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Report No.



**Report of an Announced Inspection  
of Acacia Prison  
March 2003**



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES  
WESTERN AUSTRALIA

**Cover photo: Acacia is Western Australia's largest prison, built on a campus model on pleasant, rolling land near Wooroloo.**

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of Acacia Prison – March 2003**

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

[www.custodialinspector.wa.gov.au](http://www.custodialinspector.wa.gov.au)

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# The Inspector's Overview

## ACACIA'S FRAGILE ENVIRONMENT

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### THE STORY OF PRISON PRIVATISATION IN WESTERN AUSTRALIA

Acacia Prison is Western Australia's first and only privately managed prison. It was established following a 1997 decision of the then Liberal-National Party Coalition Government to seek an alternative form of service delivery from the traditional public sector arrangements. The motives for going down the privatisation track included: a desire to change and improve the management culture of prisons; the hope that better recidivism outcomes could be achieved through different approaches to offender programs and related matters; an intention to contain costs of imprisonment; and a hope that the achievements of this innovative approach to imprisonment would encourage public sector prison management to respond and improve. However, the decision was controversial both in party political terms and from the public point of view. The Australian Labor Party, then in Opposition, was strongly opposed to privatisation of what it regarded as a core state service; whilst in public and media debate the point justifiably was made that private prisons had a mixed record in other parts of the world, including Australia, ranging from the very good to the alarmingly bad.

Accordingly, accountability and external scrutiny were seen to be crucial elements of any privatisation initiative, and this realisation was the catalyst for the establishment of the Office of the Inspector of Custodial Services. Specifically, the very same legislation that authorised and facilitated the establishment of a privately managed prison (the *Prisons Amendment Act 1999*) also set up this Office.

For these reasons, therefore, not only was the Inspection of Acacia Prison a touchstone event for this Office but also, more importantly, it provides the first opportunity to present the general public and the political arm of the State with an external and independent review of the functioning of the prison. The fact that the then Opposition party is now in Government makes the responsibility of providing a comprehensive and balanced report even greater.

Acacia Prison was commissioned and received its first prisoners in May 2001. Wisely, the Department of Justice had contracted for a slow fill-rate, so that the prison did not come up to full capacity until a year after commissioning. New prisons, whether public or private, are often vulnerable to disorder during the first few months of operation, and it is never straightforward to return a disorderly prison to a safe and pro-social environment. From the point of view of inspection, however, it would be premature to inspect a prison before it has had a reasonable opportunity to operate at full capacity for a sufficient time for the processes and protocols to settle down and the staff/prisoner culture to evolve and consolidate. Consequently, the inspection of Acacia did not commence until March 2003 - almost one year after the full capacity of 700 prisoners had been achieved.

As will be apparent upon a full reading of this Report, Acacia's performance was disappointing, well short of the standard that the State had contemplated when making the contract with the private operator. The deficiencies were evident in such areas as offender programs, education services, work opportunities, services for Aboriginal prisoners, the treatment of vulnerable prisoners who were on

## ACACIA'S FRAGILE ENVIRONMENT

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protection, and various matters relating to the care and well-being of prisoners generally. Most important of all, however, was the pervasive sense that the prison environment was potentially unsafe for both staff and prisoners. Whilst there were also some pleasing features about the prison, the situation seemed fragile, posing a tangible risk of failure. This view was forcefully conveyed to the relevant parties at a debrief session on 21 March 2003.

How had this come about? After all, the contract is a strong one, clearly articulated as to expectations, and the Department was in principle strongly committed to this key aspect of its strategy for improving prison services generally. As far as one could tell, the contract price was reasonable - the successful bid had certainly not been the cheapest and the then Government had genuinely committed itself to getting the best correctional value for money rather than accepting the cheapest conforming bid - so the contractor should not have been subject to irresistible temptations to cut corners. There seemed to be four main aspects to resolving this conundrum:

- (a) The post-contract history of the successful bidder;
- (b) Related to this, management and staffing changes and policies made by the successful bidder;
- (c) Changes to the role originally contemplated by the contract; and
- (d) Some significant shortcomings in the Department of Justice's management of the contract.

### THE POST-CONTRACT HISTORY OF THE SUCCESSFUL BIDDER

The successful bidder was the Corrections Corporation of Australia (hereafter 'CCA'). This company was originally a fully owned subsidiary of Corrections Corporations of America, which was the largest operator of private prisons in the world. At the time of the bid for Acacia, CCA operated two prisons in Australia - Borallon Correctional Centre in Queensland and the Metropolitan Women's Correctional Centre in Victoria. The bid for the Acacia contract was very much the creature and inspiration of a senior female executive of CCA.

Corrections Corporation of America ran into trouble at about the same time as the bid for Acacia was being developed. It had reincorporated itself as a 'Real Estate Investment Trust' - a corporate entity that by US law minimised tax. However, the corollary of this was to create a liquidity problem inasmuch as, under the applicable law, only a very small percentage of profits could be retained as working capital. Moreover, there was great stock market scepticism about the move. To safeguard its business Corrections Corporation of America eventually had to unscramble its corporate restructuring, and this whole episode distracted it for several years from the productive side of its operations.

During that time, it paid insufficient attention to its Australian subsidiary. In fact, CCA went backwards. First, in November 2000 the State of Victoria cancelled the contract relating to the Metropolitan Women's Correctional Centre on account of multiple defaults and service failures.

## ACACIA'S FRAGILE ENVIRONMENT

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Shortly after that, its re-bid of the Borallon contract was unsuccessful and another private provider took over. Meanwhile, the senior female executive responsible for the Acacia bid had left the company. At the time the bid was being evaluated by the Western Australian Government, she had still very much been part of the arrangement; with her departure, the corporate knowledge of and commitment to the Acacia contract evidently suffered. In the midst of all this, Corrections Corporation of America had sold 50 per cent of its equity to Sodexo Alliance, a global French service company; subsequently, Sodexo purchased the 50 per cent of CCA that it did not already own so as to become the sole owner of that company. CCA was re-badged as Australian Integration Management Systems (AIMS) in late 2000.

That saga graphically illustrates one of the risks that can arise in dealing with the private sector.<sup>1</sup> Certainly, it was a risk that no Government agency could reasonably have anticipated at the time of evaluating the bids and letting the contract. The consequence was that, from the outset, there was an inherent instability in the arrangements: a new company based in Brisbane with changed personnel and lacking its intellectual mentor; a different corporate owner based in Paris and relatively unfamiliar with the Australian prison scene; and a greenfields prison site waiting to be developed according to a timetable that was driven by the need to resolve the problem of overcrowding in the public sector prison system.

### MANAGEMENT AND STAFFING CHANGES

Not surprisingly, therefore, during the pre-commissioning period of Acacia Prison - a period during which absolutely crucial preparatory operational work should be done - there were numerous changes of senior personnel. Continuity was very much fragmented. At the middle to lower levels, there tended to be a considerable reliance upon personnel with experience in Queensland corrections, mainly at Borallon but also within the public sector, and in some ways their approaches ran counter to that which had been contemplated by the original CCA bid and by the Government in accepting that bid. All this was exacerbated by the fact that there were considerable losses of custodial staff in the months after the prison was commissioned - an entirely predictable matter<sup>2</sup> that could have been coped with if a stable management system had been in place.

To summarise: no new prison can function effectively if it lacks stability at senior management, middle management and line officer levels, and Acacia in the initial period suffered at each of these points. The impact of this was still evident at the time of the Inspection. The corollary is that one

<sup>1</sup> The contract required that the authorisation of the CEO of the Department of Justice had to be obtained if the beneficial ownership of the Contractor were to change substantially and that, in the absence of such authorisation, the contract could be terminated. However, this was an illusory safeguard in the circumstances described above; the CEO was in effect confronted with a scenario that left him no choices.

<sup>2</sup> As private prisons tend to recruit base-grade staff who have no previous prison experience, most of them experience quite a high initial staff turnover rate as people come face to face with the unexpected realities of their new jobs.

would not expect performance to improve until stability has been achieved; and one of the good things to report following the on-site phase of the Inspection is that there are at last clear signs that things are changing for the better in this regard.

### CHANGES TO THE CONTRACTUAL EXPECTATIONS

The Request for Proposals and the resulting contract had not contemplated that protection prisoners would be held in large numbers at Acacia. As it has turned out, the prison accommodates as many such prisoners as the rest of the prison system put together. Whilst not an insuperable challenge in itself, this has certainly put the prison under some stress. This has been exacerbated by inappropriate management decisions, such as using both Crisis Care and the Geriatric Unit as overflow accommodation for particularly vulnerable protection prisoners.

Similarly, it was not expected that minimum-security prisoners would be held at Acacia. In the event the numbers are increasing - up to about 65 in September 2003. This causes many of them considerable stress. Instead of being held in a relatively relaxed environment such as Wooroloo or Karnet, they find themselves in a prison that is at the top end of medium-security, and their sense of unfairness and frustration can spread into the general atmosphere of the prison.

Related to this, Acacia has become the State's most important releasing prison, especially with regard to releases on parole. This situation was likewise never contemplated and, when it arose, should have been identified more quickly and managed more effectively by both the Department of Justice and AIMS.

The Report covers these points in detail, and also the adjustment problems encountered by Wongi prisoners. A well-functioning prison could absorb and successfully handle all of these issues; but a prison whose regime is already fragile becomes even more fragile as a consequence.

It should perhaps be added that some changed contractual arrangements amounted to contract variations in a formal sense, but that they had not been reported to Parliament, as statutorily required. The Department has now taken steps to correct that in relation both to past and re-negotiated variations.

### CONTRACT MANAGEMENT BY THE DEPARTMENT OF JUSTICE

Over the last two decades there has been a significant shift in many Western societies towards private finance initiatives to fund public enterprises. This trend has probably run somewhat ahead of the capacity of public sector agencies to manage the resulting contracts effectively. This is particularly the case where the contracting out relates to human services rather than more tangible outputs, such as construction projects or power distribution networks. Certainly, the contracting out of prison services was a first for Western Australia and was always likely to pose some testing challenges.

The Department of Justice was certainly under no illusions about this, and the resources allocated for this purpose - and for the related contracts concerned with court security and custodial services including prisoner transportation - were substantial. They are described in detail at the beginning of Chapter 8 of this Report. Unfortunately, at the time of the Inspection the arrangements had not really safeguarded the State's interest in this crucial service delivery area as well as should have been the case.

Several factors have contributed to this. Foremost is what appears to be a cultural gap between those who know the prison business (the on-site team of monitors) and those who know the commercial business (the off-site contract managers, accountancy personnel and administrators). To this point these two elements of the Contract Management group have not operated in a fully integrated way. There also appears to have been an element of rivalry between them or, alternatively, a preference in one part of the team to disregard the insights of the other part of the team.

It is not useful to allocate fault or blame between the groups in this regard; suffice to say that, in a contract management situation of this kind, there must be effective integration. The outcome seems to have been that the contract management team as a whole has not taken advantage of the insights made and the trends identified by the on-site monitors; and the on-site monitors in turn have not initially felt encouraged to take their trend analysis and identification beyond the primary levels related to the performance-linked fee. If the contract management system as a whole had been operating in an optimum way during the period of the contract, it is almost certain that the prison operations would not have deteriorated to the extent that we found during this Inspection.

The other worrying aspect of the contract management activities was that there seemed to be a degree of naïvety about financial matters relating to the affairs of the Contractor, AIMS. That company, as mentioned above, is a wholly owned subsidiary of a French conglomerate, yet the partnering and business relationships of the Department of Justice were confined to relations with the subsidiary alone. AIMS is not a public company, nor is it cashed up; it is reliant upon its cash flow from the contract and, ultimately, dependent upon the commercial support of Sodexho. Whilst it is true that nothing had occurred to cause the contract managers to doubt that Sodexho would continue to stand behind AIMS, by the same token there was no formal basis upon which such an expectation could be based. Some of the safeguards written into the contract, by way of access to the books of AIMS and the entitlement to properly audited accounts, have consequently not been properly invoked.

Matters related to this were identified during the Inspection by officers of the Auditor General's Department, made available to me to assist with the Inspection by the generous cooperation of the Auditor General, Mr Des Pearson. Their inputs and insights have served to fortify my confidence in the validity of the insights and analysis in Chapters 7 and 8, but of course the responsibility for those chapters ultimately rests with me, as Inspector. The responses to our recommendations indicate that

the Department of Justice has accepted most of the points made in this regard, and the consequence should be that future control of the financial aspects of the arrangement will better protect the interests of the State.

Related to this is the fact that the Department of Justice, through its contract management team, had been tardy about formulating effective transition plans to cover possible failure or termination of the contract; it was only completed in May 2003, two months after the Inspection had finished. Far too much reliance had previously been placed upon the fact that a bank guarantee of three million dollars is available in the event of contract termination through default. The unspoken assumption was that this amount would tide the Department over for a month or so whilst it was putting in its own management and operational systems. In other words, a return to the public sector system of management was in reality if not in name the only contingency seriously contemplated.

In that regard, a bank guarantee of three million dollars would be quite trivial in its impact. Analysis in the body of this Report suggests that the true costs of Acacia Prison's being run by the public sector would be in the order of an additional fifteen million dollars per annum, i.e. over and above the existing contract price. The transition plan should certainly cover the possibility of re-tendering the contract, if only to ensure that proper market testing occurred, and although this possibility is mentioned in passing the plan in no way identifies how this might be done. Of course, what the figure of fifteen million dollars brings out is that, above all, it is in everyone's interest that the contract should be effective and should deliver the quality of services that the original bid contemplated.

In the context of contract failure, it should be noted that the problems at the Metropolitan Women's Correctional Centre - the former CCA prison that was taken back into the public sector, as mentioned above - ran for four years before the State of Victoria terminated the contract. That termination was very expensive for that State - in the region of twenty million dollars. The benefit of a timely Inspection such as this - i.e. after two years of operation - is that it has given the parties ample opportunity to head off the level of crisis that occurred in Victoria.

In this regard, it is gratifying to record that, since the on-site phase of the Inspection, this appears to be happening. There has been a positive response from both AIMS and the Department of Justice individually; more importantly, they have commenced a far more effective partnering relationship than had previously been the case. This is epitomised by the fact that the responses provided to those recommendations concerned with on-site performance were common to the parties. For its part, AIMS has brought in a new and experienced senior management team, and has also established a Joint Consultative Committee involving all levels of staff to address those problems that appear to have a staffing component to them. In addition, it appears that the Brisbane-based expenditure of the company is being cut back considerably, with savings going into Perth management structures, and that is very much to be welcomed.

## CONCLUSION

Where does all of this leave us? In March 2003, at the time of the Inspection itself, there did seem to be real and urgent questions as to whether the whole operation might fall over. The Inspection and the debrief that followed it seem to have focused the attention of both AIMS and the Department of Justice upon the crucial issues. The contract is still not without some risk: but that risk has receded. As the full Report reveals, there are some strong factors to be built upon, most notably positive staff attitudes and aspirations. If the parties carry through the undertakings given in response to the recommendations of this Report, Acacia will be a very much better prison in two or three years' time. This Office through its regular liaison visits will keep on-site performance under scrutiny to try to ensure that progress is maintained. However, in the end AIMS and the Department of Justice must make the arrangement work, and in that regard it is now evident that they are pulling in the same direction.

## EXPERT CONTRIBUTIONS AND ACKNOWLEDGEMENTS

Finally, it will be apparent to readers as they go through this Report that this Inspection was very complex. Consequently, expert assistance was required to supplement our in-house skills. As already mentioned, the Auditor General made two experts available. In addition, Mr John Podmore - a senior Governor in the UK Prison Service - advised me on security issues and these were the subject of a confidential report to the Minister before the full inspection took place. Dr Keith Carter, principal researcher for the Report on Vulnerable and Predatory Prisoners in Western Australia (Report No. 15), also re-examined the protection situation at Acacia, and his observations provide the basis for important aspects of the Report. Finally, Dr Neil Morgan participated in all aspects of the Inspection and then was the principal author of the draft report from which this final Report has grown. His contribution was enormous, and I would particularly like to extend my appreciation to him. Of course, the ultimate responsibility for the completed and for the substance of its observations and recommendations is entirely my own.

Richard Harding  
Inspector of Custodial Services

*19 September 2003*

# Chapter 1

## A NEW APPROACH TO THE BUSINESS OF IMPRISONMENT

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- 1.1 Acacia Prison was commissioned in May 2001 and, as intended, has become the State's largest prison, currently accommodating a diverse population of around 700. This includes around 200 Aboriginal prisoners (the largest number in any State prison and more than the total population of most prisons), the largest number of protection prisoners in the State, and a significant number of geriatric prisoners. Viewed simply as 'another prison', it therefore presented a number of challenges for an Inspection.
- 1.2 However, Acacia is not just another prison; it is the State's first, and so far its only privately designed, constructed and managed prison, involving a high level of long-term State expenditure. The contract is initially for a period of five years, but with the possibility of contract extensions the total prospective period is 20 years. The total value for the anticipated 20-year contract is around \$500 million at today's prices. In addition, Department of Justice head office costs with respect to the contract are currently running at around \$7 million per annum (or \$140 million at current prices over the projected life of the contract).<sup>1</sup> It is therefore crucial that this Report, two years into the prison's operation, should examine the management of the contract between the State and the service provider.
- 1.3 This Chapter provides a review of the background to the construction of Acacia (and the decision to opt for a private prison), its subsequent development, and the statutory and contractual framework. The Report then moves on to examine Acacia's performance as a prison, including custody, control and prisoner services. Having outlined Acacia's performance, it analyses a range of issues with respect to the service provider's corporate and management structure and the Department's arrangements for contract management and monitoring.
- 1.4 The Report does not refer in detail to the ever-expanding literature on prison privatisation, both theoretical and empirical. In part, that is because it is not the function of this Office to question the political/ideological preferences of different governments; our role is to review the performance of all prisons (both public and private) and to increase transparency and accountability across the system as a whole. However, it is also largely unnecessary to canvass other literature because one fundamental proposition is clear and no longer seriously contested even by opponents of prison privatisation. This is that the private sector, like the public sector, is capable of running prisons that are good, prisons that are bad, and prisons that fall somewhere in between.<sup>2</sup> Our task is therefore to review Acacia's performance in the context of a legal and contractual framework that drew on experience in other jurisdictions, and that was intended to provide a strong and effective model of accountability and monitoring.

<sup>1</sup> See Chapters 7 and 8, below.

<sup>2</sup> See National Audit Office, *The Operational Performance of PFI Prisons: Report by the Comptroller and Auditor General* (HMSO, London, 2003); A. L. James, A. K. Bottomley, A. Liebling and E. Clare, *Privatizing Prisons: Rhetoric and Reality* (London: Sage, 1997); HM Chief Inspector of Prisons, Annual Reports (Home Office, London, 1995 onwards); R. W. Harding, 'Private Prisons', in M. Tonry (ed.), *Crime and Justice: A Review of Research*, Vol. 28 (Chicago: University of Chicago Press, 2001).

### WHY A NEW, PRIVATE PRISON?

- 1.5 The decision to build Acacia Prison - and, more particularly, the decision to invest in a privately constructed and managed prison - reflected a range of ideological, practical and financial considerations.
- 1.6 The first of these was the emergence in the then Ministry of Justice of a new philosophy for imprisonment. This evolved through a series of reviews and reports from the mid-1990s and, by early 1998, had crystallised into four 'cornerstones'. It was accepted that custody had assumed too dominant a role, at the expense of other important features of a modern prison service. Custody was certainly one cornerstone, but the others were to be care and well-being, rehabilitation and reparation. Importantly, they were all seen as cornerstones in the true sense of the word: if any one of them were to fail, the structure itself would fail.<sup>3</sup> This new philosophy was developed to be system-wide but it appears that the rethink was prompted by the possibility of a new prison being constructed and, given local, national and international factors, the fact that the government would inevitably consider privatisation.
- 1.7 A second factor, which assumed particular importance by mid-1999, was overcrowding. In national terms, Western Australia has long had a high imprisonment rate, and the highest Indigenous imprisonment rate of any state. By late 1996, there was cause to believe that the imprisonment rate might decline. New laws had been introduced to reduce the rate of imprisonment for fine default, sentences of three months or less were being abolished, and the courts were being given a range of realistic modern alternatives to imprisonment. However, despite these initiatives, the prison population remained relatively constant (between 2,200 and 2,300) from 1996 to mid-1998. This population level presented some problems of overcrowding; the system as a whole was generally around ten per cent above capacity and some prisons (notably Casuarina, at around 30 per cent above capacity) faced notably higher levels of overcrowding. The overcrowding problem deepened dramatically between May 1998 and July 1999, as the prison population rose by a staggering 30 per cent to over 3,000. Planning for Acacia predated this increase - and few would have predicted its extent - but overcrowding and a rising prison population were clearly major considerations in the decision to expand capacity.
- 1.8 Four related factors help to explain the decision to opt for a private prison. First, government policy at the time strongly favoured notions of contracting out and contestability. Secondly, this ideological preference had resonance, even in an area that was traditionally regarded as the public sector's responsibility, because of concerns about the quality and costs of the public system (both in terms of

<sup>3</sup> The appropriate weight to be given to each of the four cornerstones will vary according to the role of the prison. For example, a minimum-security releasing prison would be expected to put more emphasis upon reparation and rehabilitation than a maximum-security prison where long-term serious offenders commence their period of imprisonment.

construction and in terms of management). A third factor related to concerns about prison officer culture and the role and power of the Prison Officers' Union. For all these reasons, it was considered that the four cornerstones philosophy could not readily be achieved within the existing public sector system and that a more flexible approach, less constrained by traditional attitudes and perspectives, was required. Finally, the growing literature on prison privatisation in other jurisdictions provided a resource upon which the State could build. Experiences with privatisation elsewhere had been very mixed. Inevitably, 'bad' prisons had received considerable publicity but there were also examples of good practice in the private sector. It was also clear that the most serious failures had occurred in systems with poor monitoring and weak accountability mechanisms.

