation. The services covered by this Contract consisted of:
- Court security services,
  - Court custody services,
  - Prisoner transport services, and
  - Lockup management services<sup>11</sup>.

The provision of services commenced on 31 July 2000.

- 1.3 At the time the Contract was awarded, CCA was owned by two 50 per cent shareholders: Corrections Corporation of America, a Tennessee company, and Sodexho Alliance, a French corporation. During the second half of 2000, Corrections Corporation of America sold its share of CCA to Sodexho. In December of that year the company adopted a new name, Australian Integration Management Services (AIMS). AIMS Corporation currently employs 300 full-time and part-time staff engaged in the delivery and support of the services under the contract;<sup>12</sup> approximately 70 of these staff are located in regional areas. The Contractor operates its transport obligations using 39 escort vehicles based in areas across the State.

<sup>9</sup> Nine responses were received from private companies. None was permitted from the public sector.

<sup>10</sup> Three submissions were received in response to the RFP. A full description of the process is found in Harding, R. "Privatising Justice Support and Prison Administration Functions: A WA Exemplar of Effective Regulation and Accountability". Vol. 29 Western Australian Law Review pp. 233-250 (October 2000). This article was completed some months before the position of Inspector of Custodial Services – now held by Professor Harding – was advertised.

<sup>11</sup> Under the Contract, the lockup management services form phase 2 of implementation. The Department of Justice may have proceeded with phase 2 services, at its absolute discretion, on or before 1 July 2001. This option has not been exercised. Phase 2 services involved juvenile offender transport in regional areas and lockup management services in 6 metropolitan and 7 regional police lockups. It should also be noted that the parties agreed to an increase by \$4.15 million in the first year running costs.

<sup>12</sup> This is for all services provided, not purely for the movement of adults in custody.

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### THE OBJECTIVES OF THE CONTRACT

1.4 In providing submissions to the Inspector for the purposes of this Inspection, both AIMS Corporation and the Department of Justice were asked to specify the broad objectives and outcomes to be achieved from outsourcing the service delivery of movements of adults in custody.

As the objectives of outsourcing all of the services specified in the Contract were interrelated, it was difficult to separate those that applied only to the transport aspects of the Contract. The outcomes sought by the Contract as a whole were to:

- Replace an *ad hoc*, fragmented method of service delivery with an integrated, flexible and innovative service provided by the private sector;
- Improve the quality of service;
- Improve the cost effectiveness of the delivery of the services and thereby reduce the costs to Government;
- Enable police officers, prison officers and juvenile justice officers currently performing the services to be returned to core duties;
- Improve accountability to the Government, courts and the community in delivery of the service;
- Foster continuous improvement to enable benefits of best practice to be shared;
- Improve the safety of facilities for both prisoners and staff;
- Implement strategic service planning; and
- Provide for ongoing service improvement and performance.

1.5 In summary, a principal purpose of contracting out the adult prison transport service was to provide an integrated service. This in turn had several side benefits, not least the freeing up of law enforcement and justice personnel for “core functions”. It was well understood that more would be involved than merely substituting an identical integrated service for a fragmented one, and that qualitative change for the better must be incorporated. The Department of Justice was thus committed to improving the delivery of services, including the security, safety, comfort and wellbeing of prisoners.

# Chapter 2

## THE REALITY OF TRANSPORTATION

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- 2.1 On 28 March 2001 the Inspector of Custodial Services served notice on the Regional Director of AIMS Corporation in Western Australia (“the Contractor”) and the Director General of the Department of Justice of his intent to inspect the transport of adult persons in custody, as provided by the Contractor under the *Contract for the Provision of Court Security and Custodial Services* (“the Contract”). The Inspector stated that the Inspection would focus on four key areas:
- The objectives of the State in entering into the Contract;
  - The extent to which those objectives have been achieved;
  - The arrangements for contract management, including compliance; and
  - The treatment and conditions for prisoners.
- 2.2 From its inception the Contract had been the subject of public and media scrutiny as to the quality and cost of the transport services being delivered by the Contractor. This Office had received reports from key stakeholders – primarily prison administrators and prisoners – about serious issues relating to safety, service delivery and treatment of prisoners. Direct observations by Inspections Officers during visits to custodial facilities throughout the State also raised concerns about transportation service delivery. The Office took every opportunity to interview prisoners who had recently been transported or who were emerging from a just-completed journey. The confluence of media coverage and public concern about security and cost, the reported experience of prisoners, dissatisfaction expressed by prison staff, and the direct observations by Inspections Officers provided the basis for the Inspection to focus on the prison transport service. Court security services, court custodial services<sup>13</sup> and the management of lockup facilities are thus not expressly included in the scope of this Inspection Report.
- 2.3 The operational aspects of the performance of the Contract impact directly on the experiences of those who are the subject of the service – prisoners. There are express terms in the Contract requiring the Contractor to maintain certain levels of care for those in its custody. How the Contract is performed also has an impact on the effective management of Western Australia’s custodial facilities. The negative or positive experiences of prisoners whilst in the custody of the Contractor can result in their reacting to that experience once back in their regular custodial setting.

### The Kununurra to Broome Transport Story

- 2.4 As mentioned, the Inspection methodology involved, *inter alia*, observing prisoners at the commencement and the termination of journeys, interviewing prisoners and inspecting conditions in vehicles both when they were empty and at the end of journeys. The harsh reality of the transportation experience for some prisoners was witnessed on many occasions by Inspections Officers, but none more so than on 25 June 2001 when twelve prisoners arrived at Broome Regional Prison after a 12-hour journey from Kununurra via Halls Creek, Fitzroy Crossing and Derby.
- 2.5 Two female prisoners were the first to alight from the front compartment of the Isuzu truck. They each appeared dishevelled and disorientated. Neither woman had used the toilet throughout the duration of their journey. One of the women was staying at Broome for a court appearance and the

<sup>13</sup> The Office commenced an Inspection of certain court custody services in October 2001.

## THE REALITY OF TRANSPORTATION

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other believed that she was to be transferred to Roebourne the next day. A prison officer endeavoured to communicate to her that due to overcrowding at the anticipated destination, she would have to endure an even longer transfer to Greenough instead. However, as the woman did not speak or understand English very well, she did not understand what she had been told. When an Inspections Officer explained the new arrangements to the woman, she became very distressed at the prospect of yet another long journey and, moreover, being moved even further from her own country.

- 2.6 The middle compartment of the truck was then opened, and the extreme level of heat emanating from within was immediately evident. There was no light in the compartment, and two men could be seen on the floor slowly getting to their feet. There were ten male prisoners inside the compartment. As they climbed out, prison officers helped some of the older prisoners. The men were dehydrated, disorientated and distressed. As they climbed from the chamber, the prisoners needed to be guided up into the reception area. They were all in partial states of dress, having removed clothing because of the heat inside the compartment. It was clear that the transport had been an exhausting experience.
- 2.7 All prisoners stated that they had not used the toilets provided in the transport compartment. They cited the lack of privacy and perilous movement of the vehicle as reasons for this. They had each been provided with two frozen bread rolls as sustenance for the journey. Empty water and coke bottles were strewn around the compartments; as there were no cups, they had been unable to drink from the large water container provided. A number of the men complained to Inspection Officers about the cramped conditions and the fact that the air conditioning did not work. Their discomfort and disorientation had being exacerbated by not being able to see outside at all during the journey and having to endure the lack of fresh air.
- 2.8 The passengers were then marshalled into a holding area and were fed. It was clear from the way in which they attacked the food and drink that they were extremely hungry and thirsty. Following their 12-hour ordeal, the prisoners then had to go through the prison admissions process; this took until approximately 10pm, four hours after their arrival. The futility of this whole process was highlighted by the fact that four of the ten male prisoners were fine defaulters, who would spend only a matter of days at the prison before release<sup>14</sup>. Three other prisoners were to be transported out again to Roebourne at 7a.m. the next morning, providing them with only a short rest before another long transportation (approximately eight hours) and the continuation of the cycle of discomfort and dehydration<sup>15</sup>.

### Service Delivery: Performance of the Contract

- 2.9 The day to day experiences of those who come into contact with the service providers, how the service is delivered, and the impact that it is having on the operation of Western Australia's custodial facilities are the important practical tests of the prisoner movement component of the Contract.

<sup>14</sup> They would then be confronted with the problem of how to get back to their own lands.

<sup>15</sup> In its response to the first draft Report, the Department of Justice was dismissive of this saga. It was "anecdotal", "not endemic and must be viewed in context". As explained in the text, the Inspector's methodology was to observe the starts and finishes of numerous transports not only in the Regions (where admittedly the problems are worse) but also in the greater Metropolitan area and to interview a wide cross-section of prisoners. The Department has not brought to the Inspector's attention any of its own "consumer research" – in the absence of which it is not possible to make worthwhile evaluations of the service quality.

## THE REALITY OF TRANSPORTATION

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2.10 There is a statutory prohibition on the Office of the Inspector dealing directly with complaints. However, prisoners had complained to the Office of Health Review and to the Ombudsman of Western Australia regarding conditions and treatment experienced during transportation by the Contractor. Of the eight complaints received over an eight month period by the Ombudsman's Office, five have been upheld and the results of the other three are still pending<sup>16</sup>.