- 1.9 Thus, the establishment of a new private prison was not intended merely to provide more bed-space but had a broader strategic objective - it was to provide a lever for system-wide change through the presence and example of an alternative means of service delivery. Put simply, the key drivers were efficiency, flexibility, innovation and systemic improvement.
- 1.10 Against this backdrop, it was also necessary for the government to decide on the precise nature and extent of the contracting model.<sup>4</sup> The most complete prison privatisation model is Design, Construct, Finance and Manage (DCFM). Consideration was given to this model, but it was ultimately decided that the State would itself finance the project (probably a cheaper option than the private contractor borrowing money at market rates and passing the costs back to the State), resulting in a Design, Construct and Manage (DCM) model. A separate, but linked, maintenance contract relating to the prison was also required and implemented.

### FROM EXPRESSION OF INTEREST TO COMMISSIONING

- 1.11 In April 1998, the Government tested the market by calling for Expressions of Interest for the construction of a new prison. Just over three years later, Acacia had been commissioned and had received its first prisoners. This was a relatively quick timeframe given the size of the prison and the delays that arose from the need for legislative change and the complexities of the contracting process.<sup>5</sup> It compares favourably with the planning, construction and opening of Casuarina Prison, a project which had run over-time and over-budget in the period from 1989 to 1991.
- 1.12 In order to understand the evolution of Acacia and the statutory and contractual obligations of the service providers (AIMS) and the Department, it is necessary to have a chronological record of key events prior to the opening of the prison and a sense of the document trail.

<sup>4</sup> The Request for Proposal was drafted in such a way that the Government could decide after the receipt and evaluation of bids which model would be adopted: see clause 1.1 - 'Procurement Process' - of the Request for Proposal (MOJ Contract No. 110/98: CAMS RFP No. 964/98).

<sup>5</sup> See paragraphs 1.23-1.39, below.

#### April 1998

1.13 The Expression of Interest (EOI) laid out 14 anticipated outcomes, based on the four cornerstones and reflecting the factors set out earlier. The focus was on a high level of service delivery, cost effectiveness and catering for the needs of special groups (including Indigenous prisoners). The EOI also made explicit the wider strategic objective of system-wide improvement.

#### July-September 1998

1.14 By July 1998, seven submissions had been received. Four were short-listed and in September the detailed Request for Proposal (RFP) was issued to the short-listed parties. The RFP (which, importantly, was a publicly available document) contained detailed standards, specifications and other requirements and was strongly 'output-based'. It was designed to operationalise the four cornerstones philosophy and to reflect best practice rather than existing practice; in other words, it was not merely a pre-contractual document but a blueprint for the operation of Acacia and a reference point for the prison system as a whole.

#### December 1998-January 1999

1.15 Submissions closed on 8 December 1998 and panels of Departmental and external experts then met to finalise their recommendations. Particular weight was given to the extent to which the submissions addressed the RFP requirements - and it was clear that this had presented a challenge even to experienced prison operators who had never before been asked to address so many detailed criteria. Corrections Corporation of Australia (CCA) was selected as the preferred bidder, with a reserve also being selected. CCA's bid was not the cheapest, but was assessed to offer the best value for money given the RFP requirements.

#### 1999

1.16 In 1999 construction commenced, contractual negotiations for the operation of the prison continued and enabling legislation was passed by Parliament.

1.17 The legislative process was of great importance. The State probably had the inherent power, even in the absence of specific legislative authority, to enter contracts for a private prison. South Australia had already constructed and operated private facilities without specific legislation, and the Design and Construct (D&C) contract was awarded for Acacia in April 1999 before legislation had passed through State Parliament. However, it is one thing to enter a construction contract (and, in essence, there is little different between building a prison, a road or a hospital). Quite different issues of risk management and contract management are at stake in actually operating a prison and providing human services.<sup>6</sup> Legislation and contractual obligations, operating together, provide a potentially

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<sup>6</sup> See paragraphs 8.49-8.52, below.

stronger framework for this than a contract alone. In December 1999, following discussions between the government and the Australian Democrats (who held the balance of power in the Upper House of State Parliament), amendments were therefore enacted to the *Prisons Act (WA) 1981*. These amendments (discussed below) provide a clear statement of the State's ongoing responsibilities and strong accountability mechanisms.

## 2000

1.18 With the legislative framework in place, 2000 was a year of consolidation and further preparation.

Pursuant to the D&C contract, prison building continued and contractual negotiations were finalised with respect to two other contracts: the Prison Services Agreement (dealing with management and service delivery) and the Prison Maintenance Agreement (dealing with future maintenance issues). In the interests of accountability, the Prison Services Agreement is publicly available on the internet (<http://www.justice.wa.gov.au/content/files/acacia.pdf>).

1.19 The year 2000 also saw important corporate changes. Until that year Correctional Corporation of America and Sodexo Alliance, a French conglomerate, had jointly owned CCA. Then Sodexo bought out its American partner, though CCA continued to operate under the same name until December 2001, when it was 're-badged' as AIMS Corporation (Australian Integration Management Services).

## January to May 2001

1.20 Construction was completed in March 2001, and a number of pre-commissioning tests were completed over the next few weeks. Acacia's first prisoners arrived on 16 May 2001.

## FILLING THE PRISON

1.21 Acacia has experienced a graduated and gradual fill. The original intention, reflected in the Schedule to the Prison Services Agreement, was for an average daily population (ADP) of 615 prisoners by the ninth month of operation. However, the fill up was somewhat slower than anticipated, with an ADP of only 511 in February 2002. In large part, this was due to an unexpected decline in the State's prison population during 2001. However, the prison's ADP grew rapidly over the ensuing months and, since August 2002, has been very close to 700.

1.22 It should be noted that the ADP provides the basis upon which the monthly operation charge payable to the prison is calculated. The contract stipulates that the fee is calculated by 'bands' of population numbers.<sup>7</sup> In recent months, Acacia's ADP has hovered just below 700, irrespective of broader prison population trends.

<sup>7</sup> See paragraph 1.34, below.

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**LEGISLATIVE FRAMEWORK**

1.23 Prison privatisation is a complex process and models of privatisation differ widely between jurisdictions. Acacia operates within a framework set by State legislation and by the terms of the contracts. This framework provides some important benchmarks against which to evaluate both the performance of Acacia and the extent to which the Department has fulfilled its obligations.

1.24 In an ideal world, enabling legislation would have been in place before any of the contracts was negotiated. As we have seen, there was no precise chronological 'fit', and construction commenced before legislation was passed, resulting in a split into three contracts. However, whilst the D&C contract pre-dated the legislation, the other two contracts were signed after its passage and are subject to its requirements. It should also be stressed that there can be no contracting out of the Prisons Act obligations, the legislation applying 'despite anything to the contrary in the contract'.<sup>8</sup>

1.25 The legislative intention was to ensure that, although service delivery was contracted out, the State retained a strong duty of care and the responsibility of ensuring quality in service delivery. To that end, the CEO of the Department was given extensive authority, including:

- Entering contracts for prison services.<sup>9</sup>
- An obligation to establish minimum standards for prison services.<sup>10</sup>
- Free and unfettered access to any prison, person, vehicle or document to ensure compliance with legislation, regulations or the contract and that contracted prison services are being properly provided.<sup>11</sup>
- Granting permits for contract workers,<sup>12</sup> vetting those workers who are involved in 'high security work',<sup>13</sup> and the revocation of permits.<sup>14</sup>
- The power to 'intervene' in a contract in emergencies or where the contractor fails to effectively provide a prison service.<sup>15</sup>

1.26 Thus, the CEO of the Department is - by legislation and not merely by contract - at the epicentre of regulation, monitoring and accountability.

1.27 The CEO in turn is directly accountable to the Minister, not simply as a matter of ordinary principles of government but through a number of specific requirements. These include, for example, an annual report to the Minister, containing 'such information as may be required ... to enable an

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<sup>8</sup> *Prisons Act (WA) 1981*, section 15H.

<sup>9</sup> Section 15B.

<sup>10</sup> Section 15D.

<sup>11</sup> Section 15E.

<sup>12</sup> Section 15I.

<sup>13</sup> Section 15N.

<sup>14</sup> Sections 15T-U.

<sup>15</sup> Sections 15W-ZC.

informed assessment to be made of (a) the operations of each contractor, and (b) the extent to which there has been compliance with the relevant contract'.<sup>16</sup>

1.28 Finally, the Minister and the Department are accountable to Parliament. Examples of this include the requirement for the Minister to table reports in Parliament within ten days and, in the case of any amendments to the contracts, to table such amendments within 30 days.

### CONTRACTUAL FRAMEWORK

1.29 As we have seen, three contracts (D&C, Maintenance, and Prison Services) govern the relationship between AIMS and the government (subject to the legislation). Now that construction has been completed, the D&C contract is of lesser importance, except in terms of possible warranty issues. Ongoing maintenance is governed by the maintenance contract. Inevitably, some difficulties have arisen with respect to the interrelationship between these two contracts and, at its formal briefing, the Department commented that the boundaries had been 'blurred', especially over the first 12 months of Acacia's operation.

1.30 Although the Inspectorate's role extends to all three contracts, it is the Prison Services contract that most directly bears upon our core business of prison standards and performance. As background, it is important to remember that section 15D of the Prisons Act imposes an obligation on the CEO of the Department to 'establish minimum standards applicable to the provision of prison services under a contract'.

1.31 The Prison Services contract is complex, and there are obvious limitations on the extent to which general standards can be made sufficiently precise for incorporation in the terms of a contract. However, it is not just a contract to deliver a service at a cost over time: *standards* of service are incorporated into the contract in two ways. First, some of the clauses do specify expectations. For example, clause 7.1 states not merely that the contractor 'must establish and operate' a prison shop, but that it 'must be an attractive mini-supermarket style shop as contemplated in the contractor's proposal'. Subsequent clauses address the question of shop prices.

1.32 Secondly, there are clauses of more general application, the most important of which relate to 'Minimum Standards' and 'Best Industry Practice'. Reflecting the requirements of section 15D, clause 5.1 of the contract requires the contractor to perform the services in compliance with, *inter alia*, the 'minimum standards'. Annexure A (which runs to 28 pages) then itemises these minimum standards. With a few stylistic alterations, Annexure A mirrors all the major components of the RFP. Although it does not contain the same level of detailed specifications and performance measures as the RFP, the contractor must ensure, under clause 5.2, that services are performed 'in accordance with the standards and level of care, skill, knowledge and judgement required or reasonably expected under Best Industry Practice'. Best Industry Practice is itself defined (clause 1.1) to mean 'the best standards

<sup>16</sup> Section 15G. See also paragraph 8.68, below.

that would reasonably apply' subject to 'the contractor's philosophy on the operation of prisons and the provision of services as set out in the contractor's proposal'. Put another way, the contractor is obliged to provide services in accordance with best practice in light of the RFP obligations.

- 1.33 It is also necessary to understand some features of the contract with respect to charges and penalties. Three aspects appear to have a very real influence on Acacia's population and management.

### Operation Charge

- 1.34 The operation charge is a monthly fee, calculated by reference to the prison's average daily population (ADP) over the preceding month. Under the Schedule to the Prison Services Agreement, the State is obliged to pay a minimum monthly fee (of just over \$1.7 million) based on an ADP of up to 650, irrespective of actual occupancy. Where the ADP exceeds 650, the additional operational charge is calculated in bands (of 651 to 700, 701 to 750 and so on, up to 1,000). Around \$30,000 extra per month is payable for each band. Based on the current ADP of just below 700, the annual operation charge is therefore around \$21 million.

- 1.35 If the contractor fails to deliver the services, the Principal may deduct an amount from the payment. This is a very strong potential mechanism for contract management and is further bolstered by performance-linked fees.

### Performance-Linked Fee

- 1.36 As an incentive to good performance, five per cent of the monthly operation charge (over \$1 million) is withheld and is only payable by way of a Performance Linked Fee (PLF). It is important to stress that the PLF is to be assessed on an *annual* rather than a monthly basis.<sup>17</sup> The total amount is only payable if the CEO considers that the contractor has fully performed the services and has met all the Annual Performance Measures that are itemised in the Schedule to the contract. If the contractor meets some of these measures but not others, the appropriate percentage is payable (for example, 6% of the PLF is payable if there are 30 or fewer serious prisoner to prisoner assaults per annum; and 15% is payable if incidents of self-harm or attempted suicide are 25 or less per annum).

### Liquidated Damages

- 1.37 The contractor is liable to pay an amount of \$100,000 in the event of a 'completed escape', a death in custody (other than by natural causes) or a 'loss of control'.<sup>18</sup> This figure is intended to reflect an estimate of the loss incurred by the State, though in common parlance is spoken of as a 'penalty'.

<sup>17</sup> Clause 25.16. Also see paragraphs 8.42-8.43, below.

<sup>18</sup> A completed escape involves being outside the perimeter fence. A loss of control occurs where 'the Contractor does not exercise proper management, control and security in respect of (a) a significant part of the Prison or a significant number of Prisoners at the prison; or (b) the welfare of a significant number of Prisoners at the Prison'.

1.38 The Department has established a process for contract management that includes an on-site monitor and a head office contract management team in order to meet its obligations to the Minister and to Parliament.<sup>19</sup>

1.39 It has been necessary to discuss the legislative and contractual framework in some detail - both because of its complexity and to understand the obligations of all parties. The discussion has shown that there is a clear flow through from the EOI into the RFP and then into the contract itself. AIMS' predecessor company, CCA, was awarded the contract on the basis of the 'correctional value-for-money' that it offered - a notion that weighted price against the operational standards of the RFP. Specifically, the winning bid was by no means the cheapest but stood out on the criterion of operational standards.<sup>20</sup> In turn, those standards are incorporated in the contract through two mechanisms - the minimum standards in Annexure A and the requirement to comply with 'industry best practice'. The Parliament also established a strong accountability framework and placed the Department, and more specifically the CEO, at the epicentre of accountability. The result of this is that, in a short space of time, Acacia has been subject to more reviews than any of the public prisons. Quite apart from this Inspection and the regular reports by on-site monitors branch of the contract management team, an Annual Performance Review was conducted in July 2002 by Anzor Consulting/Department of Justice and the Department has provided annual Performance Reviews to Parliament.<sup>21</sup> AIMS' parent company Sodexo conducted a 'peer review' in January 2003, and in February 2003 the Department completed reviews of Acacia's education and treatment programs.

#### CHANGE OF GOVERNMENT - CHANGE OF DIRECTION?

1.40 The decision to opt for a private prison was made by a Liberal/National Coalition government. The Labor Party expressed its opposition throughout the process, but was elected to office shortly before Acacia Prison was scheduled to open.<sup>22</sup> Some of the ideological factors that influenced the choice of a private prison now carry less political force; in particular, the Labor government is less inclined towards notions of contestability and contracting out. In addition, the problem of overcrowding has lessened, with something of a reduction in the prison population (though it remains well above 1998 levels). In these ways, the landscape has therefore changed.

1.41 Although there have been no formal policy statements from the Labor government to indicate a major shift in the place of Acacia within the total WA prison system, it is evident that the expectations of Acacia have changed somewhat. The government no longer sees Acacia as the 'market leader', with a role to lever positive system-wide change. Rather, the Labor administration seems to

<sup>19</sup> See Chapter 8.

<sup>20</sup> The reserve bidder's price was considerably cheaper, but the government of the day accepted the recommendation that the more expensive bid should be accepted because it offered better value for money in terms of the correctional regime.

<sup>21</sup> The Anzor Report is available at [http://www.justice.wa.gov.au/content/files/acacia\\_annual\\_review.pdf](http://www.justice.wa.gov.au/content/files/acacia_annual_review.pdf).

<sup>22</sup> The election was in February 2001; Acacia was scheduled to receive its first prisoners in May 2001.

have adopted a highly pragmatic perspective in pursuing systemic change, very much picking issues for prisons. For example, the hitherto arid approach to women's imprisonment is being tackled primarily through the leverage of a new, 'low-security' women's prison and regime. And drug use in prisons is being tackled by a state-wide strategy focusing initially on supply reduction and pharmacotherapy treatments. At most, it could be said that Acacia is probably no longer seen as the primary driver of change, but as one of a number of possible drivers. In any event, in evaluating Acacia's performance, and that of the Department, the legislative and contractual framework remains unchanged and the government rightly expects a high level of performance, contractual compliance, rigorous accountability and value for money.

## METHODOLOGY

- 1.42 Acacia Prison operates, then, within a context that is quite different from any other prison in the State. When inspecting other prisons, this Office has referred to a range of benchmarks, including international standards and the 'healthy prisons' tests developed by the UK Prison Inspectorate. These benchmarks remain important but are bolstered and given more 'teeth' by the specific legislative and contractual framework governing Acacia. The prison should, above all, be reflecting the 'new operational philosophy' set out in the RFP document itself whereby the 'four cornerstones' (custody, care and well-being, rehabilitation and reparation) are well balanced and the resources and systems are in place to support that approach.<sup>23</sup>
- 1.43 Our normal methodology was adjusted to take account of the privatisation component. In essence, the on-site inspection process itself was similar; we were on site for over a week, during which time we conducted a range of interviews and discussion groups with both staff (AIMS and Department of Justice) and prisoners, and examined the full range of prisoner services. Prior to the formal inspection, staff had visited Acacia on numerous and regular occasions since its opening and we had conducted, with an expert consultant, a range of security and safety tests. In addition, note was taken of all previous reports by Independent Prison Visitors; we were given formal written and oral submissions by both AIMS and the Department; and we conducted prisoner and staff surveys.
- 1.44 Given the fact that financial accountability and contract management issues would inevitably be a crucial aspect of the report, it was considered appropriate to bring in the skills and experience of staff from the Office of the Auditor General.<sup>24</sup> Together, we conducted a range of inquiries and discussions on corporate and accountability issues with senior AIMS and Department staff who are

<sup>23</sup> This Office has increasingly and explicitly linked the inspection of public prisons to the RFP standard: see, e.g., the *Report of an Announced Inspection of Casuarina Prison, October 2001* (Report No. 11, Office of the Inspector of Custodial Services, Perth, 2002).

<sup>24</sup> The ready assistance of the Auditor-General, Mr Des Pearson, should be acknowledged at this point, as well as the highly professional contributions of the officers he assigned for this purpose - Mr Peter McCann and Mr John Hull.

somewhat removed from the day-to-day operations of the prison. These included two semi-formal interviews with the Director General of the Department of Justice.

1.45 It is obvious that Acacia raises particularly complex issues, but, in order to make this Report accessible and relevant to government, we have attempted to provide a succinct overview of the strengths and weaknesses of the prison's operations and its management and accountability mechanisms. For reasons that will emerge, we have placed Acacia on our informal 'Alert List', along with some of its public sector cousins. This means that it will be kept under close review and will probably be subject to a further inspection during 2004.<sup>25</sup> This Report should be seen, in that context, as the starting point of a long-term process.

<sup>25</sup> Prisons that get on to this list can get off them again by enhanced performance, as identified by liaison visits of inspection officers, reports of Independent Prison Visitors and the variety of other information sources available to this Office.

# Chapter 2

## SECURITY, EMERGENCY PROCEDURES AND MOVEMENT CONTROL

2.1 Prior to the formal inspection period, we commissioned an external consultant, Mr John Podmore, to conduct a range of security and safety tests.<sup>26</sup> These tests identified a number of areas in which the human and technological aspects of security could be improved. Many of these are confidential, but it is both appropriate and necessary to comment on some core issues. This Chapter considers perimeter security, emergency procedures in the event of fire or other serious incidents, and movement control. Later Chapters discuss issues of ‘dynamic security’, including prisoner-staff relations.

### PREVENTING ESCAPES

2.2 Acacia has met one of its core objectives - namely the prevention of escapes. This is very much to its credit. Even Casuarina, the State’s most secure prison, had one escape in the very early days of its operation, whilst Hakea had two escape incidents in the early stages of its perimeter refurbishment. Certainly, Acacia is built to be secure, with a high level of perimeter security and numerous gates and control points into the prison itself. Although it is classified as medium-security, it feels to all intents and purposes like a maximum-security facility. In terms of comparisons with other State facilities, it feels far closer to Casuarina (maximum-security) than, say, Bunbury or Greenough prisons.

2.3 These impressions have a firm factual foundation. Two aspects of the design need special mention. First, the perimeter fence is built to a standard that would meet maximum-security specifications in Queensland (the contractor’s home State). Secondly, there is a high level of security (including abundant razor wire and CCTV) on the internal control line that separates prisoner accommodation and facilities from the administration and visits area.



*There is abundant razor wire on the internal Control line that separates prisoner accommodation and visits areas from administration and visits areas.*

2.4 The original CCA bid did not include such a high level of security on the internal control line and had been accepted on the basis that the proposed perimeter security was adequate for the purpose. However, following security audits, the Department approved additional expenditure of just above \$1 million for an upgrade prior to the prison opening.

<sup>26</sup> Mr Podmore was, at the time, employed by Her Majesty’s Prison Inspectorate in the UK. He is now Governor of Brixton Prison.

- 2.5 As mentioned above, even the best security systems can be breached, especially during the early days of a prison's operations. The success of Acacia is probably attributable in part to the slow fill rate, allowing routines to become established and well understood by staff, and also to the degree of assistance that the Department's Special Services Branch gave during the pre-commissioning phase.

## OTHER SERIOUS INCIDENTS

### Legal Framework

- 2.6 In legislatively authorising privatisation, Parliament expected clear and direct accountability with respect to control and safety. As we have seen, the contract imposes penalties for any 'loss of control'. Section 15C of the Prisons Act also requires contracts for prison services to contain 'reporting procedures to notify the CEO of escapes, deaths of prisoners and other emergencies or serious irregularities'. The contract firms this up into two requirements with respect to such incidents (which are called 'Notifiable Incidents'); the CEO and the Contract Manager must be notified within one hour and provided with a written report within eight hours. In addition, Acacia must comply with industry best practice.

### Emergency Response Capacity

- 2.7 Given Acacia's location, it is important to ensure clear and effective arrangements between the prison and fire and other emergency services. The submissions we received suggested that there are good working relationships between the various parties but they are somewhat informal. We recommend that more formal arrangements should be put in place, perhaps by way of a Memorandum of Understanding (MOU).<sup>27</sup> In this, it should not be forgotten that the Department, as well as AIMS, has risk management obligations and we have made similar recommendations with respect to public prisons.
- 2.8 Another aspect of risk management and contingency planning concerns the relationship between AIMS and the Department with respect to the role of the Department's Emergency Support Group (ESG), which is based near Hakea Prison at the Canning Vale complex and provides an emergency support service for all metropolitan public prisons. With Acacia being a private prison, the situation is somewhat more complex. In brief, the position is that AIMS should have sufficient capacity to deal with a serious incident for an hour, and this includes the capacity to call back staff who are off shift.

<sup>27</sup> In its formal response to the draft Report, the Department referred to a variety of written arrangements with the local emergency services. However, with the exception of the correspondence with the Wundowie Volunteer Fire Service, the documentation supplied appears to lack the precision and predictability (whose responsibility it is to do what, when, where and how) that best practice MOUs manifest (e.g., that between the Greenough Regional Prison and the Geraldton Police Station which we found to be a model of its kind). Whilst the Inspector accepts that communications have occurred that indicate there is some expectation of assistance in an emergency, the arrangements could and should be tightened up.

2.9 There is also an understanding that AIMS can call upon the specialist services of the ESG. Tests have shown that the ESG can be at Acacia in under an hour from the time they are called upon, but two questions arise. The first is whether Acacia is able to contain and control incidents for an hour. This is extremely difficult to answer in abstract terms and depends on the number of prisoners involved and the extent to which they have weapons or external support. However, we do have some concerns based on our tests, a number of security breaches (such as missing tools from the workshop), feedback from the on-site monitors and the prison's general staffing levels.<sup>28</sup> Secondly, the arrangements between AIMS and the Department over the ESG are not embodied in any formal document. The contract for prison services imposes obligations on the contractor; it is therefore not for that contract to stipulate the Department's obligations and there can be no 'guarantee' of ESG support. As with the external emergency services, it is time to develop a more formal MOU.

#### RESPONDING TO A CELL FIRE

2.10 An incident that occurred during the inspection period provides a small-scale illustration of our concerns about whether AIMS and the Department apply sufficiently rigorous standards in preventing fires. A prisoner in the Crisis Care Unit set fire to his mattress when locked in his cell. Internal security patrols certainly operated efficiently and effectively, rescuing the prisoner before he was overcome by fumes, and ensuring the safety of neighbouring prisoners. However, questions remain about how a prisoner with psychiatric problems in crisis care could have access to a lighter, and as to the apparent combustibility of the mattress.<sup>29</sup>

2.11 However, we were pleased at the organisational or bureaucratic response to this event. As required by the contract, the fire was treated as a 'notifiable incident' and properly notified to the contract manager within an hour. Thereafter, the spirit of the contractual requirement for a written report within eight hours was also met; the incident had occurred at 8.15 p.m. and an eight-hour time limit would have had the report filed by 4.15 a.m., whereas it was filed early the next day. More importantly, the AIMS internal investigation that took place over the ensuing three weeks was



*All current mattresses at Acacia are flammable – but fire retardant mattresses are now being purchased.*

<sup>28</sup> On staff resources, see Chapter 7.

<sup>29</sup> The ensuing internal inquiry (see paragraph 2.11) commented that 'all current mattresses at Acacia Prison are flammable'. However, it noted that the purchase of fire-retardant mattresses has already been initiated.

thorough and professional; it resulted in the recommendation of disciplinary action against an officer who had failed to carry out a strip-search of the prisoner upon his entry to that area, as required, thus enabling him to take a cigarette lighter into the cell with him.

## MOVEMENT CONTROL

2.12 Annexure A to the contract requires the contractor to provide a system of movement control that accounts for the whereabouts of each prisoner at any time of day or night, and that also provides the basis for daily population counts. The system that has been adopted involves the use of 'smart cards' which prisoners and staff swipe at control points around the prison to record their location. However, the cards do not operate as a security tool in the sense that they unlock barriers or control points; rather, they are intended to provide an innovative contribution to the development of a relaxed but controlled barrier-free environment. In this respect, their intended function is welcome - a first for Australia.

2.13 A clear consensus emerges from our Inspection and from the Anzor and Sodexho reviews; the technology is, in principle, sound but is not operating with the accuracy that had been anticipated. The result is that the system does not always provide an accurate account of prisoners' location, or even the location of staff. The reasons for this appear to be both technological and human. For example, there is evidence (including our own observations) that some prisoners fail to swipe their cards on every occasion on which they are expected to do so. In some locations, it was also quite possible to believe that a movement had been registered when it had not, because there is no audible or visible indicator other than staff acknowledgement.

2.14 The AIMS' submissions acknowledged that there have been a range of teething problems with the smart card system and we are not confident that the system currently meets its objectives. However, we were pleased to hear that extensive efforts are being made to improve the system's accuracy and to reduce operational risks.<sup>30</sup> This has also become an issue in the context of prisoners' money and spends, which should be tracked by the smart card.<sup>31</sup>

## SUMMARY

2.15 Acacia has met two key objectives. First, there have been no escapes; the level of perimeter security (which meets maximum-security standards in Queensland), coupled with the supplementary security measures on the internal control line, lead to few concerns in this regard. Secondly, there have been no 'loss of control' incidents as defined by the contract.<sup>32</sup> Again, this is positive. Many new prisons,

<sup>30</sup> Subsequently, in September 2003, the system was awarded the 2003 Award for Excellence in Design and Innovation by the Asia-Pacific Smartcard Forum.

<sup>31</sup> See paragraphs 8.38-8.40, below.

<sup>32</sup> 'Loss of control means a situation where the Contractor does not exercise proper management, control and security in respect of: (a) a significant part of the prison or a significant number of Prisoners at the prison, or (b) the welfare of a significant number of prisoners at the Prison.'

## SECURITY, EMERGENCY PROCEDURES AND MOVEMENT CONTROL

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whether public or private, have experienced loss of control in their early days.<sup>33</sup> Nevertheless, we do have some concerns about the prison's capacity to deal adequately with major incidents in the future. To that end, we believe that it is appropriate to develop more formal memoranda of understanding between AIMS, the State's emergency services and the Department's ESG. Finally, the smart card movement control system appears to be generally sound, but loose practices have developed and the system did not appear, at the time of the Inspection,<sup>34</sup> to be adequately accounting for the whereabouts of prisoners and staff.

<sup>33</sup> For example, two privately managed Victorian prisons - Port Phillip and the Metropolitan Women's Correctional Centre at Deer Park - experienced serious loss of control incidents in their first year of operation, as did the publicly operated Woodford Prison in Queensland within a few weeks of opening.

<sup>34</sup> During the tests conducted by our consultant, the smart card counts sometimes exceeded the known numbers of prisoners by 50 or more.

# Chapter 3

## SAFE CUSTODY AND CUSTODIAL CULTURE

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- 3.1 Acacia Prison was to offer a new approach to prison management, reflecting the four cornerstones and promoting a fair, safe, pro-social prison environment. The high level of perimeter security was intended to assist in fostering this environment, backed up by effective movement control, positive staff/prisoner interactions and fair and efficient grievance and disciplinary procedures. Our broad conclusion is that, after a promising start, the prison's performance has deteriorated in terms of these expectations; and that this brings attendant risks in terms of safe custody and effective control.

### CUSTODIAL CULTURE

- 3.2 The contract reflects the concept of Acacia. The prison, it says, should adopt security arrangements that enable a 'balance between the use of technology and pro-social interaction'.<sup>35</sup> We found clear evidence that the prison had become more custodial in emphasis in the months prior to the Inspection, with less focus on the dynamic security benefits of positive staff/prisoner interactions. Many prisoners told us that they now found no significant difference in the internal security arrangements between Acacia and Casuarina (maximum-security) and felt that security had been tightened in recent months. There is clear evidence that the smart card technology has been employed in a manner that has restricted prisoner movements, including interaction between different units and the freedom afforded to Peer Support prisoners.
- 3.3 Major changes have also occurred with respect to recreational access. Prior to the changes, the whole prisoner population (excluding protection prisoners) would have access to the gym or the oval for four hours per day. Now, access is by unit only, for two sessions of one hour each day, and the numbers allowed on the oval, gym or weights room at one time are restricted (to 60, 20 and 10 respectively). Since most units hold more than 90 prisoners, some prisoners miss out under these arrangements.
- 3.4 Another indicator of management's increasing concern about security and control is that security-focused workshops were held in the latter part of 2002, and no fewer than 53 safety and security tests were carried out during the first few weeks of 2003. There was also strong anecdotal evidence from prisoners that the number of 'lockdowns' is increasing. We were unable to verify this, or the causes of any such increase, because proper lockdown records are not kept.<sup>36</sup> This is also true in the public sector and it is clearly an area for system-wide improvement, perhaps along the lines adopted in New South Wales.<sup>37</sup>

<sup>35</sup> Annexure A to the contract.

<sup>36</sup> The Department's response (not formally that of AIMS, though it does appear that in many respects the Department and AIMS cooperated on the responses to the draft Report) challenged this. However, the documents sent in support of this challenge served, if anything, to fortify our observation. They were utterly confused, with one column indicating for example that more than 33,000 prisoner lockdown hours had occurred on one occasion during March 2003 and another 29,000 hours the same day. At the very least, the response indicates the need for better record keeping, as the text indicates.

<sup>37</sup> The Inspector-General of Corrective Services for NSW, in his *Annual Report 2001-2002*, provides a clear pie chart of 'Locked in Cell Causes'.

- 3.5 Security concerns appear to have flowed across to visiting arrangements. Many prisoners complained that their visitors are being subjected to more rigorous screening and that this is reducing the time spent together in visits. We were unable to conclude whether security had been tightened or whether the problem was one of inadequate staff resources to deal with increasing numbers of visitors. However, we observed excessive delays in processing visitors, and a more frequent and more intrusive use of sniffer dogs than we had encountered at other prisons.<sup>38</sup>
- 3.6 It does seem that dynamic security measures have reduced, as concentration on static security has increased. As we walked around the prison, there appeared to be less staff/prisoner interaction than in many other WA prisons; and less than we had previously observed at Acacia. There was little active patrolling within units, and officers appeared generally to be in their control pods unless they had a specific and defined reason for going into the units. The regime certainly fell far short of the RFP standard that officers would spend at least 70 per cent of their time in barrier-free interactions.
- 3.7 In summary, therefore, the prison appears to be struggling to achieve a balance between technology and pro-social interaction, and in recent months the pendulum has swung towards the use of static security measures. This, in turn, is impacting upon the culture and environment of the prison. There is no single explanation for the shift, but it appears to reflect a range of factors. One is that security reviews had revealed some deficiencies (for example, with the smart cards) and some areas for improvement. However, the more significant factors appear to be the changing prisoner population and inadequate staff resources. As we have seen, Acacia had a graduated fill, but this should not obscure the fact that the population grew quite quickly (from around 500 to around 700) from February to August 2002. It also seems likely that this final ‘fill up’ group contained a proportionately higher number of ‘more difficult’ prisoners.
- 3.8 Related to this are staffing levels. When the prison first opened, the staff/prisoner ratio had been low but staff numbers did not increase in line with prisoner numbers. During the Inspection, the daily roster showed only around 61 operational staff. This is very low by comparison with the public sector (for example, Hakea had around 140 positions for around 550 prisoners on the same day) and lower than comparable privately managed prisons in Victoria.<sup>39</sup> More importantly, it means that staff at Acacia have become over-stretched and this has affected the general prison environment. For example, one reason for the changes with respect to recreation was that staff felt unsafe (two staff sometimes supervising 200 prisoners prior to the changes).
- 3.9 Where staff are too thin on the ground, dynamic security is reduced; staff become less aware of issues within the units and less able to defuse situations or to handle prisoners’ requests for assistance. The prison officer survey material confirmed our observations, many officers feeling that case management has broken down. Staff concerns are further evidenced by a high attrition rate of

<sup>38</sup> See paragraphs 4.29-4.36, below.

<sup>39</sup> See paragraph 7.14 and footnote 133, below.

around 19 per cent over the first 12 months. This turnover created some level of instability and may have contributed to the changing culture, with an influx of new staff.

## GOOD ORDER

3.10 Efficient and fair mechanisms with respect to disciplinary proceedings, loss of privileges and prisoner grievances are crucial components of a controlled and well-ordered prison. Unfortunately, Acacia currently falls below acceptable standards in all these areas.

### Disciplinary Proceedings

3.11 The Prisons Act embodies the principle that the *administration* of punishment can be contracted out, but that private contractors should not be authorised to *allocate* punishment.<sup>40</sup> Consequently, formal disciplinary proceedings against prisoners (which may result in extra time in prison or other punishments) are a matter for the Superintendent of Wooroloo (the nearby minimum-security public prison) or the Visiting Justice. We found that disciplinary proceedings at Acacia are in a state of disarray and that this is having negative prison-wide effects.

3.12 The most obvious indicator is management's decision to clear a backlog by writing off all pending charges from the period from 1 January to 1 November 2002 - a total of more than 400 charges. In considering how this situation could have arisen, we unearthed some technological issues (incidents must be entered first on the local AIMS computer system and then on TOMS, the IT system used by the Department, thus doubling the time required). However, the root cause was not technological but a lack of human resources. Although over time six officers have been trained as prosecutors, only three remained active and of these only one had real confidence in his capacity to do the job adequately. The performance of all three was further undermined by the fact that their working facilities were inadequate, with filing cabinets stored in the human resources area and no dedicated desk space. Officers also expressed concern at the lack of time to follow up on paperwork or to prepare adequately for hearings and the lack of training opportunities.

3.13 These inadequacies and inefficiencies caused numerous disciplinary hearings to be cancelled or rescheduled (often because of other calls on staff time). It was originally intended that the Superintendent of Wooroloo would conduct hearings on two half-days each week (i.e., around nine sessions per month). However, in the period from September 2002 to March 2003, there were only around three sessions per month.

3.14 Acacia's formal disciplinary procedures are not working efficiently, fairly or effectively; they fail to meet the contractual expectations. It is clear that responsibility for these failures lies primarily with Acacia's management and not with the availability of adjudicators. Having said that, it is surprising that the Department through its contract management team has permitted this situation to continue.

<sup>40</sup> Section 15J.

Such failures have pernicious systemic effects. Some prisoners leave Acacia without charges being heard (which may advantage them in parole decisions compared with prisoners elsewhere in the system). More important, the authority of officers has been undermined, and they have come to rely on more informal forms of control, including loss of privileges.

### Loss of Privileges

3.15 Staff indicated that loss of privileges (LOPs) had become an important management tool, especially for less serious incidents. This is supported by our finding that, in the second half of 2002, 86 per cent of formal disciplinary charges were for aggravated Prisons Act offences under section 70 and only 13 per cent for minor offences under section 69. This indicates that alternative measures are being used for incidents such as misconduct and threatening behaviour.

3.16 Unfortunately, it proved impossible to quantify the extent and the propriety of the operation of LOPs. Record keeping appeared to differ from unit to unit, and the three sources of data (the AIMS computer system, TOMS and the unit logbooks) did not match. From our inquiries, it would appear that over 50 per cent of LOPs are not being entered onto the TOMS system and in M Block the figure was over 90 per cent. Better record keeping is required.

3.17 Although staff seem to have resorted to LOPs in response to dysfunctional disciplinary procedures, they identified several problems. For example, although prisoners are entitled to appeal to a Supervisor against an LOP, staff commented that Supervisors are too stretched to be able to deal expeditiously with such appeals.<sup>41</sup>

3.18 This Office is extremely concerned that LOPs appear to be used as a substitute for formal disciplinary proceedings, and this concern is exacerbated by the fact that record keeping is inadequate and inconsistent. These are issues that require urgent attention in the interests of fairness, accountability and risk management.

### Grievance Procedures

3.19 A high number of grievances are lodged at Acacia compared with other prisons. From 1 January 2002 to 21 February 2003, 198 prisoners had lodged 396 grievances. This compares with just 25 prisoners and 35 grievances at Hakea and 20 prisoners with 20 grievances at Casuarina. Acacia has also generated a high number of complaints to the Ombudsman. As with disciplinary procedures, we discovered a backlog of grievances. AIMS acknowledged this and had appointed a new Grievance Manager shortly before our Inspection.

3.20 AIMS management suggested that a small number of prisoners with a high number of grievances are distorting the figures. It is true that five prisoners have lodged more than ten grievances each but

<sup>41</sup> See paragraph 7.16, below.

clearly, if 198 prisoners in all have lodged grievances, Acacia faces systemic issues and not merely a handful of chronic complainants.

3.21 The figures might suggest, at first sight, that, from a prisoner's point-of-view, Acacia is the worst prison in the State. However, this is not borne out either by prisoner surveys or by our own perceptions and discussions. Our overwhelming impression is, rather, that prisoners experience a high level of frustration and helplessness in getting issues resolved at a lower level and, of necessity, therefore resort to formal grievances. It is important to stress that, with few exceptions, prisoners did not normally attribute problems to the attitudes of unit staff, with whom they generally reported positive relations. Rather, as one prisoner put it: 'Nobody here can say yes or no.' Put simply, unit staff lack both the numbers and the authority to answer questions and respond to prisoners' concerns.

3.22 A sign at the entrance to K Block provided striking testimony to current operational realities: 'Supervisors reserve the right to make decisions according to your attitude. If you haven't seen an officer, the supervisor can't see you.' If matters are referred to the Supervisors, they appear too stretched to be able to respond in a timely manner. There are also problems resulting from the corporate structure. In cases involving issues to do with the ATM/smart card system (such as spends and account details), we were told that matters must be referred to the AIMS head office in Brisbane.