2.11 Schedule 2, Part 4, of the Contract contains the general requirements expected of the Contractor in its performance. It states that the service "includes the safe, secure and timely movement of all prisoners, with due regard for age, gender, health, and risk status"<sup>17</sup>. The Contract goes on to state a number of other service requirements including:

- Maintenance of a safe and secure environment for persons in custody;
- Exercising a duty of care;
- Ensuring timely movement of prisoners; and
- Providing and maintaining equipment at a high standard;

It is against these criteria that the Inspection Team has specifically examined the issues of prisoner safety, care and wellbeing and treatment.

### The Interaction Between the Department of Justice, AIMS and the Department of Transport

2.12 A primary consideration in outsourcing the prisoner transportation service was improvement to its quality. There are complex arrangements that combine public safety issues with a duty of care owed to the prisoners in custody. Nevertheless, prisoner movement between custodial facilities is essentially a human service. The Inspection sought to discover the intent of the Contract and to follow the chain of events by which services came to be delivered. Central to this investigation is the design of the vehicles.

2.13 The Contract states that:

"The Contractor must develop a suitable design for motor vehicles and support equipment for the movement of persons in custody, having full regard for Outcomes related to safety, security, comfort and duty of care considerations<sup>18</sup>".

It goes on to say that the design must be submitted for the Contract Manager's approval. The Contract Manager acts as a delegate of the Director General<sup>19</sup>.

<sup>16</sup> A letter to the Inspector of Custodial Services from the Ombudsman, dated 8 June 2001, states that the Ombudsman's Office received eight complaints from prisoners regarding transportation services between 11 August 2000 and 27 April 2001.

<sup>17</sup> Court Security and Custodial Services Contract, January 2000, Schedule 2, Part 4, clause 4.3.2.

<sup>18</sup> Ibid, Schedule 2, Part 5, clause 5.10.1.

<sup>19</sup> Initially, the position was called the Director of Service Procurement and subsequently the Director of Court Security and Custodial Services.

## THE REALITY OF TRANSPORTATION

2.14 There is a specific requirement for the vehicle design to comply with the Australian Design Rules, the *Road Traffic Act 1974*, the *Vehicles Standards Regulations 1977* and other Western Australian legislation. These specifications necessarily involve the Department of Transport as the State's Crown agency with responsibilities for road safety and vehicle licencing. The Department of Justice retained primary responsibility for other Contract requirements relating to: sufficiency of size, space to store personal property and documents, air flow, lighting, and consideration for the distances and conditions in which vehicles and prisoners would have to travel on some routes<sup>20</sup>.

2.15 AIMS Corporation established a fleet of 39 vehicles that it uses to transport persons in custody; the vehicles are based at various locations throughout the State. The fleet is comprised of six different types of vehicles, as follows:



*Inside a Mazda Transport Vehicle used for Metropolitan area and local regional transports.*

Vehicle Type	Number of Vehicles	Number of Compartments	Compartment Capacity	Max. Person Capacity
Isuzu Truck	4	4	1 x 5	19
			1 x 10	
			2 x 2	
Isuzu Truck	1	2	1 x 6	19
			1 x 13	
Mercedes Van	11	4	4 x 4	16
Mazda E250 Van	16	2	1 x 3	9
			1 x 6	
Holden Rodeo	4	2	2 x 2	4
Holden Station Sedan	3	1	1 x 2	2

The Contractor reportedly utilised a prevailing design from another state (Queensland) for the construction of new Mercedes vehicles, and engaged a fleet design and management expert to advise on the design of other transport vehicles to meet its requirements. Both the Contractor and the Department have submitted that the fleet “represents an overall improvement on the previous fleets operated by the Ministry [of Justice] and the Police”<sup>21</sup>.

2.16 Australian Design Rules specify the requirements for seatbelts or, alternatively, what is needed within vehicles that transport a larger number of individuals<sup>22</sup>. The Department of Justice has stated that

<sup>20</sup> For example the 8-hour transports between Roebourne and Broome.

<sup>21</sup> Department of Justice Submission to the Inspector of Custodial Services on the Court Security and Custodial Services Contract, 2001, page 23, and statements made during the verbal briefing to the Office of the Inspector of Custodial Services by AIMS Corporation.

In its response to the first draft of this Report, AIMS commented that “at the time of vehicle commissioning, AIMS was commended by public sector representatives for its innovative design and implementation, and was publicly recognised as having provided vehicle standards far superior to anything previously provided.”

<sup>22</sup> Australian Design Rules: The Department of Transport and Regional Services, rules 3, 4, 5, 66, and 68.

during its negotiations with the Contractor, it was recognised that some variation from the Rules might apply with regard to internally operated rescue hatches, fixed grab-handles (to provide an anchor point whilst travelling in the back of the vans) and seatbelts. Nevertheless, it still required that each vehicle be submitted to the Department of Transport to undergo compliance and licensing checks.

- 2.17 Endeavouring to trace the lines of responsibility and the processes involved in the design and approval of transport vehicles, the Inspectorate encountered considerable difficulty in ascertaining the roles played by the respective agencies. The Department of Justice stated that it had a limited role regarding the authorisation and approval of vehicles as prisoner transport. In its response to a draft of this Report, the Department stated that any deficiencies in the fleet are attributable to matters and circumstances solely under the control of the Contractor. The Department's position is that it did not formally approve the vehicle design, despite this being a specific requirement of the Contract. While Departmental officers did inspect the vehicles at different stages of construction and made some suggestions as to alterations, not all of these were acted upon by AIMS.
- 2.18 AIMS stated that it has fulfilled its obligations to the Department of Justice as regards vehicle design, as stipulated in the Contract. In its response to a draft of this Report AIMS stated that safety features such as seatbelts and grab handles were not required under the Contract and had been rejected by both themselves and the Department of Justice. It contends that the design was accepted and approved by the Department of Justice<sup>23</sup>.
- 2.19 Following design and fit out, AIMS was required to submit the vehicles to the Department of Transport for approval and licensing. Accordingly, the Inspector wrote to the Department of Transport on 8 June 2001 seeking clarification about Transport's role in the approval of vehicle designs and its ongoing responsibility for maintaining compliance with rules, regulations and statutes. The Office experienced considerable difficulties in obtaining an appropriate response from Transport – correspondence was apparently lost and eventual replies were incomplete – leading in turn to some considerable delay in the completion of this Report. Following a meeting some months after the initial request for information and assistance, the Department of Transport eventually clarified its role.
- 2.20 Transport accepted that under the provisions and regulations of the *Road Traffic Act 1974*, it is responsible for registering all vehicles that are to be used on roads within WA. In fulfilling these responsibilities, Transport informed the Inspector that there is a number of ways in which vehicles, including those intended for transportation of persons in custody, can be registered. They are:
- a) Certification under the Motor Vehicles Standards Act;
  - b) Grant of a Second Manufacturer's Compliance Plate,
  - c) Industry Certificate of Modification (VSB 6), and
  - d) Vehicle Modification Permit.
- 2.21 All new road vehicles offered for sale within Australia must comply with the requirements of the Federal Motor Vehicle Standards Act (MVSA). This Act requires the vehicle manufacturer to provide evidence that a particular vehicle design meets the requirements of the Australian Design Rules.

<sup>23</sup> However, if these design modifications are required by the Department of Justice, AIMS states that it will of course comply. It refers, naturally, to the costs involved, and states that "the commercial reality of cost transference must be the subject of further negotiation."

Evidence is provided to the Federal Department of Transport and Regional Services together with any other documentation. The Federal Department examines the submission and if satisfied issues the vehicle manufacturer with a *Compliance Plate Approval*. This then allows the manufacturer to attach compliance plates to the range of vehicles for which the particular design applies, which in turn signifies their compliance with the Australian Design Rules.

### a) Certification under the Motor Vehicles Standards Act;

2.22 The Australian Design Rules are primarily intended for new vehicle manufacturers and do not cover all aspects concerning the vehicle. Therefore, before a vehicle can be registered by the Department of Transport, it must also comply with the local jurisdiction's Vehicle Standards Regulations. These regulations require the vehicle to continue to comply with the Australian Design Rules and with a number of requirements that relate to a vehicle's use and roadworthiness. The majority of these vehicles can be bulk licensed by authorised dealers. These dealers sign a declaration on the licensing form certifying that the vehicle conforms with the requirements of the *Road Traffic (Vehicle Standards) Regulations 1977*, and applicable Australian Design Rules and as a consequence such vehicles are registered without an inspection by a Transport Vehicle Examiner.

2.23 **The three Holden Commodore vehicles used by AIMS were bulk licensed.** However, these vehicles were later modified (see later comment regarding the modification approval processes at paragraphs 2.29 and 2.31).

2.24 Many truck-type vehicles can be released to the market by the manufacturer with a compliance plate and before a truck body is installed. These vehicles cannot be registered in this cab/chassis form. There are two alternative processes for dealing with these vehicles: by second manufacturer's compliance or by industry certificate of modification (VSB 6).

### b) Grant of a Second Manufacturer's Compliance Plate

2.25 The second manufacturer's compliance process requires the person who is installing the truck body to seek compliance for the additional components that are to be installed from the Federal Department. In this case, the Federal Department issues a second manufacturer's compliance plate approval, which allows the fitment of a *Second Manufacturers Compliance Plate*. All of these vehicles are required to be inspected by a WA Transport Vehicle Examiner prior to registration.