3.23 The net result is that the grievance process is top-heavy and ineffective. Prisoner frustration is palpable and understandable, and AIMS has failed to meet the minimum contractual standard 'to establish and manage a system for the prompt and fair handling and resolving of prisoner complaints and grievances'. Given better resources and planning, the situation should not be irretrievable because most complaints involve operational processes rather than staff attitudes. For example, the biggest area of complaints is property. Safekeeping of prisoners' property is an obligation imposed on prison superintendents (and therefore Acacia's General Manager) under Prisons Regulations 35 and 36. It seems likely that current practices at Acacia breach these regulations as well as the contractual standards. Urgent attention is required in this area.

### Summary

3.24 Effective disciplinary and grievance procedures are important to fair and disciplined prison governance. At Acacia, both have deteriorated to the stage that they breach acceptable standards. The paralysis of disciplinary procedures has had a negative impact, with staff relying on a poorly managed LOP regime. An inadequate response to grievances has increased prisoner stress and frustration. The risks in terms of safe custody and control may not be serious in itself but it is tangible.

### SAFETY

#### Staff Perceptions

3.25 We have already mentioned that staff are rather thin on the ground and that this impacts adversely on the creation of a pro-social, interactive environment. It also impacts upon staff perceptions of their safety. Our staff surveys found that two-thirds of officers feel unsafe more than they feel safe, and a quarter feel unsafe 75 per cent of the time. These figures are the highest we have found in any prison in the State. Our discussions confirmed a high level of safety concerns and suggest that an unhealthy spiral is emerging. The fact that staff feel unsafe leads to greater reliance on static security and less focus on dynamic security and interaction with prisoners. As a consequence, staff become less aware of issues and less able to respond to prisoners' needs. This increases prisoner stress and frustration, serving in turn to reinforce staff safety concerns.

#### General Prisoner Population

3.26 It was difficult to get a clear picture about prisoners' perceptions of safety. The survey results suggest that, taken across the board, prisoners feel no less safe at Acacia than at any other prison - one-third reporting that they always feel safe and three-quarters feeling safe most of the time. However, as with all prisons, there is a level of violence and bullying that goes unreported.<sup>42</sup> We became aware of a number of such incidents during the on-site Inspection. They included problems in the Protection Unit,<sup>43</sup> a prisoner reporting to the Health Centre with unexplained injuries, and a prisoner being stabbed with a sliver of glass (an incident that was initially classified as self-harm but later as an assault).

3.27 Incidents of this sort are probably to be anticipated, from time to time, in a prison of Acacia's size but we are concerned that bullying, stand-overs and violence appear to be on the increase.<sup>44</sup>

#### Anti-Bullying Strategy

3.28 During the on-site Inspection period, we were struck by the presence, in the Crisis Care Unit,<sup>45</sup> of people who should not have been there - namely, prisoners who had been victimised and removed to crisis care for protection. At least some of these were protection prisoners who had been removed from the Protection Unit (K Block) for protection from other protection prisoners. This appeared to be a significant admission of defeat, at odds with both the contractor's original proposal and good

<sup>42</sup> In Report No. 15, *Vulnerable and Predatory Prisoners in Western Australia: A Review of Policy and Practice*, the apparent paradox is discussed whereby prisoners who live in what is objectively an unsafe environment nevertheless state that they feel reasonably safe: see paragraphs 1.77-1.80 (Office of the Inspector of Custodial Services, Perth, May 2003).

<sup>43</sup> See paragraphs 3.33-3.38, below.

<sup>44</sup> This is the view of the monitors. It was also reflected by our own discussions with both mainstream and protection prisoners.

<sup>45</sup> The Geriatric Unit was also used in this way. These two areas abut each other.

prison management practices. To remove victims to inappropriate locations in a prison does nothing to address the bullies' behaviour and attitudes; if anything, it reinforces their power. However, senior management appeared to have given little attention to a strategy of removing the bully from the mainstream rather than the victim. This is despite the prison having had access to this Office's draft thematic review of protection prisoners for several months, in which such a strategy is developed.<sup>46</sup>

3.29 It does not appear to be a coincidence that the prison developed what it called a new 'Anti-Bullying Charter' just days before our Inspection, and called a special meeting of the Peer Support Group to discuss the new Charter. It is a rudimentary and superficial document that was apparently developed by prison management in a few hours of internet browsing. It needs review, refinement and, above all, implementation.

### O Block

3.30 O Block is a multi-function area. Prisoners from all levels meet here for a variety of purposes, including the library, education, programs and discussions with sentence management, the Indigenous Liaison Officer and Community Corrections officers. O Block appeared disorganised and chaotic. Large numbers of prisoners from different levels seemed to gather, sometimes with little idea of where they were supposed to be, and often voicing frustration. Smart card entry and exit procedures required prisoners to queue up at busy times, and we observed attempted 'queue-jumping' and some prisoners sidestepping the smart card system completely. The entrance area became extremely congested at peak times. We also received feedback that access to Sentence Management staff was made more difficult for some prisoners - especially those in protection - because of the fact that they were located in O Block.

3.31 Many prisoners and some staff told us that they sometimes felt unsafe in this location. Overall, O Block appears to present some risk management issues that may need to be addressed by considering whether so many services should be housed under one roof, whether entry and exit procedures can be improved, and whether a stronger presence of officers is required.

### Gangs

3.32 There were suggestions in some quarters that gangs may be developing within the prison. It is difficult, in the course of a generic inspection, to reach an unequivocal conclusion on allegations such as these. However, we did make a range of inquiries and concluded that, at the present time, organised and structured criminal gangs (in the sense in which they exist in prisons in some parts of the world) are not operating within Acacia. There is evidence that mutually supportive groups tend

<sup>46</sup> See Report No. 15, loc. cit. at note 42, above. The Acacia fieldwork for that Report was carried out one year before the on-site phase of the full Inspection. At that time, although there were some problems, the handling of protection prisoners seemed to be reasonably effective, better certainly than at Hakea Prison: see Chapter 4 of that Report. It is a sign of the deterioration that had occurred in Acacia generally in the intervening year that the handling of protection was now so unsatisfactory. See also paragraphs 3.33-3.38, below.

to form and reform; however, they appear to be amoebic and to lack the structured membership, rules, territoriality and challenge to the lawful regime that characterise true 'gangs'. There is also evidence that some Aboriginal family feuds spill over into the prison from outside; in that respect Acacia is no different from some public prisons. Even though these matters fell short at the time of the inspection of a serious threat to good order and security, they need to be kept vigilantly under review by prison management.<sup>47</sup>

### PROTECTION PRISONERS

- 3.33 This Office has recently published a detailed thematic review of protection prisoners, together with recommendations for improvement,<sup>48</sup> and including a chapter on Acacia. However, it is important to make a number of general observations and to comment on some apparent deterioration since the fieldwork for the thematic review was conducted in April 2002.
- 3.34 At the time of the Inspection, Acacia housed 130 protection prisoners - 118 in K Block and 12 in F Block (geriatrics), the highest number at any prison in the State and equivalent to the population of a small prison. K Block is, to all intents and purposes, a prison within a prison. First, it houses a very disparate group of prisoners, including sex offenders of different sorts, murderers, armed robbers, vulnerable and disturbed, intellectually impaired and some who are in protection by reason of family or other affiliations. This is a potentially volatile mix and, for this reason, there is some separation of sex offenders (generally in unit K3). Secondly, K Block has levels that reflect the general prison hierarchy. K1 (level one); K2 (level 2); K3 (slightly better facilities than K2); and K4 (self-care).
- 3.35 The mixture of prisoners creates a number of problems. K1, for example, houses both induction prisoners and prisoners who have been regressed to level 1 for poor behaviour. Many prisoners appear reluctant to progress to K3 because it is seen as a 'sex offenders unit'; and K4 appears to house mainly older prisoners who tend not to welcome younger and noisier prisoners. During the Inspection, we became aware of several instances of bullying and alleged assaults in K Block. In some cases, this saw the victims rather than the perpetrators being removed. On one afternoon, the Block was locked down and was being searched for weapons due to concerns about a reprisal attack by a prisoner (with a reputation for stand-overs) who had himself been attacked.

<sup>47</sup> In that regard, it should be reiterated that there has not been an occasion of 'loss of control' in the two years' operation of the prisons: see paragraph 2.15, above.

<sup>48</sup> Report No. 15, *Vulnerable and Predatory Prisoners in Western Australia: A Review of Policy and Practice* (Office of the Inspector of Custodial Services, Perth, 2003). See also note 46, above.

<sup>49</sup> *Ibid.*, p. 72. Dr Keith Carter, who did much of the fieldwork for the thematic review, was engaged to consider the position of protection prisoners for this Inspection.

- 3.36 The thematic review concluded that Acacia ‘measures up reasonably well’ but commented that ‘the arrangements seem rather fragile’.<sup>49</sup> Our perception is that the fragility has increased and that K Block has deteriorated since April 2002. Bullying and violence (physical and sexual) appear to be increasing and the original concept of direct supervision by staff is not operational. In January 2003, one of the supervisors e-mailed staff, stating that ‘two officers are to be walking the spine of every unit every hour’. However, this does not appear to be happening; officers are generally in the security pod or attending to paperwork and prisoner inquiries, suggesting that staffing levels require attention.
- 3.37 Another significant problem relates to planning and reviews for protection prisoners. The information in many prisoner files was sparse and there appears to be no systematic process for regular reviews of protection status and consequential documentation.
- 3.38 Given these problems, we recommend that AIMS and the Department should develop clearer protocols and procedural requirements for protection prisoners. It should be emphasised, in this regard, that it was never part of the original planning that Acacia should have such a large population of protection prisoners. The RFP (highly specific in most respects) said nothing about a protection regime and neither the D&C contract nor the Prison Services agreement make any reference to the need for a ‘prison within a prison’. It may well be appropriate, therefore, for the parties to negotiate a contract variation that reflects this changed role for the prison.

## DRUGS

- 3.39 The RFP and Annexure A to the contract require the Contractor to prevent drugs and alcohol entering the prison, and to develop a comprehensive drug management strategy. Despite Acacia’s perimeter security and extensive use of ‘sniffer’ or passive alert dogs (PADs) on visitors, there appears to be a significant problem with respect to drugs entering the prison. The number of positive urinalysis tests and the high number of cases where prisoners have refused to provide a sample demonstrate this point.
- 3.40 In attempting to reduce the influx of drugs, the prison has targeted visits. More specifically, it has targeted visitors with PAD dogs and conducted strip-searches of prisoners after visits. However, these mechanisms can be degrading and do not appear to have been effective. We therefore recommend that consideration be given to a system where prisoners change into one-piece pocketless overalls for visits; and that, if dog technology continues, it should be used on prisoners after visits rather than on their families and loved ones.<sup>50</sup>
- 3.41 We are concerned that, by focusing on visits, other potential weak points may have been given too little attention. Supply reduction is a key aspect of the government’s Drug Plan for prisons. We were informed that there is no policy in place with respect to searching staff, and that no staff searches

<sup>50</sup> On visits, see paragraphs 4.29-4.36, below.

therefore occur.<sup>51</sup> Further, there do not seem to be comprehensive strategies for searching vehicles and goods entering the prison. Finally, inconsistent record keeping makes it difficult to know whether cell searching is meeting appropriate standards. For example, on 25 January 2003, the monitors reported that there had been a major search of M Block following three assaults. Three weapons were found but no entries were made on TOMS and it appears that no incident reports were submitted. A brew was also found; this time, an incident report was submitted but there was no entry on TOMS.

### SUMMARY

3.42 Acacia has not achieved the balance between static and dynamic security that epitomises best practice in prison administration. There is clear evidence that static security measures have been cranked up in respect of both prisoner control and visitors. Formal disciplinary proceedings are in a state of disarray and have been displaced by a poorly regulated loss of privileges regime; grievances have snowballed; and bullying appears to have increased. In these contexts, staff members feel unsafe. These are all areas that require remedial attention, and increased static security is not a sufficient response. Fortunately, the main issue is not one of staff attitudes but of management and resources - matters that are in principle more easily remediable.

<sup>51</sup> In its response the Department, speaking for AIMS, sent us Policy Document 3.2.11, dated August 2000, which provides for random staff searches. There may be a written policy, but during the inspection we saw no evidence that it was being implemented. The Department's new gatehouse procedures, applicable to Hakea and Casuarina prisons, include random searches of staff as they enter the prison. There have recently been two confirmed cases of staff carrying illicit drugs into prisons - one at Hakea and the other at Acacia itself. Each case led to criminal charges, convictions and imprisonment. The Acacia case came to light through intelligence, not random searching.

# Chapter 4

## CARE AND WELL-BEING

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- 4.1 Before examining specific care and well-being issues, two structural issues require attention: first, the placement of prisoners at Acacia and, second, their placement within the prison.

### PLACEMENT AT ACACIA AND ACACIA'S PLACE

- 4.2 Acacia was originally conceived not merely as 'providing more beds' but as having a defined role within the State's total prison system. Its population was to consist of medium-security males from the metropolitan and surrounding areas (sometimes called Triple Ms). The prison was to provide a focal point of innovative, wide-reaching program delivery, and the expectation was that a large proportion of its prisoners would move to minimum-security prior to release. However, its population and place have been affected by broader trends and Departmental practices, and its profile cannot be described as Triple M. A number of related points arise.
- 4.3 First, Acacia was conceived in a climate of rising prisoner numbers, but has been filled during a period of reducing numbers. Nevertheless, the Department has managed Acacia's numbers with remarkable precision. In recent months, the monthly average daily population (ADP) has hovered just below 700 irrespective of broader population trends. It seems implausible that these figures would have been achieved if prisoner well-being (including proximity to family), security and program needs had been paramount, and the Department - liable to pay for the 651-700 band in any event - appears to have astutely geared its placements towards an ADP of 700.<sup>52</sup> The second point is closely related to the first; there is clear evidence that prisoners have been 'decanted' from prisons outside the metropolitan area, as is shown by the fact that Acacia is also holding 30 minimum-security prisoners and around the same number of Wongi men from the Goldfields and Central Desert. We will return to these issues later.<sup>53</sup> Suffice it to say that such placements are inappropriate: the minimum-security prisoners are denied their entitlements and the Wongis are dislocated and palpably unhappy.
- 4.4 At the same time, Casuarina, Hakea and Bunbury prisons are still holding significant numbers of medium-security sentenced prisoners. In the case of Bunbury and Casuarina, some of the explanation lies in the fact that Acacia's sex offender programs have been limited to intra-familial offenders, so that the public sector prisons have continued to provide programs for other groups.<sup>54</sup>
- 4.5 Last, but not least, Acacia has become the State's most important releasing prison. In recent months, it has provided far more prisoners released on parole than any other prison, accounting for around 36 per cent of all male parole releases.<sup>55</sup> At the time of the procurement, this was certainly not intended or anticipated.

<sup>52</sup> This observation is consistent with our analysis of Hakea Prison: Report No. 12, *Report of an Announced Inspection of Hakea Prison* (Office of the Inspector of Custodial Services, Perth, 2002), pp. 14-15. Note also that, as mentioned in paragraph 1.36, above, if the population were in the next band the Department would be liable to pay an extra \$30,000 per month.

<sup>53</sup> See paragraph 5.37 and Chapter 6, below

<sup>54</sup> See paragraphs 5.16-5.18 and 8.57-8.58, below.

<sup>55</sup> See paragraphs 5.33-5.41, below.

#### PLACEMENT WITHIN ACACIA

4.6 We have already suggested that, by virtue of its diverse protection population, the operation of different levels within the one unit and the processes by which its population is kept segregated from the remainder of the prisoners, K Block is effectively a prison within a prison. During the course of the Inspection, we concluded that there is another significant division. At the risk of over-generalisation, prisoners in self-care (Unit N) appeared to have their care and well-being needs adequately addressed. Certainly, when asked, they generally stated that, despite some frustrations, they would prefer to stay at Acacia rather than move to another prison. On the other hand, prisoners in levels 1 and 2 (Units I, J, L and M) appear to be very much less well-served. It is noteworthy that Aboriginal prisoners are grossly over-represented in lower levels.<sup>56</sup>

#### INDUCTION

- 4.7 The contract does not deal specifically with issues relating to the reception and induction of new prisoners. However, any definition of 'best industry practice' would include the provision of sufficient information about the details of prison life to enable people to adjust to and cope with custody. This is an area which has caused difficulties in the public sector and which also raised some concerns at Acacia. In the public system, it is expected that prisoners will complete their induction within two to three days, but Acacia has, on paper, a ten-day process. Some aspects of the process are good, including the comprehensive prisoner handbook, and there is something to be said for a more slowly staged induction process, provided core components are adequately addressed at the outset.
- 4.8 We had no significant concerns with respect to the initial reception process, which was conducted in an efficient, courteous and orderly manner. However, there are problems with induction. Each prisoner has an Induction Checklist and official records generally showed that all the elements had been completed. However, prisoners' perceptions are quite different and we found that many appeared quite confused and poorly informed when we spoke to them three days after reception and again after ten days. The Peer Support Group endorsed this, stating that the induction process 'used to be okay but is abysmal now' and that the prison has 'set policies in motion but expects them to run on their own'.
- 4.9 We were very concerned to find that, after induction was supposedly complete, most prisoners stated that they had been given no tour of the prison and no clear information about fire and emergency procedures, education and programs, employment and recreation. But it is perhaps the ATM/smart card system that is of most concern. Integral to the whole management regime, the system had not, according to prisoners, been demonstrated or properly explained. It is clear that many prisoners learn about the system through other prisoners, a problem that is compounded for those for whom English is not the first language. This is both inappropriate and inadequate.

<sup>56</sup> See Chapter 6, below.

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**ENVIRONMENT, ACCOMMODATION, CLOTHING AND PROPERTY**

- 4.10 The physical environment is generally quite attractive. Unlike many prisons, one is not confronted, from within, by reams of razor wire and security gates. Thus, whilst the smart card system presents some problems, it does create the opportunity for the prison to be less dominated by visual reminders of incarceration.
- 4.11 Accommodation is of a good standard. Prisoners appreciate the fact that they have their own in-cell showers, though some concerns were expressed with respect to drainage and privacy. By far the biggest complaint, in terms of the accommodation, was lack of ventilation and fresh air. Prisoners criticised the inadequacies and inefficiencies of the prison's air conditioning system and the policy that prohibits personal fans in cells. Most units have good access to the outdoors<sup>57</sup> and, apart from Units I and J, each has barbecue facilities.
- 4.12 We are satisfied that Acacia complies with its obligations to provide clean and appropriate mattresses and bedding, subject to the concerns raised earlier with respect to fire-retardant mattresses.<sup>58</sup> Clothing requirements are also adequately met. Most clothing, including all underwear and socks, is personal issue only and is not recycled when prisoners are released. Clothes are washed in machines in the units and, provided that the machines work, this arrangement is effective. However, we were told of frequent mechanical problems and delays in repair.
- 4.13 Personal property grievances are very numerous at Acacia. Some of the problems reflect poor procedures and record keeping, but there are also confusing differences between the rules adopted in the public and private sectors. This is exemplified by documentation relating to items that can be brought in by visitors. The Department has developed a new policy to the effect that newly sentenced prisoners may receive, within 14 days, up to three items from a list that includes clock, radio, television, stereo, hairdryer, fan, desk lamp, VCR and electric shaver.<sup>59</sup> Staff at the Visitors' Centre were instructed to distribute notices about the new policy. However, it turned out that Acacia has adopted more restrictive policies; that none of the listed items is, in fact, allowed through the gate and that they must be purchased through the prison shop. This does not affect many prisoners, as most are received after spending at least 14 days at a public prison (and thus have had an opportunity to get their property needs sorted out and to bring their items with them upon transfer to Acacia), but there are clear disparities between the public and private sectors. One might also ask how an Indigenous prisoner on low levels of gratuities, who is spending a good deal simply to keep in touch with family, could ever afford such items through prison spends. At best, it is disingenuous for management to direct the distribution of policies to which it does not ascribe.

<sup>57</sup> The exception is F Block (the Geriatric Unit and Crisis Care): see paragraph 4.44, below.

<sup>58</sup> See further note 29, above.

<sup>59</sup> The policy itself is problematic, especially in terms of the 14-day time limit, which has an unnecessarily adverse impact on prisoners who are incarcerated some distance from home.