2.26 **The 16 Mazda prisoner transport vehicles were licensed under this process.** The evidence that was sent to the Federal Department concerning these vehicles included a variation indicating that no seat belts would be fitted. The Federal Department approved this variation on what is claimed to be a generally held understanding that self-harm of prisoners is a greater risk than the harm which might occur from a vehicle accident without seatbelts. Before issuing such an approval, the Federal Department currently requires acknowledgement from the State jurisdiction that the vehicle in question will be accepted for registration. The Mazda vans were therefore presented to WA Transport Vehicle Examiners for inspection and passed on the basis that they were fitted with the appropriate second manufacturer's compliance plate.

**c) Industry Certificate of Modification (VSB 6)**

2.27 The industry certificate of modification process requires the installation of the additional components to be in accordance with a document published by the Federal Department called the Vehicle Standards Bulletin No.6 “National Code of Practice – Heavy Vehicle Modifications” (VSB 6). In Western Australia there is a scheme whereby modifiers, authorised by WA Transport, may fit a plate commonly known as a VSB 6 plate that certifies that the vehicle has been modified in accordance with the process. Codes must be placed on the plate, which identify the nature of the modifications. The modifier must then complete an “Industry Certificate of Modification”, which also contains the relevant codes and the identification of the authorised modifier. A signed copy of this is sent to Transport, another is provided to the owner, and a third is kept with the authorised modifier. This provides an auditable trail of modifications carried out on a particular vehicle. This is a nationally recognised system, and most states would register a vehicle with such a certificate. Before being registered, each of these vehicles must be inspected by a WA Transport Vehicle Examiner.

2.28 The five Isuzu and four Rodeo prisoner transport vehicles were licensed under this VSB 6 process. The manufacturer of the modules constructed these units in accordance with an existing design utilised by the Department of Justice. The vehicles were affixed with VSB 6 plates by the authorised modifier and examined by Transport Vehicle Examiners. As these examiners had already seen the design previously, the vehicles were accepted and registered without any additional input from Transport’s Vehicle Safety Examiner. Vehicles licensed after the notification that the Road Traffic Code 2000 would be amended to have new requirements for the carriage of persons in open load spaces, were required by Vehicle Safety to have passenger modules which satisfied the roll-over protection device requirements. To this end, the manufacturer of the modules had their acceptability certified by a consulting engineer before the vehicles were accepted for registration.

**d) Vehicle Modification Permit.**

2.29 *The Road Traffic (Vehicle Standards) Regulations 1977* allow a vehicle to be modified after it has been registered. These regulations require that vehicles that have been modified be issued with a modification permit. WA Transport Vehicle Examiners are authorised to examine and approve relatively minor vehicle modifications. More serious modifications must be forwarded to Transport’s Vehicle Safety Branch where, depending upon the complexity of the modification, the submission is assessed by either the Technical Section or the Engineering Section. Where the modification is complex or where compliance with an Australian Design Rule may be at risk, Transport may require an independent engineering report prior to accepting or rejecting the proposal.

2.30 The eleven Mercedes prisoner transport vehicles were licensed with modification permits issued by WA Transport’s Vehicle Safety branch. The design was based on vehicles approved in Queensland for the same role. The Vehicle Safety branch was approached at the prototype construction stage, whereupon some additional features such as padding on the seats and sides were requested. These vehicle modifications were examined by Vehicle Safety at the time of registration.

2.31 The three Holden Commodore vehicles were also issued with modification permits under this process after Transport belatedly became aware that they had in fact been modified. These vehicles were

## THE REALITY OF TRANSPORTATION

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examined by the Vehicle Safety Branch to ensure that the removal of seat belts and the addition of a safety screen were acceptable and did not pose an excessive risk to the unrestrained passengers.

Transport has stated that the safety screen was in fact a design that has been satisfactorily crash tested by an engineering consultant and has been found to offer sufficient protection to meet the Australian Design Rule requirements.

2.32 The majority of prisoner transport vehicles were presented by AIMS to Transport seeking approval for the modified vehicles prior to service commencement. Transport stated that it was informed by both AIMS and the Department of Justice that an exemption from several vehicle design rules was warranted because the vehicles were to be used to transport prisoners. No risk analysis was sought or received in support of the request for exemption<sup>24</sup>. Upon inspection, Transport requested a number of changes be made to some vehicles. Some of these were not acted upon by AIMS; however, registration was granted nonetheless. Transport stated to the Inspectorate that it relies on information from the parties seeking the exemption, contact with other jurisdictions and also took into consideration engineering reports relating to the capacity of the vehicle frame to withstand rollovers and lateral impacts.

2.33 It must be said that the documentation that the Department of Transport provided to the Inspector to back up the processes explained above was fragmented and confusing. It did not support the procedures set out above. However, taking these explanations at face value, Transport's actions have facilitated the transportation of prisoners in conditions considered unsafe by the Inspector. In the Inspector's view, the fact that a panoply of regulations offers legalistic justification to avoid issues of passenger safety, does not excuse Transport's passive approach to its responsibilities.

### PRISONER SAFETY – THE IMPACT OF DESIGN AND OPERATION

2.34 From the prisoner's point of view, it is not enough for the vehicles to meet, or exceed, minimum standards for crash tests. The Contractor owes prisoners under its control a duty of care. This is clearly provided for in the Contract. The Department of Justice has statutory responsibility for prisoners. It is not in a position to transfer ultimate responsibility for them. The triad of arrangements between the Contractor, the Department of Transport and the Department of Justice failed, the consequence of which is borne by prisoners. There is an urgent need for each party to discharge their respective responsibilities for enforcement of design rules and contract compliance. This should be done in the interest of public and prisoner safety – there is no basis for treating the prisoner-passenger fundamentally differently from the citizen-passenger when safety issues arise.

2.35 Key aspects of duty of care relate to crash situations. In the event of a rollover,<sup>25</sup> how will the prisoners get out of their compartments? Obviously, internally operated rescue hatches present a

<sup>24</sup> In its response to this Report dated 9 October 2001, Transport stated it did not request a formal analysis based on its awareness of similar views existing in other Australian jurisdictions and of comments in coronial reports regarding self-harm with safety belts.

<sup>25</sup> This is by no means a fanciful possibility. In the non-Metropolitan areas long distances are travelled at high speeds on roads that typically do not have passing lanes and where 3 or 4 carriage road trains are commonplace either travelling towards one or having to be overtaken. The ability to concentrate is at a premium; driver fatigue is a possibility; in the wet season driving conditions are often difficult.



*An Inspections Officer sits in the compartment of a Mercedes van authorised to hold four people.*

potential opportunity for prisoners to escape. Externally operated escape hatches were therefore installed. This leads to other problems, however. In the case of a crash, officers may be injured and not able to reach the hatch to release prisoners trapped inside, an issue of concern especially for long transport services in remote and very hot locations. To add to the confusion, when the Inspection Team inspected a Mazda van and a Mercedes van at the AIMS depot at Hakea, it was noted that while a rescue hatch had been placed between the two compartments, no external rescue hatch had been installed. This means there is no means for the compartments to be opened from the outside should the doors become inaccessible.

2.36 In any road crash, the single greatest danger for passengers is to be thrown about in the vehicle.

However, fixed grab handles and seatbelts present possible opportunities for prisoners to self-harm or could conceivably be used as a weapon against others. The Contractor and the Department of Justice stated that they had made a considered decision that this risk outweighed the risk of injury to prisoners. The basis on which this outcome was decided was less than comprehensive, lacked evidence of research, and no effort was made to provide safe alternatives.

2.37 Evidence gathered from prisoners and prison managers is that many prisoners are fearful of travelling in the vehicles. Some even decline other necessary services – for example, medical escorts – rather than be transported in these vehicles<sup>26</sup>. This fear is exacerbated by the unpadded steel benches used in the compartments, which can result in prisoners sliding even with relatively light braking by the driver. The Department and the Contractor explain the use of such benches as necessary to prevent contraband being secreted. The Inspection Team considers this to be an admission of failing search procedures<sup>27</sup>.

2.38 Because seatbelts and grab handles were specifically rejected by the Department of Justice and the Contractor, consideration of other methods of providing safe transport transportation must be made and implemented as a matter of urgency<sup>28</sup>. Statements from managers and prisoners in relation to the absence of safety features in the vehicle compartments are as follows:

- “It is terrible, poor. The vehicles are not fit for humans to be transported in. We are just waiting for a death to happen.” (Prison administrator)

<sup>26</sup> Department of Justice figures indicate that 5 per cent of prison initiated transport cancellations are due to prisoner refusal to be transported in the Contractor’s vehicles, due either to safety concerns about travelling in the vehicles or because of the Contractor’s policy on use of restraints. An important feature of this is that medical escorts are being refused from time to time – moving to another duty of care issue.

<sup>27</sup> On 5 December 2000 a prisoner escaped from the custody of AIMS after using an implement secreted into the transportation vehicle to force open the vehicle door. Casuarina Prison staff had responsibility for the strip-search of the prisoner prior to his entering the vehicle.

<sup>28</sup> It should be noted that in situations where the Department provides its own transport, especially for s. 94 transports or work-camp movements, the vehicles often do have belts or grab handles.

- “We are frightened without seatbelts and not knowing what is going on.” (Prisoner)
- “If the driver has to hit the brakes, we get flung forward onto each other, it’s dangerous in these vans.” (Prisoner)
- “Prisoners do not feel safe, there is nothing to hold on to.” (Prisoner)

These hazards created are magnified when, as AIMS staff informed Inspection Officers, women with their children have been transported in the compartments.