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## FOOD

- 4.14 Acacia provides a fascinating case study of the dilemmas that arise with the provision of healthy prison food. On the one hand, we were satisfied that the prison seriously endeavours to provide nutritious meals. The menu is set by an independent dietician and attempts to provide a low-fat, healthy diet. Breakfast (toast and cereal) is provided in units and, with the exception of self-care, lunch and dinner are provided through the kitchen. Toast and fruit are also available in units for snacks during the day. There is less in the way of sweet and/or high fat foods than in many prisons and, in principle, this is to be welcomed. On the other hand, prisoners themselves complained vociferously about the type of food that is served, criticising a lack of red meat and roundly condemning the frequency of fish meals. We were not able to determine whether this was due to a general dislike of fish or to the quality of the Acacia fish. However, it would be sensible for the prison to provide better dietary advice/education for prisoners to try to counteract consumer resistance.<sup>60</sup>
- 4.15 Of more concern were the persistent complaints with respect to the quantity of food. Prisoners complained that quantities are inadequate and longer-term residents stated that servings had diminished as the prison population had increased. We are unable to conclude whether this is true or not. However, reports on food purchased through the canteen do suggest that some prisoners are using their spends to supplement basic foods rather than to buy 'extras' such as chocolate, soft drinks or snacks. This must be either because they dislike what is on offer or because of inadequate quantities.<sup>61</sup>
- 4.16 Thus, whilst Acacia's food philosophy is sound, there appear to be some possible areas for quality improvement and some genuine concerns with respect to quantity.

## HEALTH SERVICES

- 4.17 In principle, there is much to be said for a clear delineation between custodial and health roles in prisons. This is generally not the case in the public sector,<sup>62</sup> but the Prison Services Agreement for Acacia sought to entrench the principle. It states that services should be provided by a 'health care provider approved by the Contract Manager'.<sup>63</sup> Unfortunately, AIMS/CCA was unable to find a suitable subcontractor at a rate that was considered acceptable. Consequently, with the Contract

<sup>60</sup> Western Australian prisons generally are unimaginative in their management of menus. Even the most run-down UK prisons (e.g., Brixton) have a choice system whereby prisoners can order their meals in advance (rather as in public hospitals). This has considerable advantages in terms of ordering and avoidance of waste, and also facilitates the provision of special diets. Unfortunately, Acacia seems to have taken the easy way out adopted by public sector prisons in this State.

<sup>61</sup> In the week commencing 8 March 2003, canteen foods included 123 dozen eggs, 34 packs of bacon, 117 barbeque packs, 181 packs of instant noodles and 54 cans of baked beans. It should be recorded, however, that comparable patterns have been found during other inspections - e.g., at Casuarina Prison.

<sup>62</sup> See, for example, Report No. 12, *Report of an Announced Inspection of Hakea Prison* (Office of the Inspector of Custodial Services, Perth 2003), pp. 24-27; Report No. 13, *Report of an Announced Inspection of Bandyup Women's Prison* (Office of the Inspector of Custodial Services, Perth 2003), pp. 74-82.

<sup>63</sup> Annexure A, Clause 2.2(2).

## CARE AND WELL-BEING

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Manager's approval, AIMS directly employs the health service providers.<sup>64</sup> As with other prisons, this does, at times, generate some clouding of roles on the part of staff. This is exacerbated by the inappropriate practice of holding vulnerable protection prisoners in the Crisis Care Unit (CCU). The CCU comes under the control of the Manager of Health Services who is thus fulfilling a custodial role in relation to these protected protection prisoners.

- 4.18 There are a number of positive aspects to Acacia's health services, but we also identified areas for improvement. Looking, first, at the positive features, we are satisfied that the physical facilities meet the contractual standard of equivalence to a 'Level 2 Accident and Emergency Department incorporating provision for assessment and treatment, consultation and clinical support facilities'. There is adequate space in the health centre and a high level of equipment, including a defibrillator. First aid and oxy-vivas are located appropriately throughout the prison. There are ample medical supplies on site and they are safely stored. The only issue that needs consideration in terms of the facilities is improved privacy in the examination room.
- 4.19 Medical records appear to be safely stored, well-ordered and up-to-date. Medications are appropriately stored and registered, and drug charts are properly completed. An example of very good practice is that around 50 prisoners administer their own medications through Webster packs.
- 4.20 We were satisfied that prisoners have adequate access to externally sourced services such as pathology and x-rays and there are signs of improving links between the prison and external service providers. Dental facilities are very good and, although there is a three-week waiting list for normal appointments, the dentist will generally see emergencies at the next available clinic.
- 4.21 However, in a number of respects, service delivery appears to be diminished as a result of under-resourcing, some inconsistent treatment philosophies and a lack of coordination between different parts of the service. The most obvious issue is access to a doctor. Two doctors are on roster, for a combined total of two-and-a-half days per week. This appears quite inadequate given that it results in a two-week waiting list (time enough for most people to become well again<sup>65</sup>) and the fact that Acacia has a significant number of older offenders with high health needs. It compares poorly with Casuarina prison (2.5 days' service for half the number of prisoners) and Hakea (3.5 days for around 600 prisoners). A service for five days per week would appear to be necessary to service a prison of this size and profile.<sup>66</sup>
- 4.22 Under-resourcing also results in some tasks not being undertaken as required. For example, prisoners must be given a 'comprehensive medical assessment annually'.<sup>67</sup> At the time of the Inspection, the

<sup>64</sup> See paragraph 8.44, below.

<sup>65</sup> We were subsequently told that this delay was a 'one-off' occurrence, caused by the fact that one of the doctors had broken his wrist. However, that merely puts the question back one step: what contingencies were in place to deal with doctor unavailability, for whatever cause?

<sup>66</sup> Acacia's records apparently show 3,266 doctor consultations in the 12-month period to June 2003.

<sup>67</sup> Annexure A, Clause 2.2(c)(1)(G).

TOMS system identified 50 prisoners as overdue.<sup>68</sup> The contract also requires at least two hours of formal health education for prisoners within a month of being received. This was not occurring, nor was there adequate education on matters such as blood borne diseases. A nurse educator has now been appointed in an attempt to address these deficiencies.

4.23 The CCU also appears under-serviced in terms of health monitoring. The occurrence book for January and February confirmed that nurses generally go into the CCU only to distribute medications. This is rarely more than once per day<sup>69</sup> and visits lasted between two and eight minutes only. Other sporadic visitors over this two-month period were the mental health nurse (six visits), the Aboriginal Visitors' Scheme personnel (five visits) and the Chaplain (two visits). This seemed to us to be an inadequate level of support and service, though it was reassuring to learn that Peer Support members are regular visitors (movement controls permitting).

4.24 A full-time mental health nurse and a part-time psychiatrist provide mental health services. The nurse assesses all prisoners on reception, as far as possible. Subsequent referrals are by the prisoner filling in a form. In at least some blocks, these forms are in a filing cabinet in the Senior Officer's office. This presents barriers to possible access that should be reduced. The mental health nurse then filters cases for consideration by the psychiatrist or, if the problem is psychological, by a psychologist. The psychiatrist's contract with AIMS stipulates a minimum of four hours per week and he stated that, on average, he spends around six hours. Although the contract has some flexibility, questions again arise as to whether these resources meet the needs of such a large and complex population of prisoners. We also became aware of some difficulties in linking Acacia's psychiatric services to those in the outside community, such as the Frankland Unit at Graylands Hospital, and were told that prisoners tend to be transferred from Acacia to Casuarina prior to admission to Graylands. This situation seemed to be in the course of evolution but clearly should be remedied.<sup>70</sup>

4.25 We identified philosophical differences with respect to drug treatments. In particular, one of the doctors is not in favour of slow-weaning drugs such as methadone but favours rapid-weaning ones combined with cognitive skills programs. This appears to generate some inconsistencies and a degree of 'doctor-shopping'. The prison should have clear and consistent medical policies that feed into systematic drug treatment programs.<sup>71</sup> Account should also be taken of prisoners' needs rather than doctors' preferences.<sup>72</sup>

<sup>68</sup> The formal response states that some of these overdue prisoners would be refusals - but the record keeping system did not enable them to be identified or quantified. The Department states that record keeping protocols have now been adapted to cope with this deficiency.

<sup>69</sup> There were only 39 medication rounds for January and 31 for February.

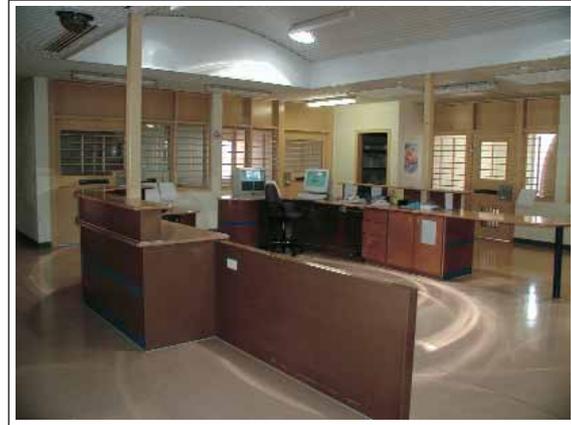
<sup>70</sup> Subsequently (May 2003), the psychiatrist's contract ran out and was not renewed. The Statewide Forensic Mental Health Services group has been contracted to provide services directly. Consequently, the quantum of services will be increased from one session to four sessions per week, and the awkwardness of arranging transfers to the Frankland Unit has been by-passed. This is a considerable improvement and prima facie meets the concerns expressed in the Report.

<sup>71</sup> We also identified inconsistencies in the philosophy of drug programs - see paragraphs 5.10-5.11, below

<sup>72</sup> Acacia has subsequently been brought within the Department's Drug Plan strategy, so it is hoped that these anomalies and inconsistencies will start to disappear.

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4.26 Finally, better linkages should be forged between the medical doctors, psychologists and psychiatrists. At present, perhaps because of limited resources, they each appeared largely to operate in their defined areas. There could be a more coordinated approach to the case management of those prisoners who are accessing a range of services, in terms of both their prison management and their subsequent release.



*The physical facilities of the Health Centre were excellent, as the reception area indicates.*

4.27 In summary, the physical facilities are excellent and service provision included some examples of best practice. However, these are counterbalanced by some philosophical differences between staff. The GP services are in any case inadequate for a population of 700. These are matters that should be readily remediable.

## SUICIDE AND SELF-HARM

4.28 The contract provides for Acacia to pay damages of \$100,000 in the event of any death that is not by natural causes. It is to the prison's credit that no such deaths have occurred.<sup>73</sup> There have been several incidents of self-harm, including one during the Inspection. However, at the current time, there is nothing to suggest that the per capita rate of such incidents is any different from any other prison. There are also indications that the At Risk Management System (ARMS) and the Prisoner Risk Assessment Group (PRAG) processes are functioning adequately. However, as with other areas of the prison's operations, staffing levels and the decline in case management give us cause for concern.

## MAINTAINING FAMILY AND COMMUNITY CONTACTS

### Visits

4.29 Acacia has limited contractual obligations with respect to prison visits. The basic entitlement is one visit per week of 'at least 60 minutes' duration'.<sup>74</sup> The prison states that it has so far exceeded this, with visits of around 90 minutes. However, this is less than the public sector standard of two hours and it is worth recording that AIMS/CCA represented during the selection process that they would

<sup>73</sup> With regard to deaths, note D. Biles and V. Dalton, 'Deaths in Private and Public Prisons in Australia: A Comparative Analysis', *ANZ Journal of Criminology*, 34 (2001), 293-301. This indicates that suicide rates during the start-up period for new public and private prisons carrying out comparable functions in relation to comparable populations are very similar. At this stage - though it is too early for the figures to have statistical cogency - Acacia has exceeded the performance of the Arthur Gorrie Correctional Centre (Queensland) and Port Phillip Prison (Victoria).

<sup>74</sup> Annexure A, Clause 2.4(c)(2). This standard was set out in the RFP.

## CARE AND WELL-BEING

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exceed the RFP minimum and provide at least two hours to level one prisoners, three hours to level two and four hours to level three.

- 4.30 Two other facets of the visiting arrangements give rise to particular concern. First, the prison has recently introduced restrictions on visits. Second, visitors encounter undue delays and demeaning security procedures.
- 4.31 The new restrictions impact in three main ways. Non-contact visits have been pared back to the base contractual level of one hour; the prison has reduced the number of social visit days from four to three; and 'official' visits (which include visits by lawyers) have been cut back to four days. We do not consider these restrictions to be justified and they breach the Prisons Regulations, at least with respect to remand prisoners.<sup>75</sup>
- 4.32 Even when visits do occur, the face-to-face time between prisoners and visitors is affected by delays and security procedures. Visitors initially report to the Visitors' Centre, located around 50 metres from the main gate. The room is clean and orderly with good basic facilities. However, the good-willed staff appeared to be faced with too many demands.<sup>76</sup> There is a large crèche and playground and the prison provides childcare services through a subcontractor, but we are concerned that prison management does not appear to have screened crèche workers in terms of qualifications and police clearances.
- 4.33 Visitors are subject to rigorous security. At the Visitors' Centre, they are given both a UV stamp and a wrist-band, before proceeding to the main gate. Here, they must negotiate a sensitive metal-detecting turnstile door, which often necessitates the removal of shoes and jewellery, with consequential delays. This time-consuming process is exacerbated by the constraints that arise from limited staffing. On the day we observed the visits, two staff were processing visitors and this appeared barely adequate. We were told that normally only one staff member is present - a level we view as wholly inadequate in terms of security and efficiency.
- 4.34 Once they emerge from the main gate area, visitors may face the PAD dogs. This demeaning process involves visitors being lined up, in groups of eight, on painted dots on the path between the Visitors' Centre and the main gate. The dog handler then recites his legal powers before the dogs go to work. We saw the dogs pick out a number of visitors who were told that they could only have a non-contact visit. However, as there were insufficient non-contact booths, some visits were reduced in duration and some visitors were turned away.<sup>77</sup> When visits proceeded as planned, they had been drastically curtailed by the time that it had taken to reach the Visitors' Centre (around 40 minutes).

<sup>75</sup> Regulation 56 requires access to daily visits for remand prisoners.

<sup>76</sup> For example, at the time of the Inspection the visits booking officer had a two-month backlog of around 500 statutory declarations that needed to be entered on TOMS.

<sup>77</sup> We observed three turned away due to non-contact booths being unavailable.

- 4.35 Overall, the arrangements for social visits are in need of improvement and both AIMS and the Department must bear in mind that, at best, the prison involves an hour's travel for most visitors and the journey is especially onerous for those who rely on public transport to Midland station and then the AIMS shuttle bus. Visiting arrangements are a particular source of discontent when prisoners feel, as they do at Acacia, that their loved ones are being harassed or treated with disrespect. Again, the paradox is that these feelings reflect prison practices rather than staff attitudes.
- 4.36 We therefore recommend that AIMS and the Department consider alternative measures. First, improved staffing levels appear to be required. Secondly, the security focus might profitably shift from visitors to prisoners. Canine technology seems to us to be outmoded in relation to visitors<sup>78</sup> but, if retained, could best be used on prisoners after the visits. Some prisons also adopt the practice, which seems eminently sensible, of prisoners changing into one-piece pocketless overalls for visits.

#### Telephones and Video Links

- 4.37 The telephone system at Acacia had some positive features. The Arunta system is somewhat more sophisticated than in the public system, due to technological advances. Some policies are also enlightened. There is direct and free access to the Ombudsman, Legal Aid, the Aboriginal Legal Service and the Intelligence Department of Acacia and, unlike the public system, none of these are included in the ten numbers allowed on each account. Telephones are readily accessible, and the prison has introduced a phone card system for prisoners who do not receive visits and whose families are all overseas. The Indigenous Liaison Officer has also allowed Aboriginal prisoners from remote areas to use his phone.
- 4.38 Acacia has good video link technology; this is most frequently used for official business, including courts and police. Over the 12 months prior to the Inspection, there had also been 54 visit links. Such technology has obvious potential but is very expensive at Acacia (\$9.60 for ten minutes) compared with the public sector (\$4.00 for 20 minutes). These price differentials may be permitted as a matter of strict contractual interpretation, but are otherwise impossible to justify.

<sup>78</sup> The presumed objective is to discover and interdict drugs that the visitor intends to pass to a prisoner. Until recently it was the practice of the Department to conduct strip-searches of some visitors who had given a positive indication to the PAD dogs. In the two-month period December 2002-January 2003, 46 such searches were conducted across the prison system; not one resulted in the discovery of drugs. At Bunbury in the six-month period May-November 2002, 15 strip-searches were conducted, with two findings. On that basis, it can be said that there was a 97 per cent rate (59/61) of false positives, i.e. strip-searches of persons who were not found to be in possession of drugs. The Department argues that a fairly high percentage of persons subject to a positive indication admit some recent contact with drugs of one kind or another, and that accordingly the rate of false positives is low. That is true, if the point of PAD dog surveillance is to ascertain levels of drug use in the community. But it remains true that it is not a reliable, or even a useful, indicator of attempts to smuggle drugs into prison. That is not to deny that the knowledge that PAD dogs may be used may have a deterrent effect upon visitors. Even so, the objective of preventing the flow of drugs into prison via visits would be met better by the use of special clothes by prisoners at visits, fortified by PAD dogs and strip-searches in relation to those prisoners plus continued utilisation of the effective camera surveillance of visits. The amount of angst and the degree of indignity imposed upon citizens visiting prisoners would be very much reduced.

### RECREATION AND LIBRARY

- 4.39 Physical recreation facilities at Acacia are adequate. Each unit has a recreation yard, the size and quality of which varies according to the prison hierarchy. I and J Blocks have small, enclosed concrete yards with a basketball hoop, and the Self-Care Unit has open grassed and concrete areas. The oval is of a good size and the gymnasium is well equipped. In theory, a good range of activities is available, including mainstream sports. However, at the time of the Inspection, prisoners' access to the gym and the oval had been reduced. In part, as we have seen, this was the result of more restrictive prison management rules, prompted by security concerns and current staffing levels.
- 4.40 There are also serious maintenance problems. These were glaringly obvious with the oval, which had deteriorated over the summer months to become a yellow-brown patchwork that was aesthetically unpleasant and so hard as to pose risks of injury.<sup>79</sup> Some gymnasium equipment appeared to need repair or replacement and staff expressed concerns about the occupational health and safety implications of this and the time that repairs have taken.
- 4.41 The library is reasonably light and spacious, but the shelves are somewhat sparsely populated with a fairly mundane selection of English language books, some in multiple copies. Despite the presence of a substantial number of non-English speaking background (NESB) prisoners at Acacia, as well as many Aboriginals for whom English may be the second language, there are few, if any, books in other languages. Resources to support the prison's educational and training programs are very limited also. Legal resources were too limited to meet the needs of remand and appeal prisoners (over 20 in number). Regrettably, Acacia is not linked to the State's public library service and, unlike public sector prisons, is unable to arrange inter-library loans.
- 4.42 Acacia is therefore not providing the level of recreation and library services that would be expected in a prison meeting best industry practice.

### SPECIFIC GROUPS

- 4.43 We have already mentioned the position of protection prisoners, and a later chapter discusses Aboriginal prisoners. Two other groups that are particularly visible at Acacia are NESB prisoners and geriatric prisoners. Judging by the ethnicity data provided by Acacia, a significant number of prisoners (probably between 30 and 60) are NESB. Many Asian and Muslim prisoners stated that they were satisfied with the prison's attempts to provide culturally appropriate food. However, there is no formal information available in languages other than English, and prisoners tend to rely on others for advice and for translation/interpretation if necessary. Whilst acknowledging the difficulties associated with multiple-language provision, we believe that the prison could improve its performance, and note that the contractor is required to provide NESB prisoners 'with adequate verbal and written information in their preferred language'.<sup>80</sup>

<sup>79</sup> For more discussion, see paragraphs 8.55-8.56, below.

<sup>80</sup> Annexure A, Clause 2.2(a)(5).

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4.44 The Geriatric Unit was one of the best features of the prison, providing a relaxed environment in which prisoners felt safe. It was pleasing to see that work opportunities are available for prisoners who are sufficiently fit. The only issue is that the unit is enclosed and prisoners have inadequate access to fresh air. This should be capable of remedy, in a manner that is consistent with security demands, by constructing a fenced open-air area at the back of the unit.

4.45 The contract mentions two other groups of prisoners - those with physical and intellectual disabilities. We concluded that, as with the population as a whole, these prisoners' needs would be better met by improved staffing levels. This would not only allow more attention to their prison management needs, but would also promote a more structured and proactive approach to liaison with other relevant groups such as the Disability Services Commission and the Department's disability services. There appear to be very few such linkages.