- 2.39 The present practice is well short of acceptable standards. Improvements could be made. For example, in some Scandinavian countries seat belts that sound a warning when they are unbuckled are used. Bus-style bench seats facing in the same forward direction, though far from ideal, would offer some protection. The issue requires some lateral and creative thinking by the parties involved<sup>29</sup>.
- 2.40 Concerns have also been raised about the speed at which some transport services vehicles travel. The movement of prisoners from Broome to Roebourne (or vice versa) is sometimes completed in eight hours – a very quick time, even without stops for staff breaks. The distance is 822km and involves use of an Isuzu truck with capacity to hold 19 prisoners, plus their property, in multiple compartments. Apparently, there is some formal or informal pressure for escorts to be completed within set times, and this has the potential to create further safety hazards<sup>30</sup>. Prisoners expressed a great deal of concern regarding the speeds at which vans travel, and relate this to the absence of anchor points and seatbelts. A system of monitoring speed, such as through the use of GPS, needs to be considered by the parties<sup>31</sup>.
- 2.41 Under the terms of the Contract, the Contractor is supposed to provide vehicles that are appropriate to transport prisoners with disabilities or with medical conditions, and to develop and implement a Disabilities Services Plan. The Department of Justice has stated that no such plan has been received. While the outline of such a plan has been provided to the Inspector, the Contractor has on some occasions failed to utilise it appropriately. For example, one prisoner who had undergone a serious spinal operation involving 195 internal stitches was told to travel in the back of a standard transport van, even though he was incapable of sitting. The prisoner had to kneel for the duration of the journey back to prison, as this was preferable to a seated position which could have aggravated his

<sup>29</sup> The Inspector’s Overview refers to the fact that Transport is now, in response to this Inspection, forming a working group of relevant parties to address these problems. This is a positive and welcome response.

<sup>30</sup> Concerns about the excessive amounts of overtime by some AIMS employees was raised in the AIMS Resource Management audit report prepared by KPMG at the request of the Department and tabled in Parliament in July 2001. This is another issue impacting on prisoner safety. If drivers are working long, continuous hours, fatigue may result in accidents and consequent injury to prisoners (and AIMS employees).

<sup>31</sup> AIMS stated that its operational procedures do not require any staff member to exceed legislated speed limits. Whilst the Inspector accepts this, it is not really to the point: to average 103 kph for eight hours (from Broome to Roebourne), including stops, inevitably means the speed limit will be exceeded from time to time. But even if it were not, to spend such a time bouncing around unrestrained in the back of a van in the conditions described in the text is a major ordeal. AIMS also stated that there “have been some design faults with their GPS apparatus”. When modified and corrected, vehicle speed will be able to be continuously monitored.

wound. This is a totally unacceptable standard of service<sup>32</sup>. The Contractor should not perform at this level, and the Department should employ better systems to ensure they do not.

2.42 Similar stories were forthcoming from other prisoners suffering from back ailments and who could not sit properly on chairs, yet were forced to sit on the steel benches in the back of transport vans. No alternatives for more appropriate transportation were presented. The Contractor must provide and utilise vehicles with more appropriate designs for such purposes. The Department of Justice for its part should actively monitor these service matters.

2.43 A final example of inappropriate transport for prisoners with disabilities was televised during a recent news telecast. An Aboriginal prisoner in the Goldfields had been the subject of tribal punishment and been speared fourteen times in the thighs. Despite not being able to walk, the man was carried by his arms out of a regular transport van all the way into court while in handcuffs. No wheelchair was provided, and as the man was incapable of escaping restraints were obviously unnecessary.



*A handcuffed prisoner who has had 14 spear wounds inflicted in his thighs struggles to walk to a court appearance in Kalgoorlie.*

2.44 In relation to the design of transport vehicles, the Contract also requires that the Contractor should have regard to the comfort of persons in custody<sup>33</sup>. Evidence suggests that this provision has not always been complied with. The Inspection Team inspected each type of vehicle used to transport prisoners. With the exception of the three regular automobiles used, the remainder of the vans were uncomfortable. Only a few of the vans have any padding or coverings on the seats, with most being left as bare steel. This is even the case in many of the vans used for prisoner escorts in the Northwest of the State, where journeys last in excess of eight hours. Sometimes on these journeys removable pieces of foam are put into the compartment to sit on. Inside some of the van compartments the seats face each other providing very little legroom for those being transported. When two Inspections Officers sat facing each other in the Mazda van they were forced to interlock their legs to sit down.

2.45 Air conditioning is inconsistent throughout the different compartments in the vans, and also varies depending on the number of passengers in each. This aspect of the transportation service will be examined in more detail later in this Chapter: see points 2.57 and 2.61.

<sup>32</sup> AIMS stated in response to the first draft of this Report that the incident was “a regrettable and unacceptable error of judgment that will not be repeated.”

<sup>33</sup> Schedule 2, Part 4, clause 4.3.2 requires that the Contractor ensure that there is “minimisation of hardship during movement by adequate provision for the safety, comfort and well being of prisoners”.

## CARE AND WELLBEING

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2.46 In an addendum to its submission to the Inspector, the Contractor stated that it would be reviewing the performance of the vehicles in relation to prisoner safety and comfort. Terms of reference are yet to be developed, but it was indicated that the operation of air conditioning, safety measures and prisoner comfort would be included. Proper regard for the regulatory framework of vehicle design should be documented on the public record. This should include written correspondence between the Contractor, the Department of Justice and the Department of Transport. Any submissions for exemptions should detail the basis of the application, the declaration of risks and attendant action plans. The duty of care to prisoners should be made transparent in all such documentation and, where appropriate, the party acting in the interests of prisoners should be named<sup>34</sup>.

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2.47 In recognising that the Contractor should take account of the wellbeing of all persons in custody, Schedule 2, clause 5.3.1, of the Contract stipulates that: “Persons in custody shall be treated with humanity, dignity, care and sensitivity. No person in custody shall be exposed to torture, or to cruel, inhumane or degrading treatment or punishment.” Specific clauses then go on to specify requirements as to prevention of self harm, protection, health services, provision of food and drink, and occupational health and safety. Evidence has been gathered throughout the Inspection process to support the statement that some of these contractual requirements are not being fully met.

### Toilet Facilities

2.48 In the course of long distance transportation, prisoners are not permitted out of the compartments of the van to stretch or to go to the toilet. Custodial officers will stop to allow themselves a break, but prisoners remain locked in the vans. This is despite the Contract stating that provision must be made for both rest breaks and proper toilet access. Schedule 2, Part 4, clause 4.3.2, stipulates that provision must be made for proper access to toilets and other amenities and to ensure that “as a general requirement” road travel should not be of more than five hours duration without a minimum rest break of half an hour where prisoners can leave the vehicle<sup>35</sup>. The only routes where this requirement appears to be complied with is on transports to and from Kalgoorlie and Perth and Albany and Perth, where there are stops for a stretch and a toilet break at Merredin and Narrogin police stations respectively. This is good practice that should be encouraged on other long routes.

2.49 A chemical toilet is provided in the compartment of long distance transport vehicles for use by

<sup>34</sup> The explicit basis for these contracting arrangements is that of public access and political transparency. Section 45(4) of the *Court Security and Custodial Services Act 1999* requires that the contract, and any amendments made from time to time, be laid before Parliament within 30 days following the execution or amendment of the contract. The proposal in the text is consistent in spirit with the statute, though not literally and specifically required by it.

<sup>35</sup> In response to the first draft Report, AIMS stated that “the balance between public risk and prisoner comfort will continue to be an issue, unless the Department is willing to amend the contractual aspects that mitigate against prisoner wellbeing.” The particular provision that constitutes such a barrier relates to the “escape” and penalty provisions: see further paragraphs 2.72 – 2.73. For its part the Department of Justice simply noted that “it is recognised that distances travelled between comfort stops are likely to be greater under AIMS [than under the previous Departmental system] due to risk-management considerations of unlocking vehicles in non-secure situations.” Its response did not include any proposal or apparent desire to address this situation.

prisoners during transportation. The toilet is in full view of all other prisoners within the compartment, and is also able to be seen by the officers in the driving cab via security cameras. Prisoners must attempt to use the facility while the van is in motion, without knowing when the van may stop suddenly or turn corners. This often results in urine spilling onto the floor, creating pungent odours. Because of this factor, on some occasions the prisoners on a transport will make a common agreement not to use the toilet at all to prevent the embarrassment and unhygienic conditions it creates. The enforcement of such an arrangement could result in the bullying, intimidation or assault of prisoners. In any event, many prisoners felt too ashamed to go to the toilet in the presence of so many other people.



*Chemical toilet provided within the compartment of Isuzu vans. Both the toilet and water container are unanchored.*

- 2.50 This situation applies to male and female prisoners, regardless of the gender of the officers accompanying the prisoners who may witness the use of the toilet. Evidence was gathered of one female prisoner who covered the camera lens to change a sanitary towel. The driver stopped the vehicle and told her not to do this, and persisted with this attitude even after being told why the camera was covered. This is inappropriate behaviour.
- 2.51 This whole situation has further repercussions for prisoner health, as some prisoners informed the Inspection Team that they try not to drink water to ensure they will not need to use the toilet. This is the case even on very long transports in the hot conditions in the north of Western Australia. The distressed condition of prisoners at the end of the Kununurra to Broome journey<sup>36</sup> was indicative of this.
- 2.52 Not even this basic toilet facilities are provided for prisoners being transported in the metropolitan area. This is despite some prisoners spending many hours in the vehicles due to the movement through multiple locations in one journey. This is especially the case for prisoners being transported to or from prisons in the outer metropolitan areas<sup>37</sup>. When AIMS Corporation staff were asked what is done if a prisoner needs to use the toilet during transportation, one officer replied, “We sometimes give them a bottle to piss in.”
- 2.53 The lack of rest stops is exacerbated by the inadequate access to natural light and the inability to see out of the vans. Windows are too small, obscured or absent. This is especially disconcerting to prisoners on long distance transports and to Aboriginal prisoners. The Inspection Team is aware that the windows in some vehicles have been modified to allow more light to enter compartments and for prisoners to see outside, and would encourage this practice to be applied to all other vehicle<sup>38</sup>.