### PEER SUPPORT

4.46 We met with the Peer Support Group (PSG) on a number of occasions. This group of around 12 prisoners is coordinated by the Indigenous Liaison Officer, and is hard-working, committed and responsible. It became clear that it has identified some areas of limited service delivery by AIMS and has given priority to offering assistance in such areas, including visits to the Crisis Care Unit and assistance to new prisoners. However, it is difficult to see how a group of just 12 could ever adequately meet the needs of 700 prisoners.

4.47 In addition, there is the problem of enabling such a group to be representative of the whole prison population. We have suggested that Acacia is a somewhat 'divided' prison, with K Block amounting to a 'prison within a prison', around 200 Indigenous prisoners, and a divide between I, J, L and M Blocks and the Self-Care Unit. However, all the PSG prisoners came from the Self-Care Unit, with very limited Indigenous representation and no Asian member. The difficulties that face the PSG are further affected by the prison's movement restrictions. We were informed that one PSG prisoner has relatively unfettered access throughout the prison but that the others are more restricted.

4.48 Many prisons struggle to achieve a strong and representative PSG. However, Acacia faces particular problems by virtue of its sheer size. For example, there are enough Aboriginal prisoners to fill a smaller prison. We therefore recommend that consideration be given to the most appropriate arrangements to meet all prisoners' needs. These discussions should draw on the strengths of the existing PSG, but consider whether there would be benefits in establishing other groups or sub-groups reflecting prison location or prisoner group.<sup>81</sup>

<sup>81</sup> Unit-based meetings already exist on paper but they appear to be sporadic and to meet a different purpose.

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## WELFARE AND SUPPORT SERVICES

- 4.49 The Contractor is required to identify and involve voluntary community organisations. This includes the development of an up-to-date database of relevant Aboriginal and non-Aboriginal agencies, access by prisoners to appropriate services and regular meetings between the prison and the agencies.<sup>82</sup> However, whilst several community organisations - Alcoholics Anonymous Mirrabooka Wellmen's Group, Prisoner Fellowship, the Salvation Army and some Aboriginal elders - have formal links and entry protocols with Acacia, their actual presence on the ground was disappointing. Nyungar prisoners commented that despite the number of Aboriginal community organisations, Centrelink appeared to be the only one with whom they had contact - and then only for processing social security payments.
- 4.50 In the public sector, Outcare provides a range of services focused around practical assistance and a linkage between prison and the community. However, at Acacia Outcare is conspicuous by its absence, and no equivalent service has been developed. Prior to the selection of the Contractor, Outcare provided a service model and costings. This, or an equivalent service, should have been incorporated within the bids. During much of 2001-2002, Outcare continued negotiations with AIMS, but they took the view that the proposed services, at around \$40,000 per annum, were too costly. The result is that prisoners at Acacia do not have the level of service from outside agencies that exists at other prisons and that was anticipated in the contract.
- 4.51 The lack of external welfare support has knock-on effects for Chaplaincy services. It became very evident that the Chaplains are providing a high level of counselling that is primarily family/welfare oriented rather than spiritual or religious. Given their other work, it is unreasonable for the Chaplains to carry this extra burden. It is also inappropriate for family and welfare matters to be tied, or appear to be tied, to religious and spiritual services.

## SUMMARY

- 4.52 Care and well-being issues are something of a mixed bag at Acacia. There is no doubt that cell accommodation is of a good standard and that clothing, bedding and hygiene needs are well met. There have been no suicides, health facilities are very good, and health care provision can readily be improved by increasing the availability of doctors. Psychiatric care has also recently been enhanced.<sup>83</sup> Food has become an area of contention, especially with respect to the quantities that are served, but the philosophy and general practices are sound. Recreation and library facilities have a good foundation but need to be enhanced. However, some areas require ground-up review and improvement. These include accounting for prisoners' property, improving the induction process,

<sup>82</sup> Annexure A, Clause 2.2(h).

<sup>83</sup> See note 70, above.

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developing welfare support services and attending adequately to the needs of special groups and Indigenous prisoners.<sup>84</sup>



*Acacia is virtually three prisons. This is a block in self-care, where prisoners' needs are well met.*

4.53 Based on our observations, interviews and discussions, we were left with the impression that there are almost three prisons operating at Acacia: protection, self-care and 'the rest'. Prisoners in self-care generally appear to have their needs well met and, with proper attention to anti-bullying measures, the position of protection prisoners can be readily improved. The greatest challenges are in I, J, L and M Blocks.

<sup>84</sup> See Chapter 6 for specific discussion of Indigenous prisoners.

# Chapter 5

## REHABILITATION, REPARATION AND RE-ENTRY

- 5.1 Acacia was designed to play a pivotal role in the provision of innovative rehabilitative programs, training and work opportunities, with a view to preparing prisoners for release and reducing the risks of recidivism. Thus, the contract not only stipulates a number of requirements with respect to delivery of services within the prison, but also requires a strong focus on ‘throughcare’ and community reintegration. The philosophy and the contractual provisions are fully consistent with the current government’s ‘re-entry agenda’. This chapter provides a thematic review of these areas and concludes that there are serious shortfalls. Most of these involve the level of service provided by Acacia, but the Department also needs to appraise its own performance with respect to re-entry.<sup>85</sup>
- 5.2 For present purposes, the most significant area is programs, because they have the greatest systemic downstream impact. The ‘paramount consideration’ in Parole Board decisions is the risk to the community<sup>86</sup> and treatment programs aim to ‘address offending behaviour’ and to reduce risk. Consequently, although program completion is not a pre-requisite for parole, it is a significant consideration and tends to carry more weight than work or educational achievement.

### OFFENDER PROGRAMS

- 5.3 The Department’s delivery of programs has suffered from a number of deficiencies over recent years. The most obvious of these concern delivery in regional prisons, the development of programs for women, culturally appropriate programs and program evaluations.<sup>87</sup> In the short period of its existence, Acacia has delivered a considerable number of programs. However, there are major problems in terms of program intensity, integrity, staffing and, increasingly, of timely delivery. We note that the Department commissioned a review of most of Acacia’s programs very shortly before the Inspection and that review generally accords with our findings.<sup>88</sup>
- 5.4 The contract was deliberately non-prescriptive in terms of the range and content of programs, because the aim was to promote innovation and not to replicate the public sector’s programs. On paper, Acacia offers an impressive suite of programs with a strong cognitive skills focus. They include a generic Cognitive Skills Program (Cog Skills); a Violent Offender Intervention Program (VOIP); a Sex Offender Intervention Program (SOIP); three AIMS-provided substance abuse programs (Pathways, Choices, and Preventing and Managing Relapse) and two other substance abuse programs mainly directed to Indigenous prisoners (Corroboree and NASAS).

<sup>85</sup> For discussion of the principles of re-entry, see J. McGinty, *Reducing Reoffending - Focusing on re-entry to the Community* (Office of the Attorney General, Perth, 2002).

<sup>86</sup> *Sentence Administration Act* (WA) 1995, s. 18.

<sup>87</sup> See especially the reports from this Office on Bandyup Women’s Prison (Report No. 13, 2003); Broome Regional Prison (Report No. 6, 2002); Eastern Goldfields Prison (Report No. 4, 2001 and Report No. 9, 2002); Roebourne Prison (Report No. 14, 2003); and Greenough Prison (forthcoming).

<sup>88</sup> *Acacia Prison Program Review Report* (Department of Justice, Perth, 2003). Curiously, this review does not discuss the system-wide ‘flagship’ program, Cognitive Skills (also known as Reasoning and Rehabilitation). This may reflect some ambivalence as to whether ‘Cog Skills’ is truly a program or a general educational package.

- 5.5 On the ground, the picture is very different. Program delivery is disorganised and some unacceptable practices have developed.

#### Individual Management Plans (IMPs)

- 5.6 IMPs are supposed to be the backbone of the prisoner management system, providing both a list of program expectations and a schedule for their delivery. Most prisoners arrive at Acacia with an IMP that has been developed at Hakea Prison. However, some prisoners do not have an IMP, either because their expected custody time is under six months or because they have not been through the Hakea assessment process.<sup>89</sup> In such cases, Acacia itself is required to assess 'individual offending factors' and to develop either an MAP (Management and Placement Checklist) or an IMP. It must also ensure that IMPs are reviewed annually.<sup>90</sup> Where Acacia proposes to change what is specified in an existing IMP, this should be done in consultation with the Department. There are a number of problems with the operation of the IMP system.
- 5.7 First, a significant number of prisoners at Acacia do not have IMPs, and staff appeared at best to be uncertain about their obligations. They stated that they felt unqualified or insufficiently trained to develop or modify IMPs. This does not sit easily with Departmental assurances that Acacia staff are the best-trained in the State. If so, it would seem that system-wide training needs improvement.
- 5.8 Secondly, contrary to the contractual wording, IMPs for Acacia appear to be driven by program availability rather than driving the delivery of appropriate programs. The contract puts the onus on Acacia to provide programs 'as required in the IMP' but in some areas, including sex offending, its programs are limited in application and exclude offenders who would otherwise be suitable for Acacia.<sup>91</sup> We were informed that Acacia provides the Department with a schedule of the programs it will offer each year and that Hakea then dovetails IMPs to program availability.
- 5.9 Collaboration is clearly important to the efficient delivery of programs, but this does look like the Acacia tail wagging the IMP dog. Another example is that IMPs are sometimes modified at Acacia to fit in with program availability. We were told of cases where the IMP required a Pathways Program but the person was actually placed in Choices. Again, some flexibility is necessary but the current arrangements appear to be ad hoc and unstructured.

#### Drug Treatment Philosophy

- 5.10 Broadly speaking, there are two main approaches to drug treatment. The cognitive/social learning approach sees substance abuse as a learned behaviour and stresses personal choice and harm minimisation. The '12-Steps' approach regards substance abuse as a sickness or disease and is

<sup>89</sup> This will include, for example, prisoners who are transferred to Acacia from regional prisons.

<sup>90</sup> Annexure A, Clauses 2.2(g) and 2.4.

<sup>91</sup> See paragraphs 5.16-5.18, below.

predicated on abstinence. Acacia's core programs (Pathways, Choices, and Preventing and Managing Relapse) are all based on the first approach, but other parts of the drug strategy reflect the 12-Steps model. In a prison of this size and complexity, there is scope for different approaches but they need careful and consistent management. Unfortunately, there was little evidence of this. Indeed, many of the treatment staff appeared insufficiently aware of the philosophical divide.

5.11 This is not just a matter of nicety, but directly affects the accessibility and operation of the Drug Treatment Unit (DTU), a cluster of 18 cells in Self-Care. We were advised that the theoretical underpinning of the DTU is a harm-minimisation model, which would be consistent with the core programs. However, in practice, the unit is only for those prisoners who have already given up drugs and there is a zero tolerance approach to users. There are no cognitively based programs to support the DTU, only some rather unstructured Living Skills sessions, Alcoholics Anonymous and Narcotics Anonymous meetings and self-support groups based on the 12-Steps approach. Further, whilst attendance at such groups is 'voluntary', we were told that people have been removed from the unit for non-attendance. This Office agrees with the Department's review that the DTU's philosophy and role should be evaluated and that it should be extended to those who are still working towards abstinence.

#### Otiose Programs

5.12 We were informed that, as part of the induction process, all prisoners are required to complete an eight-hour drug education program and we observed one such program in operation. The sessions do attempt to address a number of generic life-skills issues, but this hardly justifies their application to all prisoners irrespective of their offending histories. Some clearly resented having to attend under pain of suffering a Loss of Privileges penalty for non-attendance. The prison's limited resources could probably be put to better use - either by redirection to drug treatment programs or to improving information on more practical health and induction related issues.<sup>92</sup>

#### Program Overlap

5.13 It is not easy to identify the differences and relationship between some of the programs. For example, both Acacia and the Department run a program called CALM (Controlling Anger and Learning to Manage It) that is of 48 hours duration and classified as medium intensity. The Department also offers a high intensive Violent Offender Treatment program (VOTP) of around 400 hours to some, but not all, of the more serious offenders. Acacia offers a similar-sounding Violent Offender Intervention Program (VOIP) but it is only of 64 hours duration and, although purchased from a different source,<sup>93</sup> bears a striking similarity to CALM. Both CALM and VOIP also draw

<sup>92</sup> These would include areas relating to blood-borne diseases and use of the ATM smart card system; see paragraphs 4.9 and 4.22, above.

<sup>93</sup> CALM is a T3 program and the VOIP was developed by the Queensland Department of Corrective Services.

heavily on the generic Cognitive Skills program. In the context of substance abuse programs, it is almost impossible to distinguish between Choices and Preventing and Managing Relapse.<sup>94</sup> The plethora of overlapping programs may look impressive on paper, but is confusing to consumers and decision-makers and seems unnecessary.

### Program Intensity

5.14 Acacia holds a large number of prisoners with extensive treatment needs. However, its primary focus has been on providing lower intensity programs for a large number of prisoners. In its program directory, the prison classifies two programs as high intensity: Pathways and the DTU. However, this is misleading. As we have seen, the DTU does not provide any structured treatment programs and is essentially a residential arrangement. It does not, in our view, constitute a high-intensity program. Pathways is said to offer 78 hours of treatment followed by 13 maintenance sessions of 1.5 hours each. The Department has indicated that, in its view and that of the program developers, T3, even a fully delivered Pathways program<sup>95</sup> should be designated only as medium intensity.

5.15 There are no high-intensity programs at Acacia for violent or sexual offending. The VOIP, as we have seen, is only 64 hours and the SOIP is only 60 hours. Both are classified as medium intensity but are undoubtedly at the lower end of the medium-intensity band. They fall far short of public sector's high intensity Sex Offender Treatment Program (SOTP) and Violent Offender Treatment Program (VOTP), each of which lasts for over 400 hours. Indeed, the SOIP is little over half the duration of the public sector's medium-intensity SOTP (110 hours).

### Sex Offender Intervention Program

5.16 The criteria for inclusion in the SOIP are very restrictive compared with the public sector. The SOIP only applies to intra-familial sex offenders where the victim was female, where the person has no prior convictions for sexual offences, and where no threats or violence were used. In developing such a specific program focus, Acacia has adopted a different philosophical framework from the Department, which considers that different types of sex offenders (such as stranger-rapists and intra-familial offenders) are best treated in a mixed group. There is scope for philosophical differences provided a suitable range of programs is offered. However, Acacia's programs have, in effect, skimmed off the group that, according to international research, is at the lowest risk of re-offending, and the prison has not delivered any programs designed for other offenders.

5.17 It should be stressed that the SOIP's limitations have wider implications in that the public sector prisons must still meet the needs of other offenders through more intensive and more costly programs. We were informed that Acacia has relaxed the SOIP entry criteria and the Department has estimated that around 50 per cent of participants do not now meet its strict requirements. Whilst this

<sup>94</sup> 'Choices' is a T3 program and PMR is a Queensland Department of Corrective Services' program.

<sup>95</sup> There are also issues in terms of its actual delivery; see paragraphs 5.19-5.20, below.

goes some way to increasing access, it is highly problematic. A program specifically conceived for non-violent, opposite-gender, intra-familial, first offenders appears inappropriate and inadequate for other offenders.

5.18 At the time this Report was written, AIMS and the Department were in negotiations over program delivery for sex offenders. It is a matter that has been allowed to drift and requires resolution.<sup>96</sup>

### Program Integrity

5.19 The integrity of Acacia's programs has been undermined by unpalatable practices. Some programs have been reduced in duration by shortening treatment sessions, Pathways being reduced by one-third, with sessions being cut back from three to two hours. Sessions in other programs are regularly curtailed or rescheduled because of custodial demands placed on uniformed presenters, and senior management effectively conceded that programs staff have been pressured to push numbers through. We even learned that, in 2002, two prisoners were involved in delivering a substance abuse program. Whilst we would encourage prisoner peer support, it is utterly improper for prisoners to be in a position of authority in formal programs,<sup>97</sup> especially when the Parole Board gives weight to such programs.

5.20 These deficiencies are compounded by a lack of clear and direct clinical supervision and support. The program psychologists are largely operating in isolation and there is no senior clinical psychologist on staff.

### Staff Resources and Qualifications

5.21 The program staff generally appeared to be enthusiastic and committed, but relatively inexperienced, too few in number, and struggling to cope with competing demands. This is partly due to their need to be involved across so many facets of program delivery and partly because they have to carry out administrative tasks that could be delegated to allow them to focus on program delivery. There is no doubt that the professionally qualified staff feel disillusioned and frustrated; under-resourced, inadequately supported and under pressure to compromise professional standards.

### Timely Delivery

5.22 As a consequence of inadequate resources, Acacia is not delivering programs within the optimum timeframe. One example is that the generic Cognitive Skills program, which was intended to be, in part, a building block for more specialised programs, is being delivered later in prisoners' sentences

<sup>96</sup> The Department reports (August 2003) that it has directly delivered some intensive programs at Acacia. A re-negotiation of the contract has ensued under which Acacia will now deliver two medium-intensity sex offender treatments annually. Also, the Department will, at Acacia's expense, deliver one Violent Offender Treatment Program each year as from 2004.

<sup>97</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners specifically prohibits these arrangements: Rule 28(1).

rather than early on. Combined with other delays, this means that prisoners are not completing programs, as projected in their IMPs, by their earliest parole release date.

### Indigenous and Specific Needs Programs

5.23 The Contract states that Aboriginal prisoners are to be engaged in programs 'that address their particular offence patterns in culturally appropriate ways'. There was little evidence to suggest that Indigenous-specific programs are being vigorously pursued and management conceded that the SOIP is not appropriate for Indigenous men. Many prisoners and staff spoke highly of Corroboree, a pilot self-help group for substance abuse conducted by prisoners. This is a promising initiative but would need further development and accreditation.

### Summary

5.24 Although the contract is non-specific in relation to programs, it does require compliance with best industry practice across the gamut of prison services. The Department's *Annual Performance Review* of Acacia in July 2002 hinted at some problems but expressed optimism that there would be improvements given what it called 'high levels' of management expertise and the existence of a 'clear remedial strategy'. Such optimism was seriously misplaced. Acacia is not even at present meeting acceptable standards, let alone achieving best practice. There is an urgent need for programs to be rationalised (in number and intensity), practices to be tightened up, and more resources to be provided.

### EDUCATION AND VOCATIONAL TRAINING

5.25 Education and vocational training suffer from very similar deficiencies to programs, including resourcing, integrity and availability. Some of these deficiencies should have been obvious quite early on, but the Department's *Annual Performance Review* of July 2002 made little reference to education and training and the AIMS' *Best Practice Review* of January 2003 was virtually silent. Fortunately, it is a matter that is now being addressed by the Department in the light of a review that its own Education personnel conducted over the four months preceding our Inspection.

5.26 The contract states that the Contractor must provide a 'comprehensive range of education and employment training opportunities for all prisoners', and that this should involve 'a minimum of four hours per week' in addition to the stipulated work requirements. In order to ensure standards, the prison was to become a registered training organisation (RTO) and to comply with Departmental standards. It was to ensure 'training pathways between prisons and from prisons to community', and to cater for the needs of Aboriginal and NESB prisoners and those with disabilities.<sup>98</sup> For present purposes, it is sufficient to itemise the areas of shortfall.

<sup>98</sup> Annexure A, Clause 2.4(a).

- There is a yawning gap between the paper promises and actual practice. For example, our Inspection affirmed the Department's finding that there is no industry-based vocational training, despite documentation indicating otherwise.
- Prisoners tend to be discouraged from attending core educational subjects such as Maths and English, and directed towards more recreational pursuits such as Art and Music. This seems to occur even when core subjects are specified in an IMP.
- The prison is not meeting its obligation to provide occupational health and safety training for prisoners. At the time of the Inspection 580 prisoners (over 80% of the population) were awaiting such training.
- There are insufficient trained staff and virtually no professional staff development opportunities.
- Prompted by staff shortages, prisoners have assumed too great a role in educational courses. Peer tutoring is to be encouraged as a supplement to program delivery. However, at Acacia prisoners have been involved in actual delivery. As with treatment programs, this is utterly improper.
- Acacia did acquire RTO status but there have been several compliance issues. It has purported to deliver programs that it is not registered to deliver and staff seemed unaware of Department of Education and Training requirements for RTOs.
- The situation with certificates and statements of attainment bears the hallmarks of a farce. Some prisoners have been issued with 'certificates' that do not comply with official requirements and are therefore worthless but Acacia's records are inadequate to rectify the problem. There have even, apparently, been occasions where prisoners have issued certificates to other prisoners.
- The prison has failed to meet contractual expectations with respect to Aboriginal and NESB prisoners and prisoners with disabilities.
- Despite facing manifest problems with service provision and increasing prisoner numbers, the prison slashed the educational budget during 2002, from around \$250,000 to around \$180,000.

5.27 In summary, Acacia seems to have run fast and loose in the areas of education and training and is meeting neither its contractual obligations nor prisoners' legitimate expectations.

## WORK

5.28 The contractual standards reflect four key principles with respect to prisoner work.<sup>99</sup> First, work programs should be practical, diverse and relevant, and prisoners should be provided with at least six hours work per weekday. Second, they should aim to offset the costs of imprisonment (for example, by engaging prisoners in prison maintenance work and by developing partnerships with industry).

<sup>99</sup> Annexure A, Clause 2.3.

Third, there should be a degree of reparation to the community (for example, through work for community groups). Finally, the purpose of work should be to assist prisoners' reintegration (for example, through prison-based industries that may create employment opportunities on release). These principles deliberately set high aspirations. There are some positive aspects to Acacia's performance but, on the whole, it is disappointing.

- 5.29 One of the positive features is that protection prisoners have access to work opportunities to an extent that has not been achieved in the public sector. Another is the vegetable preparation facility where prisoners peel and prepare vegetables for an external contractor. However, the 'Veggie Prep' story is also one of managerial ambivalence and uncertainty. For most of 2002, some protection prisoners were working double shifts and therefore earning double gratuities at a high level. This was, of course, a highly valued privilege. Double shifts have now ceased and management's explanation was reasonable enough; that such valued work should be shared out between more prisoners. However, this has not happened and we found the same number of prisoners now working single shifts. As a result, veggie prep productivity has plummeted from around 30 tons per week to around 12 tons. We were informed that the external contractor was considering cancellation of the contract because of the prison's inability to deliver sufficient quantities. It seems counter-productive and contrary to the prison's contractual obligations, to restrict and jeopardise a successful enterprise that has the potential for expansion.
- 5.30 Elsewhere, work issues had a ring that is all too familiar in the public sector. Official profiles suggest full employment but many positions are nominal and only equate to six hours work at a snail's pace. Too many Aboriginal prisoners are in lower levels of work<sup>100</sup> and there are no meaningful opportunities for prisoners with disabilities. There are no significant linkages between work and skills development/vocational training, and little use of prisoners in maintenance work.
- 5.31 We felt considerable disquiet, too, at the consequences for people who are suspended from work. In the public system, such prisoners regress to the base level of gratuities. However, management confirmed that at Acacia, no gratuities at all are paid. We were even told of a case where a prisoner who had been sacked from one job received no gratuities for several weeks even though he had commenced another job. We believe that a nil-gratuity regime is appropriate, at most, for prisoners who are on punishment. It is an oppressive sanction for simply refusing to work and inhibits a prisoner's ability to make phone calls or to purchase basic items.
- 5.32 Overall, work at Acacia is in somewhat better shape than either programs or education and the concept of the structured day still carries some validity for many prisoners. However, the area needs review and re-energising.

<sup>100</sup> See paragraph 6.11, below.

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RE-ENTRY: THEORY AND REALITY

**Backdrop**

- 5.33 Prison-based programs, education and work can only ever be one component of a re-entry process. Other issues, often of a highly practical nature, require attention, including accommodation, family, social and welfare supports, and employment opportunities in the community. The government's re-entry agenda has set a range of strategic objectives, many of which will require inter-agency collaboration and long-term planning. However, many parts of the re-entry agenda do not require complex planning but are simply about good, common sense, offender-management practices.
- 5.34 This is obviously an area where AIMS and the Department have a shared responsibility, a fact that is recognised in the contract. It places obligations on the Contractor to develop re-integration programs and initiatives; to assist with developing parole plans; to provide access to community corrections officers (CCOs) for release planning; and to liaise with post-release agencies. The Department, in turn, has firm operational responsibilities. It is expected to place at least two CCOs in the prison and has overriding responsibility for the throughcare of prisoners, including their movement between prisons and from prison to the community.<sup>101</sup> Unfortunately, neither AIMS nor the Department are meeting their obligations.

**Acacia: The Major Releasing Prison**

- 5.35 In understanding the issues surrounding re-entry, it is important to return to the original conception of Acacia - as a male, medium-security, metropolitan prison. The theory, embodied explicitly in the contract, was that Acacia would be responsible for some releases, but that 'the majority of prisoners will be released from minimum-security prisons'.<sup>102</sup> However, the realities have proved very different and Acacia has become by far the State's biggest 'releasing prison'. In the period from 1 July 2002 to 31 December 2002, it released over 370 sentenced prisoners. Over the same period, Casuarina released around 150 and the major minimum-security prisons (Karnet and Wooroloo) together accounted for around 280 releases. Furthermore, whilst prisons such as Broome and Roebourne have a high proportion of unsupervised releases, Acacia accounts for a very high proportion of parole cases, which require more careful release planning. In the second half of 2002, it was responsible for 36 per cent of all male parole releases. In a system-wide context, this is equivalent to the total number of parole releases from the next four highest paroling prisons (Wooroloo, Karnet, Casuarina and Greenough).
- 5.36 There is no doubt, therefore, that the system has not seen the flow-through to minimum-security that was anticipated. Indeed, since the opening of Acacia, minimum-security options have been downsized and under-utilised by the Department. Pardelup, a well-managed minimum-security

<sup>101</sup> Annexure A, Clauses 2.4(d) and (e).

<sup>102</sup> Annexure A, Clause 2.4(e).

prison for around 80 prisoners, was downgraded at short notice to a work camp, usually having fewer than 20 prisoners; Bunbury Prison has lost 30 minimum-security beds; and the work camps are often operating below potential levels. This situation raises some broad questions about security ratings and strategic planning, which have yet to be addressed in Departmental documents,<sup>103</sup> and which are beyond the scope of this Report. However, it can certainly be said that more of Acacia's population should, in principle, be progressing to minimum-security prior to release.

### Minimum-security and Wongi Prisoners

5.37 There are two groups of prisoners whose placement at Acacia is at odds with any sensible notion of re-entry. The first is a group of around 30 prisoners<sup>104</sup> who have managed to acquire minimum-security status, but who remain in a medium-security prison (and one which bears most of the hallmarks of a maximum-security facility). These prisoners are denied the increased levels of freedom and responsibility which are appropriate to their status, and to which they are entitled, such as less intrusive security, leave of absence and out-of-prison activities.<sup>105</sup> The second group consists of almost 30 Wongi prisoners from the Goldfields and Central Desert regions. Their parlous circumstances are discussed more fully in Chapter 6.

### Community Corrections

5.38 Community Corrections support is inadequate to meet re-entry needs at Acacia. The contract anticipated two CCOs at the prison, even when it was not identified as a major releasing prison. It does not appear that the Department has generally provided this level of support, even when minimum-security facilities were being downsized and it would have been obvious that Acacia's needs were far greater than the contract had anticipated. At the time of the Inspection, only one CCO was based at the prison. Most of her work involved writing reports and dealing with the needs of life sentence and long-term prisoners. She therefore had little available time for other prisoners, even though they constitute the bulk of parole releases. One consequence of this is that prisoners become unduly reliant on advice from other prisoners in developing parole plans, to the extent that we could name some prisoners who had positions of particular 'authority' in this regard.

5.39 The Department is therefore not meeting its service obligations with respect to prisoners' re-entry, and the position at Acacia compares unfavourably with Wooroloo, Karnet and Casuarina, which are better resourced. For its part, AIMS has failed to provide the CCO with adequate facilities. Originally, she had a separate room but, due to security concerns, was moved to the prison's

<sup>103</sup> The recent report WA Prison System: Role and Function Profile contains a range of facts and figures but no analysis of the structural issues to which we have referred.

<sup>104</sup> By the time (September 2003) that this Report was being finalised, the number had more than doubled - to 65. This number included three Wongis, who by any sensible sentence management criteria should have been housed at Eastern Goldfields Regional Prison.

<sup>105</sup> Prisons Act, sections 87 and 94.

Sentence Management Office. This was unsuitable (especially if prisoners had issues with sentence management) so she moved again to another space. When this proved unsuitable, she moved yet again to the current location - a room that is shared with the Indigenous Liaison Officer. This, too, is inappropriate for interviews; it is not confidential, can be noisy and may be required for other purposes.

5.40 Finally, the CCO's responsibilities and lines of accountability are blurred. As a 'visitor' to Acacia, she has some access to AIMS management but, as a Department employee, her direct line of management is to the Manager of Midland Community Justice Services who may then raise issues with the General Manager of Acacia. This does not lend itself to the level of coordination and collaboration envisaged in the contract.

#### Community Welfare and Support Services

5.41 We have already pointed to gaps in terms of access to welfare and support services for prisoners.<sup>106</sup> These deficiencies flow through to their re-entry to the community. The most obvious example is that Outcare provides no prisoner or family support services at the prison. Although prisoners can apply to go on a waiting list for Outcare accommodation, they are being denied a comprehensive service.

#### SUMMARY

5.42 The gap between paper promises and life on the ground is all too obvious in the context of rehabilitation, reparation and re-entry. Treatment programs and education are disorganised, under-resourced and undermined by slack practices. Both of these areas need review and re-evaluation. Work projects have some good features but are under-developed and do not meet the needs of all prisoners. Re-entry services are scant and hamstrung by inappropriate prisoner placements, AIMS' apparent indifference and Departmental inertia.

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<sup>106</sup> See paragraphs 4.49-4.51, above.

# Chapter 6

## ABORIGINAL PRISONERS

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- 6.1 Indigenous Western Australians are the most imprisoned people in Australia and would be at or near the top of any world league table. Twelve years on from the Royal Commission into Aboriginal Deaths in Custody, and despite the promises of successive Department policies,<sup>107</sup> Aboriginal prisoners continue to face conditions that are markedly inferior to those of non-Aboriginal prisoners. We have, in previous reports, described this as ‘structural racism’.
- 6.2 Structural racism is not about whether individuals hold racist views but about the discriminatory impact of systemic policies and practices. It emphasises that racism is judged by outcomes, not intentions or paper policies. The most glaring examples are found in the prisons that we have called ‘Aboriginal prisons’ in view of the fact that their population is 75 per cent or more Aboriginal. At Roebourne, Broome and Eastern Goldfields we observed substandard and unhygienic conditions that would simply not be tolerated if non-Aboriginal prisoners were in the majority, including woefully inadequate blankets and cockroach-infested accommodation areas (Eastern Goldfields) and prisoners eating on the floor (Roebourne).
- 6.3 Aboriginal prisoners constitute 25%-30% of Acacia’s population, so it is not an ‘Aboriginal prison’ under the 75 per cent test. However, because of its size, Acacia holds more Aboriginal prisoners than any other prison in Western Australia. Aboriginal prisoners are also concentrated in lower accommodation levels.<sup>108</sup> In this sense, it is very much an Aboriginal prison. Furthermore, one of the key objectives of the RFP and the tender evaluation process was to set new benchmarks for the treatment of Aboriginal prisoners. This Chapter is therefore devoted to a range of issues relating to Aboriginal prisoners and, for ease of reference, is designed to be relatively self-contained. It concludes that the prison has fallen well below expectations and, in too many respects, replicates the public sector’s shortcomings.
- 6.4 Two positive features should be recorded. First, accommodation throughout the prison is of a good standard and we did not encounter the more blatant failings of Eastern Goldfields, Roebourne or Broome. Secondly, there is a full-time Indigenous Liaison Officer (ILO) who has recently been assisted by a support worker. This is, in principle, a good practice that should be considered in other prisons.<sup>109</sup> These two bright spots should not obscure the systemic problems, some of which lie at Acacia’s door and others at the Department’s.

<sup>107</sup> The Department’s *Strategic Plan for Aboriginal Services 2002-2005* (Department of Justice, Perth, 2002) is the latest manifestation. It provides a good set of principles, most of which should have been implemented earlier and are still awaiting implementation.

<sup>108</sup> See paragraphs 6.8-6.10, below.

<sup>109</sup> In the public prisons, the position of Prison Support Officer is almost invariably filled by an Aboriginal person, but his or her duties relate to prisoners generally, not just Aboriginal prisoners. In practice, however, the Acacia ILO finds himself drawn into the concerns of non-Aboriginal prisoners (see paragraph 6.16, below), so the practical position on the ground is quite similar.

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WONGI PRISONERS

- 6.5 At the time of the Inspection, 203 (or 30%) of Acacia's sentenced prisoners were Aboriginal. The majority (172) were Nyungar, but 28 identified as Wongi and three were Yamaji. Prisoner placements are, of course, the sole responsibility of the Department and not of Acacia. We were both puzzled and disturbed by the presence of so many Wongi men at Acacia, including people from as far away as the Warburton, Jamieson and Blackstone - remote communities near the South Australian border. In many prisons, such as Eastern Goldfields and Roebourne, one encounters a spirit and attitude on the part of Aboriginal prisoners that helps to lift them above sub-standard surroundings. We have never previously encountered any group that appears so unhappy and so out-of-place as the Wongis at Acacia. Indeed, one young man self-harmed during the Inspection period.
- 6.6 The Departmental response will no doubt be that all these prisoners were placed at Acacia in view of standard security and prison management considerations. This is not the place for a detailed review of every case to test these claims. However, the following factors suggest that current classification and placement practices are too crude and require refinement.
- It was difficult to understand how some prisoners had come to be placed at Acacia given their current offences and prior history. For example, there were cases of men serving short sentences for driving licence and minor dishonesty offences. In one case, the prisoner's security rating seemed largely to reflect the fact that in 1998 he had been convicted of an offence of escaping lawful custody (ELC) and therefore faced a five-year upgrade to medium-security. Given that many ELCs can be at the lower end of seriousness (especially when they involve absconding from a minimum-security prison), such a sanction seems unduly harsh if applied across the board.
  - Despite obvious communication and dislocation problems, neither AIMS nor the Department had provided interpreter or other support services. It was not possible or reasonable to expect the ILO (a Nyungar man with other major commitments) to absorb such responsibilities.
  - None of the Wongi prisoners had received any family visits, and visits are effectively out of the question given travel difficulties and accommodation costs.
  - There had been very few temporary transfers to Eastern Goldfields for visits.
  - Video link technology was rarely used between Acacia and Eastern Goldfields to facilitate family contact.<sup>110</sup>
  - Some prisoners had been transferred to Acacia from Eastern Goldfields after they were found in possession of turpentine. Questions should be asked about how young men with a known history of solvent abuse could have got hold of such substances at Eastern Goldfields, and remedial measures taken, rather than transferring the individuals concerned.

<sup>110</sup> This is probably due in part to cost (see paragraph 4.38, above). In any event, technology should not be seen as a substitute for human contact.

## ABORIGINAL PRISONERS

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- There are too few culturally-specific education or treatment programs at Acacia.<sup>111</sup>
- Acacia openly acknowledges that its Sex Offender Program is unsuitable for Indigenous people, and the Department should be aware of this. However, there were at least three young sex offenders with significant treatment needs at the prison, some of whom are now past their earliest date for possible parole release.<sup>112</sup>
- A number of prisoners have been at Acacia at their parole eligibility date and have had their release delayed simply pending transfer and/or travel arrangements.

6.7 Prisoner classification and placement is not simple, but neither is it rocket science. The Department's placement of so many Wongis at Acacia not only generates misery and dislocation but is fundamentally at odds with the paper principles of its Re-Entry agenda and its *Strategic Plan for Aboriginal Services*. We recommend a more flexible approach and, if Wongis remain at Acacia, the introduction of travel and accommodation assistance for their visitors. Consideration should also be given to providing financial assistance for prisoners from remote communities to return home at the expiration of their sentences or when released on parole.<sup>113</sup>

### PLACEMENT WITHIN ACACIA

- 6.8 There are striking differences between the placement of Aboriginal and non-Aboriginal prisoners. Self-Care (N Block) houses around 30 per cent of the prison's non-Aboriginal prisoners and only four per cent of Aboriginal prisoners. By contrast, J Block houses 25 per cent of the prison's Aboriginal prisoners and nine per cent of non-Aboriginals. Blocks I, J, L and M combined account for almost 90 per cent of Aboriginal prisoners but less than half of the non-Aboriginal population. These patterns are not dissimilar to those found in public prisons - and the management refrain was equally familiar. Aboriginal prisoners, it was said, prefer to stay together in lower level accommodation. We have previously criticised such explanations as simplistic and inadequate.<sup>114</sup> As the supposed innovator, we had expected better from Acacia.
- 6.9 The uneven distribution of prisoners has an adverse effect on the use of shared-cell accommodation. Ten cells in the prison are designed to be shared by up to four prisoners (two each in I, J, K, L and M Blocks). This deliberate and innovative strategy was developed with the needs of Aboriginal

<sup>111</sup> The Department and AIMS state that there are two substance abuse programs (NASSAS and Corroboree) as well as ATAS education programs. They did not appear to have made the impact in terms of the knowledge of the targeted group that was desirable. Moreover, neither of the substance abuse programs is accredited.

<sup>112</sup> That said, the Department also does not offer sex offender programs in regional prisons to the extent that would be desirable.

<sup>113</sup> In the inspection of Greenough Regional Prison (May 2003), we also encountered the unacceptable practice of releasing Aboriginal prisoners away from their own country.

<sup>114</sup> See the reports of this office on Eastern Goldfields Prison (Report No. 4, 2001 and Report No. 9, 2002); Broome Regional Prison (Report No. 6, 2002); Roebourne Prison (Report No. 14, 2003); and Bunbury Prison (Report No. 16, 2003).

## ABORIGINAL PRISONERS

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prisoners in mind. However, when virtually all Aboriginal prisoners are at lower levels, use of this accommodation cannot be maximised. For example, 15 of the Wongi prisoners were in J Block, double the number that could be accommodated in the Block's shared cells.

6.10 It also appeared that tighter movement controls around the prison had reduced the opportunities for interaction between prisoners in different blocks. This had become an issue for many Aboriginal prisoners to whom we spoke, as it had reduced the capacity for interaction with family and friends.

### GRATUITY LEVELS AND WORK, EDUCATION AND PROGRAMS

6.11 The figures on work and gratuity levels are not what could be expected by way of 'best industry practice' from a prison that was intended to set new benchmarks. Our major findings were as follows:

- 18 per cent of Acacia's total population were classified as 'not working', but 46 per cent of these were Aboriginal.
- 23 per cent of Nyungar prisoners were 'not working' compared with 14 per cent of non-Aboriginal prisoners.
- Over 60 per cent of the Wongi prisoners were 'not working'.
- Those Aboriginal prisoners who were working tended to be in lower gratuity-level jobs such as unit workers and cleaners (44 per cent of whom were Aboriginal) and horticulture (55 per cent Aboriginal). There were very few in the private industry section (only 10 per cent of the workforce).
- Aboriginal prisoners accounted for over 60 percent of prisoners on the two lowest gratuity levels (five and six), but only seven per cent of those on level one.
- Around 25 per cent of Aboriginal prisoners were at the lowest two gratuity levels, compared with just five per cent of non-Aboriginal prisoners.
- The Wongi prisoners, who face the greatest costs in keeping in touch with families, fared especially badly - over 50 per cent being on level six. Put another way, the four per cent of Acacia's prison population that was Wongi provided a staggering 30 per cent of all prisoners who were on level six gratuities.

6.12 Aboriginal prisoners share the same frustrations as the wider population about the chaotic state of programs and education. To the extent that attention has been given to Indigenous-specific programs, it appears to be ad hoc and inadequate.

## ABORIGINAL PRISONERS

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### FOOD, CULTURE AND FUNERALS

6.13 Traditional foods are made available to prisoners during NAIDOC week, but otherwise are largely inaccessible. Again, this partly comes down to the fact that Aboriginal prisoners are over-represented in lower accommodation and gratuity levels. We were told, for example, that self-care prisoners could have kangaroo meat once per week - but so few Aboriginal prisoners are in self-care that this is almost meaningless. Prisoners at other levels, we were told, could purchase and cook their own meat. But this is unrealistic for prisoners on the lowest gratuities and J Block (where most Wongis reside) has no barbecue facilities. This gap between theory and reality makes a mockery of any claim to be meeting the contractual requirement to accommodate the 'food preferences' of Aboriginal peoples.