<sup>36</sup> See Sections 2.4 to 2.8, above.

<sup>37</sup> This occurs, for example, when the same van has to drop prisoners from various courts back to Hakea, Casuarina and Wooroloo prisons.

<sup>38</sup> It was acknowledged by the Department that an improvement was required with regard to the window design of some vehicles. While the parties have communicated about the need for such modification, no agreement currently exists to complete the works.

2.54 In summary, procedures must be reassessed to comply with the terms of the Contract and provide opportunity for persons in custody under transport to have time out of the van during long distance movements or to have more appropriate conditions within the van compartments.

#### Drinking Water and Food

2.55 Under the terms of the Contract fresh drinking water must be made available to every person in custody at all times. This is regardless of the length of the journey, but is especially important during long distance transports. Evidence has been gathered that prisoners sometimes have very restricted access to water. On the long transports, a large plastic water container of approximately 50-litre capacity with a tap is provided. It is difficult, indeed almost impossible, for prisoners to lift the heavy container off the floor of the van and place a cup under the tap. This is especially difficult if the van is travelling fast or turning corners. Prisoners in custody in the north of the State gave evidence that they have been in the compartment of vans where a container of water was provided, but often with no drinking cups. This would mean having to lift the large container and attempt to drink directly from the tap – a very awkward task in a moving van. This is dangerous, and does not fulfil the obligation to provide fresh drinking water at all times.



*Five prisoners ready for transportation from Broome to Roebourne in an Isuzu truck. Food, water and the toilet are all in the compartment together.*

2.56 In the course of an eight-hour escort, prisoners are provided with one meal (provided by the prison from which the transport is departing) whilst in the custody of the Contractor. This generally comprises two sandwiches and a piece of fruit. Often the sandwiches have been made the day before and are either stale or soggy. This is not adequate nutrition. Prisoners also object to having to eat and drink while sitting directly next to the toilet in the compartment of the van. The smell (if the toilet has been used) often puts prisoners off their food. Occasionally, urine may have spilt over the water container, with the result that no prisoner wants to touch it. This arrangement is unhygienic and bad practice. The provision of food, water and toilet access must be reviewed urgently<sup>39</sup>.

#### Heating/Cooling systems

2.57 Air conditioning systems are installed in all vehicles as stipulated in the Contract, and must maintain a temperature of 16 to 25 degrees Celsius as a constant flow of cool air. Problems have arisen, however, in the multi-compartment vans where it has become extremely difficult to maintain temperatures in one section of the van without either depriving the others of cool air, or freezing others. The factor of body heat has added another problem. When the compartments are full they

<sup>39</sup> In its response to the first draft Report, AIMS stated that it “will at its own expense devise an alternate water dispensing method.”

## CARE AND WELLBEING

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can become very hot due to the crowding of many people in a small space. This has again proven an issue, especially in the longer routes in the south and north of Western Australia where extreme weather conditions are also experienced.

2.58 There is some suggestion that, on occasions where prisoners have complained about the compartments being either too hot or too cold, custodial officers have simply shut the system down and left the prisoners in natural conditions, regardless of how many persons are in the van. Such conduct, if it occurs as alleged, is not acceptable.

2.59 In April 2001 members of the Inspection Team entered the compartments of a vehicle following its arrival at Roebourne Prison after a short journey (about 40 minutes) from Karratha. It was found to be extremely hot inside even though the custodial officers stated that the air conditioning unit had been switched on constantly. Prisoners disembarking were sweating a great deal and were visibly in discomfort. Comments from prisoners included:

- “The constant change to the air-conditioning, first it’s too cold, then it’s too hot. When you tell the drivers they just ignore you;”
- “The air conditioning is useless, even on a short trip;”
- “They were really worried about the trip as they knew it would either be too hot or too cold.” (An Indonesian prisoner translating for another prisoner.)



*Six prisoners arrive at Roebourne Prison in a Mazda van after a 40 minute journey.*

2.60 In light of the concerns expressed by the Contractor and the Department about providing seatbelts due to the risk of use for self-harm, it is interesting to note that AIMS Corporation staff have given prisoners blankets to use in the van compartments when complaints were received about the fluctuating conditions (that is hot in some parts and cold in other parts of the van compartment). These could be used for self-harm to equal effect as seatbelts, and there is inconsistency in the approach of the parties with regards to self-harm concerns.

2.61 The Department of Justice has acknowledged the problems with providing adequate air conditioning and airflow and has committed itself to a review of escort vehicles in the near future. The Inspector will continue to monitor this<sup>40</sup>.

<sup>40</sup> In its response to the first draft Report, AIMS stated that "it will cooperate fully with this review and implement any design changes considered necessary."

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### Emergency Procedures and Medical Emergencies

2.62 Schedule 2, part 5, of the Contract requires that critical incidents be dealt with immediately. Critical incidents are defined to include occurrences such as:

- Death in custody,
- Major fire,
- Self harm or attempted suicide,
- Injury or illness to person in custody requiring medical attention, and
- Injuries to a person in custody likely to cause death or permanent incapacity.

The Contract also states that “vehicles operated by the Contractor for the movement of persons in custody shall be equipped with adequate safety, remote rescue and first aid equipment for use in routine and emergency situations.”

2.63 This necessitates clear procedures in the event of any such incident, while fulfilling the Contractor’s obligations of duty of care towards persons in its custody. Measures stipulated within the Contract to safeguard the wellbeing of persons in custody include: regular checks being made on the condition of prisoners travelling in compartments and the development of procedures for first aid and medical assistance. There is evidence that, while some procedures are in place to deal with most of these emergency situations, they are inadequate in some aspects. There are also indications that where procedures are in place, appropriate staff training is inadequate.

2.64 The Office is concerned by reports that AIMS staff will not permit prisoners to carry Ventolin medication for asthma while in transport<sup>41</sup>. This is a serious threat to the health, or even the life, of prisoners, and has the potential to create a serious emergency situation. On inspecting the driver’s compartment in vehicles at the AIMS vehicle depot, Inspection Officers were shown a St John’s First Aid Kit and a Blood Spill Kit. When employees were asked what other safety equipment was carried in the vehicles only the Drager resuscitation equipment was mentioned.

### Camera Surveillance and Self Harm Incidents

2.65 With regard to duty of care obligations, Schedule 2, Part 4, clause 4.3.2, requires that regular checks be made on prisoners during transportation to ensure safety, security, health and well-being. In the majority of vehicles the main method of conducting such checks is through the use of cameras in the van compartments, linked to monitors in the driver’s cab. The observation of these monitors by Inspection Officers indicates that, while the camera system operates sufficiently to fulfil the security function of observation, they are, at least in the Mazda vans, inadequate to ensure the safety of prisoners under transport. In these vehicles the monitors look directly down onto the prisoner and only show the tops of their heads. Self harm incidents could be occurring unobserved. When staff

<sup>41</sup> In its response to the first draft Report, AIMS stated that there is no such policy. Prisoner testimony was quite clear, however. Probably, incidents have occurred without company authority, and if so that is indicative of poor training and/or supervision. AIMS has stated that it will resolve the issue immediately.

were questioned about this, one stated that: “If they start fighting, as sometimes they do, or if they slash-up, we won’t stop. We will have a look for the nearest police station or prison and take them there<sup>42</sup>.” Asked again if they would stop if a prisoner were seen to self-harm, they responded that they would not do so.

- 2.66 This is an inadequate response to what could be a critical and potentially life-threatening emergency. All staff should be fully trained to respond appropriately in these situations<sup>43</sup>. The Contractor is reliant on the public sector system for back up in emergency situations, and in this sense therefore is not providing a comprehensive and integrated service – one of the primary Contract objectives.

### Timeliness of Transportation

- 2.67 The terms of the Contract requires the timely movement of persons in custody. The procedures in place for booking a scheduled movement require all custodial facilities to notify the Contractor by a set time each day of the transport requirements for the following day. This allows the Contractor to plan movement routes and order of pickups. In the first months of operation, there were criticisms of the timeliness of service from both the Supreme Court and the District Court of Western Australia. Interviews with Officers from both Court jurisdictions indicate that, while the service has improved, there are still some issues relating to the delay in prisoners being received. One Officer stated that he still felt that the problem was not being addressed on a strategic or comprehensive basis.
- 2.68 Many prison administrators throughout Western Australia have also been critical of the lack of timeliness of the transport service. There have been complaints about the lateness of transport for medical appointments, which causes a great deal of frustration within the system. Waiting lists for medical and dental appointments are very long and if prisoners miss an appointment the wait for another can be very lengthy. One facility complained that despite a consistent routine for dental appointments from the facility – four prisoners to the same destination on the same day of each alternate week – the Contractor still consistently arrives at least one hour late<sup>44</sup>.

<sup>42</sup> In the non-Metropolitan runs, the nearest police station might be several hundred kilometres away.

<sup>43</sup> The AIMS Resource Management audit report (July 2001) found that AIMS “have a training manual in place, however there is no formal, documented training plan in place to support this manual detailing financial and other resources to be used in this training, who will conduct the training and a proposed outline of when the training is to be performed” (page 58). Evidence taken throughout the course of the Inspection supports this finding, which has widespread implications for the way in which transport services are delivered and for the safety, care and well being of prisoners in the custody of AIMS.

<sup>44</sup> The Director of the Office of Health Review has reported to this Office that on one occasion a prisoner missed a long-booked appointment in a public hospital and was consequently, like any other patient, put back in the waiting list. This would have meant a further delay of six months or more. The Director accordingly recommended that the Department should meet the costs of providing the prisoner with private medical care for this particular treatment. Fortunately, the prisoner subsequently managed to secure an immediate public hospital appointment.

## USE OF RESTRAINTS

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2.69 While both the Department and Contractor claim that the service has by and large been delivered in a timely manner<sup>45</sup>, the Inspection Team interviewed many people and collected a large number of examples of tardiness in the arrival of transport services. The performance by the Contractor has clearly been an issue for those utilising the service – prisoners and prison administrators – and procedures need to be reviewed and performance improved in light of this. However, it should be acknowledged that the Department of Justice Contract Manager’s Report for August 2000 – May 2001 states that “since about October 2000 AIMS have demonstrated overall timeliness and have kept missed services to a minimum” – a rather different emphasis from that which we heard from the coalface participants<sup>46</sup>.

### USE OF RESTRAINTS

2.70 Under the terms of the Contract, persons in custody are to be transported with due regard to risk status – that is whether the individual is rated maximum, medium or minimum security within the prison system. This seems to allow the Contractor some flexibility to consider factors of public safety and risk in determining the conditions under which prisoners are transported, particularly minimum security prisoners. The *Court Security and Custodial Services Act 1999* also places restrictions on the Contractor with regard to the use of restraints. Schedule 2, clause 12, limits the power to use restraints to circumstances where it is the opinion of the Contractor that they are necessary to prevent injury, prevent damage to property, on medical grounds, or to prevent escape. The clause again encourages operational flexibility rather than a blanket policy to restrain.

2.71 Historically, minimum-security prisoners and many prisoners suffering from serious health conditions were not manacled or shackled when transported. Minimum-security prisoners are kept in open custody environments where there is ample opportunity to escape should they decide to do so. Restraining them on escorts, therefore, seems an unnecessary measure, especially when trust is a large factor in granting that security rating. Moreover, many ill prisoners suffer from conditions that make it virtually impossible for them escape, whilst others for medical reasons cannot wear restraints.

2.72 During the initial stages of the Contract’s operation, the Contractor exercised its discretion as to when restraints should be utilised, rather than applying a blanket rule. Information regarding the proven behaviour of prisoners was taken into account and restraints applied accordingly. However, the Contract contains a penalty clause specifying a fine of \$25,000 per “escape”. A number of escapes by persons in the custody of the Contractor<sup>47</sup> led to a reversal of this exercise of discretion to a blanket policy whereby all prisoners, regardless of disability, infirmity, age or gender, are handcuffed during all movement occurring outside the transport vehicle itself. This ignores any continuity of

<sup>45</sup> Each acknowledges there are still problems from time to time. The Department of Justice highlighted the particular example of “early bring-ups for pleas or sentencing where the judicial officer has made a specific request.” It is possible that the judiciary has not been sufficiently apprised of the complexity of prisoner movements and that some improved liaison is necessary. Certainly, in some regional areas, remands in custody can enormously overload the system as prisoners are taken back and forth to court hearings. This is particularly so in the Kimberley.

<sup>46</sup> A key finding of the AIMS Resource Management audit report (July 2001) was that “AIMS do not appear to have a satisfactory resource management framework in place to manage their resources efficiently” (page 3). This could in some part explain the difficulties experienced by users of the service with the timeliness of transport pick-ups and deliveries.

<sup>47</sup> Note that the Contractor is currently in dispute with the Department as to what constitutes an “escape”. The matter is being arbitrated.

## USE OF RESTRAINTS

treatment for prisoners who are kept in custody in minimum-security environments. This causes a great deal of angst for some of these prisoners, and consequently some are refusing to be transported because they are being shackled.

2.73 The Contractor has also adopted the practice of assigning a minimum of two staff and a high security vehicle for every escort, regardless of the category of prisoners being transported. Under the public sector transport service, only one officer was usually assigned to a minimum-security prisoner and a less secure vehicle used. AIMS' method is more intrusive and more expensive. While it is encouraging that the Department and the Contractor desire to improve the performance of custodial services through the minimisation of escapes, the facts that



*Prisoner with serious leg injuries is handcuffed as he is led to court from a transport vehicle.*

“escape” seems to have been broadly defined and that the number of allowable escapes has been set at an unrealistically low level has actually hindered, rather than assisted, the good performance of the Contract. Prescribing a lower number of allowable escapes than has been historically been the case is laudable, but that number must be achievable. In this case it was not and it encourages the Contractor to exercise discretion based on commercial risk rather than security<sup>48</sup>. During the verbal briefing to the Inspection Team the Contractor conceded that, above all, financial considerations have driven the blanket policy on restraints.

2.74 The Department stated in its written submission that: “It is the Department’s view that the use of restraints and staffing requirements for prisoners under escort should be determined according to assessed risk<sup>49</sup>.” The Department is not satisfied with the performance of this aspect of the Contract, has raised its concerns with the Contractor, and will continue to monitor the issue. This policy regarding the use of restraints has resulted in a negative impact on the provision of services to prisoners, most notably those in medical care. This is especially so in minimum-security prisons and in the State’s main women’s prison. Women prisoners on escort to medical appointments are often handcuffed to male custodial officers and sometimes remain handcuffed throughout sensitive medical procedures. This is unacceptable practice<sup>50</sup>. Respect and privacy must be afforded to prisoners on such occasions. Evidence has also been taken from male prisoners who are similarly handcuffed to officers during medical procedures. Common sense discretion must be exercised in these situations.

2.75 Transportation for those in custody is inconsistent in quality and, at its worst, unacceptable. The care, wellbeing and safety of prisoners have not been a paramount consideration, and this is exemplified in the entrenched practices highlighted and issues raised in this Chapter. In large part this can be traced back to the vehicle design process, for which no agency wants to take responsibility. While many of the issues that have been raised are largely or wholly under the direct control of the Contractor (as stated by the Department in a response to a draft of this Report), each party involved had some level of responsibility to prisoners being transported. Ultimately, the Department retains responsibility for all persons in custody.

<sup>48</sup> The Department has acknowledged this and has committed to undertake a review of the definition of “escape” for the purposes of the Contract and the allowable number of escapes per annum.

<sup>49</sup> See reference at note 21, page 14

<sup>50</sup> The Department has stated that the Contract prohibits female prisoners being manacled to male officers, but is aware that the practice does occur. It has committed to closer monitoring of procedures.

# Chapter 3

## COMMERCIAL CONSIDERATIONS

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- 3.1 Throughout the Inspection a number of developments occurred in the relationship between AIMS Corporation and the Department of Justice. These included: industrial action by AIMS employees in relation to their own employer<sup>51</sup>, renegotiation with the Department of the remuneration for the performance of the Contract, and the negotiation of the cost of the second year of operation of the Contract.
- 3.2 These events had some impact in delaying the information gathering and Inspection process, but they have not had a substantial effect on the findings and recommendations contained in this Report. However, with many issues constantly being raised by both parties concerning monitoring, management and terms of the Contract, it has taken a concerted effort by the Inspector not to become entrapped in commercial matters. Of course, such issues retain importance for the purposes of this Report, in as much as they ultimately impact on the delivery of transport services. Accordingly, the commercial issues raised below will be monitored on an on-going basis by the Inspector, and will be the subject of comment in future reports regarding contracted services.

### Have the Contract Objectives Been Successfully Achieved?

- 3.3 Each party to the Contract claims that the broad objectives outlined in Chapter One have been achieved<sup>52</sup>. Certainly, having a sole service provider rather than many has generally allowed for more flexibility in the scope and volume of transport services provided. For example, after the commencement of the Contract the parties agreed for extra services to be added to those originally provided for in the agreement. While the Department of Justice and AIMS claim this objective has been achieved, those who come into daily contact with the service have profound reservations about its quality. Even if the claim of “better practice” is accepted as correct, this does not mean it constitutes acceptable practice. This issue has been explored in the previous Chapter.
- 3.4 With regard to the quality of custodial supervision and the safety of the public, the number of escapes by persons whilst in the custody of the Contractor has been the focus of much public and media attention. Under the Contract, only two escapes are permitted per annum. After this, a penalty of \$25,000 for each escape is deducted from the performance-linked fee<sup>53</sup>. As mentioned previously, the parties to the Contract are currently in disagreement as to what constitutes an “escape” for the purposes of the Contract, as according to the narrowest definition there have allegedly been six since the commencement of the Contract. If this were correct, it would entail a fee reduction of \$100,000. It should be noted that when these services were provided by the public sector, there were frequently more than two escapes per annum, though it is impossible to get any agreement on an accurate figure. The existence of the Contract has served to better document and make public these occurrences, compared to the multi-provider arrangements that preceded it.

<sup>51</sup> It should also be noted that, when the uniformed staff of Hakea Prison went on strike for two days in July, AIMS staff refused to cross the picket line for either a funeral escort or a medical emergency. However, in late September the Inspector witnessed AIMS staff crossing a picket line at Casuarina Prison to pick up a prisoner for dialysis. Obviously, working life is complicated for all workers at a time when the prison system as a whole is involved in industrial strife.

<sup>52</sup> The achievement of broad outcomes is examined here, as opposed to the performance of those specific terms of the Contract that have been examined previously in this Report.

<sup>53</sup> The Department states that this is not a “penalty” but a deduction. However, in common parlance this is how the arrangement would be regarded.

## COMMERCIAL CONSIDERATIONS

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- 3.5 The price for the provision of all services specified in the Contract for the first year of its operation was \$11,725,485. This consisted of \$11,061,804 as the budget cost to provide the services, \$165,900 (or 1.5% of service costs) as AIMS profit margin, and \$497,781 as a performance linked fee. The latter fee is assessed at bi-yearly intervals against 19 performance measures. AIMS Corporation has been paid the full amount of the bi-yearly fee due after the first assessment<sup>54</sup>. Following demands by AIMS employees for increased remuneration and an increase in the scope and volume of transport services provided<sup>55</sup>, the Department agreed to increase the total Contract price by \$4.15 million (to a total of \$15,875,485) for the contract year 1 August 2000 – 31 July 2001.
- 3.6 Benchmarks were formulated by the Department to determine value for money in assessing the bids for the Contract. The Department has accepted, however, that service level estimates made in determining the volume of prisoner transport services were flawed, and this contributed to the need to reassess the Contract price. However, the mechanisms to ensure that the Contractor is not able to drive up its own costs through its work practices are arguably not as effective as the Department would wish and the public interest requires. The Contract fee increase (see 3.5) was a lump sum amount offered by the Department and then accepted by the Contractor for a range of services to an estimated demand. It was not the result of absolutely accurate service benchmarks supported by careful documentation of increases in volume or scope.
- 3.7 Another aspect of the objectives of the Contract that may have been achieved is the return of police, prison officers and juvenile justice officers to their core duties. The Department provided figures that the equivalent of 100 police officers in metropolitan and regional areas have been released back to other duties and 40 prison officers and juvenile group workers have been returned to custodial duties. The Department advises that it is not possible to directly compare staff numbers employed by the former public sector providers and those employed by the Contractor; therefore, any extent to which this objective is met remains somewhat unclear.
- 3.8 AIMS stated that accountability has been improved in many ways including: the requirement of immediate reporting of incidents to the Department, the adoption of the concept of a performance linked fee ensuring high standards and thorough Departmental scrutiny, the extension of Ombudsman jurisdiction to the Contractor<sup>56</sup>, and the provision of statistics regarding the scope and volume of service that had not been previously provided by the Department.
- 3.9 However, despite being asked for evidence of internal compliance monitoring procedures, AIMS was not able to provide the Inspector with detailed information. AIMS stated in a supplementary written submission: “We are continuing to reinforce a range of measures aimed at verifying compliance with written best practice<sup>57</sup>.” No other details of this range of measures has been supplied. AIMS also states

<sup>54</sup> On the same date and in conjunction with the execution of the Contract, a schedule was executed between the parties setting out the original price and service resourcing that was to be carried out. The additional payments required under that schedule have resulted in a dispute between AIMS and the Department which is currently the subject of arbitration.

<sup>55</sup> The Inspectorate accepts that there has been a genuine increase in the scope of services provided by AIMS and in the volume of transport services required. AIMS have documentation where the Department itself states that the data upon which service requirements were calculated were unreliable.

<sup>56</sup> Note also that the Office of Health Review also supplies some scrutiny; see, e.g., note 44, above.

<sup>57</sup> Letter to Office of the Inspector of Custodial Services, 18 June 2001. The Department of Justice Contract Manager’s report, August 2000 – May 2001, claims (at p. 47) “there continue to be significant data quality problems associated with AIMS’ service delivery reporting within the CSCS contract.”

## COMMERCIAL CONSIDERATIONS

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that a Quality Management Plan will be ready in the next 12 months that would supply compliance information – 18 months after the signing of the Contract and nearly 12 months since the delivery of services started.

### Department of Justice Contract Management

- 3.10 The terms of the Contract require a degree of cooperation between the Department of Justice and the Contractor to ensure there are “cooperative processes”<sup>58</sup> in dealing with contractual issues. “This will involve full and open disclosure of resource assumptions, inputs, costs and margins by the Contractor when establishing a Contract Price, reporting on expenditure against the agreed Budgets during the operation of the Contract, negotiating any variation to the Contract Price and reporting on performance in delivering the Services<sup>59</sup>.” The Department has set up a team responsible for managing the Contract, which receives monthly service performance and expenditure reports and tries to ensure the accuracy of those reports. Any disputes or differences arising out of the Contract are decided either by mutual agreement, or by a dispute resolution process detailed in clause 10.3., or by arbitration. An example of this is the issue of the number of persons who have escaped while in the custody of AIMS.
- 3.11 The increase in demand for transport services has caused the Inspector to question the Department’s management of demand protocols. Previously, each prison was responsible for providing staff for prisoner transport services from its own staff complement. This forced facilities to budget for transport services and ensure that each movement was absolutely necessary and was coordinated properly. Priority setting and management was central to this arrangement. Of course, the danger in this was that genuine demands would be artificially suppressed. The Inspector believes on balance that a significant part of the apparently increased demand reflects the fact that past practice did to some extent suppress needs.
- 3.12 When the transport services were contracted out for a set price, individual custodial facilities no longer had to take resource responsibility for the provision of prisoner transport. However, strategies put into place to ensure that the Department managed transport demand were not effective. This appears to have contributed somewhat to the marked rise in the volume of prisoner movement and consequential increase in the cost of the Contract.
- 3.13 Pressures were also placed on transport services by other government agencies that have dealings with persons in custody, such as the Western Australia Police Service. These agencies are also requesting services not in accordance with previous practice<sup>60</sup>. Of particular relevance to this Inspection is the fact that the Department appeared not to be aware of this trend until it analysed the

<sup>58</sup> Contract for the Provision of Court Security and Custodial Services, January 2000, clause 2.4.

<sup>59</sup> *ibid*, clause 2.4(b).

<sup>60</sup> Anecdotal information suggests that remote area police stations prefer to move prisoners from local lock-ups to regional prisons as fast as they can – for example, from Derby or Fitzroy Crossing or even Kununurra to Broome. One reason for this is concern about deaths in custody. The Police consider that prisons are more appropriately fitted out and staffed to manage any such risk and basically are relieved, therefore, to export that risk to the nearest prison. There is no countervailing constraint to this practice, for the transportation costs and complications come out of a non-Police budget. In its response to the first draft Report, the Department of Justice expressed concern about and seemed to confirm this as being a problem.

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submissions for increased fees. Ideally, it should have had credible benchmarks and thus noticed the shift in service demand, so that at an earlier stage it could have commenced appropriate consultations with the government agencies to manage demand. The Department must put measures in place to manage the demand for prisoner transport services to prevent any blowouts that are not justified by genuine service needs<sup>61</sup>. The Department of Justice has indicated it has a number of plans in infancy to address the issue, mostly relating to the implementation of resource management controls at the local level. The Inspector will continue to monitor the demand for prisoner transport services to assess the impact of these proposals.

- 3.14 Similarly, it is difficult to know whether the Contractor is driving its own costs<sup>62</sup>. If the budget component of the Contract is increased, the performance linked fee and the Contractor margin are correspondingly increased, as these are calculated as a percentage of the budget cost. More effective measures must be developed into the Department's Contract Management procedures to ensure that all services are being delivered in the most efficient way and that costs are not being driven up to the commercial advantage of the Contractor.

### Corporate Compliance Measures

- 3.15 The Contractor is required to monitor its performance against performance measures stipulated in the Contract and to provide a monthly report to the Department. The Department stated in its submission to the Inspector that to date the report "has suffered from omitted or incomplete data and inaccuracies requiring considerable reworking". It has expressed its concern to the Contractor and is awaiting an improved performance.
- 3.16 AIMS notifies the Department of Justice of all reportable and critical incidents (as defined in the Contract). In the first instance some are notified by telephone within one hour of the incident, but in any case all must be followed up with an interim written report. The Department is satisfied with the Contractor's fulfilment of this obligation.
- 3.17 Twenty-four hour on-line access to management information is supposed to be available to the Department. The Department only received notice that access is available on 19 June 2001, but no password was initially provided and accordingly access was denied. This information should have been available from the commencement of the operation of the Contract in July 2000<sup>63</sup>.
- 3.18 An audit framework developed specifically for the Contract by the Department has been trialled at one location. The Inspector believes that 16 months into the Contract term, compliance measures

<sup>61</sup> The Department states that such measures are now in place. However, "medical appointments, hospital admissions and funeral escort applications are policy-driven demands that will continue to draw on contract resources." Nevertheless, these are matters still within the control of the Department.

<sup>62</sup> Court Officers also raised this concern with the Inspectorate. They had approached AIMS with a measure to increase efficiency and decrease costs, by an alternative system of collection of prisoners at the close of court business. The officers believe this would reduce security risks and reduce the hours at court by approximately 240 hours per month. We have been told that AIMS have yet to respond.

<sup>63</sup> The Department advised in its response to this Report dated 9 October 2001 that as a result of its inability to access reliable data, it has resorted to a parallel reporting system to manage contractual risk. This has resulted in significant differences between the figures reported by the Contractor for service delivery, and the figures produced by the Department.

## COMMERCIAL CONSIDERATIONS

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should be operating at a better standard. This goes directly to the aim of achieving better accountability and transparency in service delivery. The broad deficiencies outlined above will continue to be monitored by the Inspector and followed up in future reviews of the total services provided under the Contract.

- 3.19 The Department recently introduced a Prisoner Grievance Scheme into all prisons. This is a worthwhile initiative and seeks to facilitate the resolution of prisoner grievances at the lowest possible level and within the shortest possible time. However, the Scheme is predicated upon prisoners knowing about its existence and being confident about its effectiveness – some prisoners may not have had prior experience of custody and may not have been orientated into the grievance system. So while prisoners can in theory lodge complaints regarding transportation services through the Prisoner Grievance Scheme, they may not in practice be in a position to do so. This Scheme parallels statutory rights to lodge complaints with the Ombudsman or the Office of Health Review, and should be explicitly drawn to the attention of prisoners. Such complaints should also be seen as a source of information on service quality. The Inspector appears to have been the first agency to actually consult the “customers” about service quality and draw upon their experience in evaluating it.
- 3.20 A number of desired objectives in contracting out prisoner transport services have been realised. In its response to the first draft Report, the Department cited fifteen ways in which it considered it had brought about improvement to the situation of prisoners and thus contributed towards meeting its own duty of care. They included such matters as: referral to the Department’s own Internal Investigations Unit of all serious complaints alleging assaults by AIMS employees; similarly, referral of allegations to the Police; refusal of high-security work permits to some applicants put forward by AIMS; involvement of the Department in restraints training for AIMS workers; and, detailed notification procedures to be followed by the Contractor in the event of critical incidents.
- 3.21 Without wishing to diminish in any way Departmental commitment to improvements in service delivery, it does seem that these matters have been consistently held at arm’s length. In a situation where, ultimately, duty of care cannot be delegated (it is simply that AIMS is also involved in that duty), more direct involvement and a more interventionist approach would seem preferable. Many aspects of the contract performance involve potential legal and political risk. A rollover on the Great Northern Highway in which the injuries to prisoners are exacerbated because of lack of passenger safety within the compartment or inability to release prisoners from a vehicle on fire could not be shrugged off as attributable merely to AIMS. The Department of Justice itself, and the responsible Minister, would be accountable.
- 3.22 Furthermore, there remain serious questions as to the extent of the Contract’s success with regard to some important commercial and contract management aspects. The Department has indicated that it is aware of these shortcomings and is taking action to remedy them. Given that the primary focus of this Inspection was transport services for adult prisoners and that sensitive negotiations were currently under way between the Contractor and the Department to move into the second year of operation of the Contract, the Inspection Team did not closely examine commercial and contract management arrangements on this occasion. However, the progress of these developments will be

## COMMERCIAL CONSIDERATIONS

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monitored and reported when the Inspector undertakes a more expansive review of the Contract services<sup>64</sup>.

- 3.23 The fact remains that despite a number of Department of Justice mechanisms in place that supposedly ensure that the Contract operates with the interests of prisoners in mind<sup>65</sup>, Inspections Officers repeatedly observed non-compliance with contractual terms that resulted in prisoners being transported in unacceptable conditions.

<sup>64</sup> Many of the commercial issues raised in this Chapter were the subject of comments in the AIMS Resource Management audit report prepared by KPMG at the request of the Department and tabled in Parliament in July 2001. The response from the Department was that the “findings raise concerns about the resource planning, management and reporting practices of AIMS, and have implications for the ability of the company to deliver cost-effective court security and custodial services to the State” (page 49).

<sup>65</sup> See paragraph 3.20, above. The full list of these mechanisms was provided by the Department of Justice in its response to a draft of this Report, dated 18 September 2001.

# Chapter 4

## MOVING FORWARD

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- 4.1 Following a protracted process, the Department of Justice contracted out the provision of transportation services of adult persons in custody. The objective was to provide an integrated service that would prove less expensive while becoming more accountable, safer and improving the quality of service. In this process, there was always a danger that the human side of what is a human service may have got somewhat lost. The safety, care and wellbeing of prisoners must always constitute the primary consideration. The Inspection has given rise to questions as to whether this has always been the case.
- 4.2 The reality of transportation for prisoners is that they are often dehumanised and subjected to sub-standard conditions. Prisoners told Inspection Officers of their fear while locked in the compartments of vehicles – fear that is exacerbated by the lack of anchor points, hard seating, speed and disorientation. The often inadequate provision of ablution facilities, drinking water, food, climatic controls and emergency procedures has further exacerbated their situation. Added to this, the often inappropriate use of restraints demeans those minimum-security prisoners who are moving toward release and resettlement into the community. The design of vehicles has not passed independent scrutiny for their suitability in the transport of people, especially over long distances. The fact that the people being transported happen to be prisoners is no justification or excuse. In summary, the serious issues raised in this Report regarding the performance of the Contract cast doubt on the claim that the objectives of the out-sourcing of prisoner transport services have been achieved.
- 4.3 The complex and ever-evolving contractual and commercial aspects of the Contract have highlighted the need for renegotiation. The scrutiny and management of the Contract by the Department have been inadequate in some respects, and the Contractor has failed to implement comprehensive compliance monitoring and documentation. The need for an independent mechanism for prisoner grievances to be registered must also be recognised and addressed.
- 4.4 Following dispatch of draft Reports to the respective agencies, the Inspector usually receives Action Plans by way of response from the different parties, specifically addressing the Report's recommendations. At the resolution of these disputes, the Inspector requires to receive the respective Action Plans to progress issues raised in this Report. In due course, the Inspector will re-examine the transportation services and expects an improved service that fulfils its duty to the prisoners in its care.

## RECOMMENDATIONS

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### 1. SAFETY

The Department of Justice must reassess the acceptability of the vehicles in the context of the contractual obligations placed upon the Contractor in relation to “safety, security, comfort and duty of care” and the Department’s own obligation to grant or withhold approval of the design submitted by the Contractor.

### 2. INNOVATIVE DESIGN TO ADDRESS SAFETY ISSUES

The Contractor should develop and implement innovative strategies that address the issues of anchor points, safety harnesses, bench seat design and evacuation hatches so as to conform to its contractual obligations.

### 3. COMFORT AND WELLBEING DURING JOURNEYS

The Contractor must address such questions as breaks for private toilet use, the improved provision of fresh meals and drinking water, access to natural light and the method of climate control to improve the conditions experienced by prisoners whilst being transported.

### 4. ENVIRONMENTAL, REGIONAL AND ABORIGINAL ISSUES

Factors unique to the provision of transport in remote areas of Western Australia, such as climate and distance, and the fact that most prisoners carried on these transports are Aboriginals to whom certain factors are particularly oppressive, must be given specific consideration by the Department of Justice and the Contractor in the design of vehicles and in the development of the rules and procedures governing prisoner transportation.

### 5. DISABILITY

Vehicles that are appropriate for the movement of prisoners who are infirm or who have a disability must be made available and utilised by the Contractor. In addition, proper equipment (such as wheelchairs) to assist prisoners who have problems with mobility due to infirmity or disability must also be utilised in moving prisoners.

### 6. TRAINING

The Contractor must provide proper training to its employees to ensure rigorous procedures are in place relating to safety, rescue and vehicle evacuation. It must also continuously monitor that employees follow the established procedures. The procedures used to monitor the health and safety of prisoners whilst in transport must be improved.

### 7. TIMELINESS

The Contractor must reassess its systems and practices in dispatching transport services to ensure a more reliable and timely service.

## RECOMMENDATIONS

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### 8. RESTRAINTS

The blanket policy of using restraints on all prisoners during transportation is not acceptable and must be reviewed. Discretionary use of restraints based upon security classification, age, infirmity and gender must be utilised.

### 9. DEMAND CONTROL

The Department needs to develop measures to control demand for transport services from custodial facilities to ensure the genuine transportation needs of prisoners are maintained while eliminating excessive use of the service.

### 10. GRIEVANCES

The Department needs to introduce a system to allow prisoner experiences of transport services to be documented and linked to the Department's recently introduced grievance system.

### 11. CONTRACT COMPLIANCE AND COST PRESSURES

The Department should develop and implement improved measures to ensure that the Contractor is delivering all services in the most efficient manner and not driving its own costs.

### 12. CONTRACTOR'S INTERNAL AUDIT SYSTEM

A complete and concise operational audit system should be planned and implemented by the Contractor as a matter of priority.

### 13. DUTY OF DEPARTMENT OF JUSTICE TO MONITOR COMPLIANCE REGARDING SERVICE QUALITY

The Department of Justice must rigorously monitor and enforce compliance with the quality of service issues and work together with the Contractor to facilitate the achievement of the above recommendations, including the renegotiation of any terms of the Contract as necessary.

### 14. DEPARTMENT OF TRANSPORT SHOULD TAKE A LEADERSHIP ROLE IN THE DEVELOPMENT OF STANDARDS RELATING TO VEHICLES USED FOR PRISONER TRANSPORTATION

The Department of Transport should accept that it has responsibility for setting and enforcing standards of vehicles used in prisoner transportation, and produce a new Code that reflects the passenger safety concerns identified in this Report.





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