6.14 There is a similar gap between theory and practice with the prison's 'cultural area'. The aim was to provide a culturally appropriate meeting place, and official descriptions of Acacia's frequently extol its existence. However, in practice it is virtually unused. Some prisoners were negative about the set up itself, one describing it as 'more like a Maori totem pole'. However, when we probed more deeply, we found that the main reason for its lack of use is that security controls have effectively rendered it out of bounds. This curious phenomenon (of establishing a defined cultural area but then preventing access) is one we have also observed at Casuarina, Bandyup, Roebourne and Eastern Goldfields. Such tokenism is insulting, hypocritical and unacceptable.<sup>115</sup>



*Aboriginal prisoners said the meeting place was like a Maori totem pole.*

6.15 Prisoners expressed considerable frustration with respect to the rejection of applications to attend funerals. The Department says in its *Strategic Plan* that 'the rich and complex kinship system places great importance on familial obligations and responsibilities'. The contract further states that such obligations must be recognised 'with regard to visits, attendance at funerals and sick relatives in hospital'.<sup>116</sup> Unfortunately, it proved very difficult to obtain a clear picture on funeral applications or to reach firm conclusions on the fairness and operation of the system. We were given figures indicating that only one-third of all applications were successful, but it was unclear how many of these had been knocked back by Acacia (where some staff said all applications were forwarded to the Department and others said around 70 per cent were forwarded) and how many by Head Office. This is an area that requires more detailed investigation, but we formally record concern that it is so

<sup>115</sup> Wooroloo Prison has a well-developed cultural meeting place. Aboriginal prisoners did not utilise the original site, so the Superintendent invited them to select another site and design the layout - with the consequence that it is now widely used. It is easier to manage meeting places of this sort in a minimum-security setting, but this shows that it is possible to make them more than a token.

<sup>116</sup> Annexure A, Clause 2.2(a)(6)(A)(vi).

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difficult to obtain clear information and repeat our recommendation in the Roebourne Report<sup>117</sup> for a thorough review of both policies and practices with respect to funeral applications.

### INDIGENOUS STAFF

- 6.16 There is no doubt that the Indigenous Liaison Officer (ILO) plays a most important role in the prison. He, and his assistant, are highly visible and make it their business to be readily accessible. There is also no doubt that the ILO is extremely busy, not only with Indigenous prisoners but also supporting non-Indigenous prisoners and coordinating the Peer Support Group. We concluded that, in some areas, he is being called upon to provide services because low staff numbers inhibit effective case management. Perhaps the best example of this is the ILO's role in assisting Wongi prisoners to make phone calls. Under a more effective case management regime, tasks of this sort should be capable of organisation by security or case officers.
- 6.17 The RFP had identified a specific service requirement that 'a significant proportion of the staff, including custodial staff, must be of Aboriginal descent'. Apart from the ILO and the then Assistant General Manager (an Aboriginal man from Queensland), we were only aware of about four or five other Indigenous uniformed staff. We acknowledge that it is notoriously difficult to recruit Aboriginal prison officers, but Acacia's performance is disappointing. The contract does not 'lock in' any specific requirements in terms of Indigenous staff (and it would be unrealistic to do so), but CCA/AIMS did promise a notable breakthrough during the tender process. This has not yet materialised.

### SUMMARY

- 6.18 Acacia was intended to provide new benchmarks for the imprisonment of Aboriginal people. The expectation was that it would provide an improved cultural environment, specialised programs and better work and training opportunities. Unfortunately, it has fallen well below these expectations and replicates too many of the public sector's worst features, including accommodation, work and gratuity levels. Some of these problems, such as the placement of Wongi prisoners, are outside AIMS' control but some are matters to which they should have urgent regard, and others require joint initiatives between AIMS and the Department.

<sup>117</sup> Report No. 14, *Report of an Announced Inspection of Roebourne Regional Prison* (Office of the Inspector of Custodial Services, Perth, 2003), pp. 79-83.

# Chapter 7

## COSTS, STAFF RESOURCES AND CORPORATE STRUCTURE

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- 7.1 A common theme in previous chapters has been that uniformed staff and those responsible for programs, education and sentence management appear to be committed and well intentioned, but thin on the ground. This has impacted adversely on several areas, including programs, education, work, disciplinary proceedings, grievances and delays experienced by visitors. More generally, but equally important, prisoners expressed high levels of frustration at limited access to staff and an inability to get answers to 'simple' questions. The highpoint of such sentiments was the suggestion from a number of prisoners that 'what the prison really needs is more screws' - hardly a proposition that normally emerges from such a source.
- 7.2 Discussion of staffing resources leads inexorably to questions of costs and management structures. This Chapter begins with a discussion of the costs of housing prisoners at Acacia and finds substantial differences between the public and private sectors. It then moves on to consider the AIMS corporate structure before turning to issues of staff levels, qualifications and training. It concludes with a discussion of a range of issues surrounding management at Acacia, including the gaps between management and both prisoners and staff.

### COSTS

- 7.3 It is not easy to calculate the precise costs of imprisonment, but it is accepted that there are two key components: 'direct' (broadly 'on-site') costs and indirect or 'head office' costs that include both prisoner services paid for from a central budget item and corporate overheads. The methods of calculation differ somewhat between the public and private sectors but in broad terms they are as follows.
- 7.4 The Department has previously estimated an average direct cost per prisoner per day of around \$145 across the public sector. The range is from \$125-\$130 at the two cheapest minimum-security prisons to over \$200 at the most expensive facility. To this must be added the Department's head office costs. These are difficult to calculate in such a diverse organisation where some services (such as public affairs, procurement and human resources) and some personnel straddle courts, prisons, community corrections and other justice services. However, there is no doubt that the overheads are substantial. A recent Department publication concluded that the total average cost per prisoner per day is around \$255-\$260 and moving upwards.<sup>118</sup> Given that the average direct cost is around \$145, this means that head office costs in the public sector are in the region of \$110 per prisoner per day, or approximately 40 per cent of the total costs.<sup>119</sup> It should be emphasised once again that elements of these head office costs go ultimately into prisoner services, but that they also include general corporate overheads.

<sup>118</sup> Prisons Division Monthly Performance Report: January 2003 (Department of Justice, Perth, 2003), p. 3.

<sup>119</sup> We have previously raised similar issues: see Office of the Inspector of Custodial Services Annual Report 2001-2002 (Office of the Inspector of Custodial Services, Perth, 2002), pp. 13-14.

## COSTS, STAFF RESOURCES AND CORPORATE STRUCTURE

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- 7.5 At the end of the report preparation phase of the Inspection, the Department submitted a revised costing model that it had not previously been able to offer this Office. The model lists five categories of expenditure: (a) direct costs in the sense used in the text; (b) Head Office costs significantly attributable to prisons; (c) output costs significantly attributable to prisons; (d) output costs associated with Head Office; and (e) Head Office costs involving prisons corporate overheads. The Department states that the percentage of total costs attributable to those five categories is, respectively: 50.5%; 16.5%; 24.3%; 6.3%; and 2.4%.<sup>120</sup> In dollar terms, expenditure under those five heads per prisoner per day is as follows: (a) \$129; (b) \$42; (c) \$62; (d) \$16; and (e) \$6.
- 7.6 In comparing Acacia's costs, it is necessary to take account both of fees paid to AIMS and of the Department's head office costs related to the contract. Payments to AIMS are made pursuant to two contracts (Prison Services and Maintenance), for which the total funding allocation for 2002-2003 is around \$25.156 million. This translates, at current occupancy levels, to around \$100 per prisoner per day.<sup>121</sup> The figure includes both direct on-site costs and AIMS corporate overheads. Other costs are Department head office costs attributable to prisons (\$5 per prisoner per day) and output costs such as depreciation and capital depreciation (\$29 per prisoner per day). That is a total of \$134 per prisoner per day.<sup>122</sup>
- 7.7 The Department's costing model is not yet sufficiently well developed to enable it accurately to estimate the proportion of the additional expenditure of \$121 per prisoner per day (\$255-\$134) to be incurred should Acacia be returned to public operation. In briefing this Office, senior Departmental personnel suggested that the additional cost would probably be about \$11.75 million per annum, but conceded that the present imprecision of the costing model meant that the figure could be as high as \$15 million. On the basis of our own calculations, we would consider that figure of \$15 million to be more realistic.<sup>123</sup> Either way, there would be major financial ramifications if the prison were returned to public sector management under current cost structures. It is important in the debate about privatisation that the size of this amount be thoroughly understood.

### AIMS CORPORATE STRUCTURE

- 7.8 At the time of its successful tender bid, Corrections Corporation of Australia (CCA) was jointly

<sup>120</sup> This is not the place to attempt to break down the categories and cost components further, but this response for the first time will allow the discussion of "Head Office costs" - a matter about which the Inspector has expressed concern in the past - to be better grounded. Suffice to say that, for present purposes, we accept the basic categorisations adopted in what the Department states is a preliminary costing model. The text as it appears does not contradict this approach.

<sup>121</sup> 690 prisoners per day x 365 days p.a. = 251,850 prisoner days p.a.; \$25,156,000 / 251,850 = \$99.88.

<sup>122</sup> Once more, raising this point in the draft report has produced clarification that was not previously forthcoming. The Department states that 29 dollars out of 33 are output costs significantly attributable to prisons, in particular depreciation and capital user charges. Unfortunately, the breakdown does not go far enough to enable one to check exactly how this figure is reached.

<sup>123</sup> Our own calculations pointed towards a figure of at least \$20 million, which we scaled back to allow for the offsetting savings that should arise from economies of scale. See also Chapter 9, below.

owned by two entities - the Corrections Corporation of America and Sodexho Alliance. Sodexho is a multi-national conglomerate whose head office is situated in Paris. At that time, CCA's operations and head office were based in Queensland, its main enterprise being Borallon Prison. Borallon had opened in 1990 and CCA was initially awarded the management contract for five years. It was then successful in securing a further five-year contract, but in 2000 a new contractor (Management and Training Corporation) was appointed. As a result, AIMS no longer operates any facilities or provides any contract services in Queensland. In the period from 1997 to 2000 CCA also had interests in Victoria in the form of a 125-bed secure prison for women at Deer Park and a small-scale prisoner transport operation. The women's prison (now called the Dame Phyllis Frost Centre) has been returned to public sector management and the transport contract has also ended.

- 7.9 This means that AIMS' business is, at least for the time being, wholly based in Western Australia where it has not only the Acacia contracts but also the contract for prisoner transport and court security (the Court Security and Custodial Services Contract). Together, the Western Australian contracts are worth over \$42 million per annum. However, despite the locus of its operations shifting, AIMS has retained a head office in Brisbane. At the time of the inspection, about 13 senior executives and support staff were located there. Although the AIMS head office is in Brisbane, Sodexho's Asia and Pacific operations<sup>124</sup> are based in Sydney. In turn, Sodexho Asia Pacific's operations are subject to the global head office of Sodexho Alliance in Paris, as indeed are those of AIMS.
- 7.10 It is inevitable, in the modern commercial world, that corporate structures will be complex and somewhat dispersed. This is not a problem provided they efficiently deliver the service. However, we have concerns with the current arrangements. They relate to costs and efficiency. The salary packages of the top five or six AIMS executives, most of whom were Brisbane-based, undoubtedly would at that time have totalled something in the order of \$750,000 per annum. On top of this there are very significant costs when these executives attend to business in Perth, including flights, hotel accommodation, living expenses and car hire (and accounts revealed some single-journey corporate cab charges running to several hundred dollars). Given the location of AIMS' principal business operations in Australia and the tight budget for Acacia, questions must be asked as to whether the retention of a Brisbane head office is either necessary or desirable.<sup>125</sup> It is not commercially naïve to suggest that some of the Brisbane costs could be going into prison services if AIMS were corporately located in Perth.<sup>126</sup>

<sup>124</sup> Sodexho is a general service provider, and prisons constitute a small part of its total business activities. It is not clear to us to what extent Sodexho Sydney has a commercial role in relation to AIMS.

<sup>125</sup> It is true to say that these expenses are notionally spread over two contracts, not just the Acacia contract. Whilst that may, in an accounting sense, make the impost of these corporate arrangements less severe, it is still a source of inefficiency and, in a hands-on business like prison management, wrong in principle.

<sup>126</sup> We were informed at various times that less than 2 per cent of the contract was remitted to Brisbane to cover corporate overheads, but it is difficult to understand how this could be so.

7.11 The second set of concerns is even more important. We concluded that the dispersal of authority is having a corrosive impact on some core aspects of prison management and appears to be blurring the lines of responsibility and accountability. The following are simply illustrations:

- There have been problems accounting accurately for prisoners' gratuity monies. Payments should be automatically credited through the ATM smart card system, but we quickly encountered stories of unreliability and error. We will return later to this issue.<sup>127</sup> For now, it is sufficient to note that such problems are apparently incapable of resolution locally and must be referred to the Brisbane head office. In our view, prisoners are entitled to an efficient response to questions about basic prison management issues and in the context of gratuities (like property)<sup>128</sup> they are not receiving an adequate service.
- Time differences between Perth and Brisbane can generate delays in decisions. This is further compounded when different States have different public holidays.
- Later in this Report, we raise concerns that AIMS has only furnished 'special purpose financial statements' rather than 'general purpose' statements.<sup>129</sup> When asked about this, the Brisbane management team stated that accounting decisions of this sort were the responsibility of Paris.
- IT is increasingly important to both on-site and corporate management and can involve high levels of expenditure that must be properly monitored by the contract management team. However, IT is designated as Brisbane's responsibility and local AIMS staff proved unable to respond in other than the broadest terms to questions of a technological or financial nature.
- At the time of our Inspection, Acacia staff took industrial action over pay and staffing levels. During this time, the General Manager (as the senior AIMS representative on the ground) appeared to play a significant corporate role in discussions with staff. However, real authority again lay in Brisbane, creating a sense of shadow boxing.
- AIMS' operational audit team is based in Brisbane. There has been a tendency for them to fly in and fly out, leaving behind them changed routines without adequate consultation with local management.

7.12 In summary, it would appear that the time has come for a thorough review of current corporate arrangements and especially of the continuation of a distant head office. The present structure seems to generate both financial costs and inefficiencies in prison management. It also complicates the tasks of monitoring and accountability that lie at the heart of the statutory framework. Even if head office remains in Brisbane, detailed consideration should be given to relocating some responsibilities to Western Australia.

<sup>127</sup> See also paragraphs 8.38-8.40, below.

<sup>128</sup> See paragraph 4.13, above.

<sup>129</sup> See paragraphs 8.22-8.26, below.

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## STAFFING

7.13 Acacia faces numerous issues with respect to staffing levels, qualifications and training. These issues have adversely affected service delivery and contractual compliance.

### Staffing Levels

7.14 A recent Department report puts the prisoner/staff ratio in the public sector prisons at under 2:1.<sup>130</sup>

If this were followed at Acacia, its total staffing establishment would be in excess of 350 full-time equivalent employees (FTEs). Although the prison does have the benefit of sophisticated modern security equipment, and was intended to provide a more efficient approach than the public sector, nevertheless, the expectation<sup>131</sup> was that Acacia's total staffing establishment would be in the region of 250 FTEs. That level of staffing would enable about 100 persons to be on the ground during the day shift on a normal weekday.<sup>132</sup> Yet current staffing levels on the ground appear to fall far below this level. As noted earlier, our count on one weekday during the Inspection indicated that only around 61 operational staff were on-site, compared with Hakea's 140 staff for around 550 prisoners on the same day. Of course, Hakea is a public sector prison, so comparison with a privately managed prison is more meaningful. Arguably, Acacia also appeared to be understaffed by this measure, a similar Victoria prison having 83 staff on-site during weekdays.<sup>133</sup>

7.15 There is no doubt that, across the prison, most staff feel over-stretched and under stress. There is also no doubt that inadequate staffing levels have contributed to many of the problems we have identified, including reductions in dynamic security; staff safety concerns; apparent increases in bullying and assaults; problems with the delivery and integrity of treatment and educational programs; the collapse of disciplinary and grievance procedures; poor record keeping on basic matters such as prisoners' property and gratuities; and delays in processing visitors.

<sup>130</sup> *Prisons Division Monthly Performance Report: January 2003* (Department of Justice, Perth, 2003), p. 3, puts the figure at 1.7:1.0.

<sup>131</sup> Derived from the staffing matrix that formed part of the bid.

<sup>132</sup> The CCA bid contained projections as to the staffing numbers in each team and in each location during the day shift. It seemed to contemplate that there would be 144 persons on the ground each day; however, there were some ambiguities in the way the numbers were presented and as to the categories of staff - e.g., whether that number included backroom staff - so that figure is not sacrosanct. The Inspector entirely accepts that there would be an adjustment of that number in the light of operational realities; the question that really matters is whether the prison is being run in a safe way and is delivering prison services to an acceptable standard. However, a reduction to the numbers indicated in the text seems to be a fundamental shift rather than a mere adjustment, and would seem to require some explanation. Since the inspection AIMS has established a Joint Consultative Committee to discuss a range of matters including the best way of utilising available staff. One matter that it should consider is the 12-hour shift arrangement, which distorts staff utilisation in the sense that paid hours are often not productive ones.

<sup>133</sup> Fulham Prison, like Acacia, has about 700 prisoners. A roster inspection carried out in July 2003 over 15 weekdays by the Correctional Inspections Unit of the Victorian Department of Justice gave an average of 83 operational staff. Average weekend rosters were 64. To supply that size roster, Fulham draws on an effective full-time staff of 203. Note that Fulham, unlike Acacia, works predominantly to an eight-hour shift pattern: see note 132, above. The correctional services fee (running costs) of Fulham is virtually identical to the cost of running Acacia.

7.16 The position of unit supervisors provides a pertinent example. In public sector prisons, each unit has a unit manager who plays a crucial role in supervising staff, resolving lower-level prisoner grievances, and liaising between management, unit staff and prisoners. At the time of our Inspection, only three supervisors were fulfilling the equivalent role each day at Acacia. One was responsible for I and J Blocks (around 180 prisoners including newly arrived men); one was responsible for self-care prisoners in N Block (around 160 men); and the third covered all protection prisoners in K Block in addition to L and M Blocks (a total of around 360 prisoners). Even with the best will in the world, a supervisor cannot adequately service the needs of a population equivalent to the total number of prisoners at some prisons.<sup>134</sup> It appears to us that each major unit should have a dedicated supervisor and that the more complex units, such as K Block, may well require more than one supervisor.

7.17 It is not our task to quantify all the gaps between current staffing levels and what would be required to meet the best industry practice standard, but it is clear that staffing levels must be reassessed.<sup>135</sup> This does not have to be done from the point of view of exact matching of staff numbers to the original bid - that is outmoded - but rather so as to ascertain, in the actual operational realities of a working prison, the numbers and disposition of daytime staff that are required so as to enable the prison to feel safe and orderly in the ways identified earlier in this Report.<sup>136</sup>

#### Qualifications, Training and Staff Development

7.18 CCA/AIMS initially recruited staff who had little or no previous custodial experience. This was seen as an important step in promoting a new prison culture. It also brought significant financial benefits; staff would be cheaper to employ given that they would probably be younger and would certainly be less experienced than people who might have been recruited from the public sector. However, along with the benefits came obligations on CCA/AIMS to provide proper training and staff development opportunities. The Prison Services contract quantifies the expectations in two ways:<sup>137</sup>

- Initial induction training should be equivalent to Certificate III in Correctional Procedures; and
- All those 'undertaking senior, supervisory or specialist duties are to receive training equivalent to ... Certificate IV / Diploma in Correctional Administration, as soon as practicable after deployment to these duties'.

<sup>134</sup> The distribution of supervisors is also instructive and accords with our thesis that the needs of self-care prisoners have been addressed more thoroughly than those of other prisoners.

<sup>135</sup> The Department's response contains an analysis of expected aggregate work hours per week under the contract and the actual aggregate number of work hours. It concludes that AIMS is actually providing more work hours than originally contracted. Unfortunately, the cogency of these figures is unclear. The source data are not identified, whilst categories and job descriptions do not really match up. In any case, whether the figures are right or wrong, they do not in themselves address the basic question as to whether service provision is adequate and the atmosphere is safe. Also, they belie the testimony of both staff and prisoners, the observations of one's own eyes and the actual on-site count of personnel.

<sup>136</sup> Whilst the inspection was being conducted, there was some industrial action at Acacia as a consequence of which management offered some extra positions to the union.

<sup>137</sup> Annexure A, Clause 3.2(h) and (i).

- 7.19 We requested details from AIMS' Human Resources with respect to these standards and found a significant shortfall. It appears that fewer than half the staff have formal Certificate III qualifications. Amongst the supervisors, all but one were accredited to Certificate III, but only around two-thirds had Certificate IV qualifications. Amongst acting supervisors, fewer than one-third had Certificate IV accreditation.
- 7.20 Discussions with staff led us to conclude that some officers may, in fact, have done the training but have yet to be awarded their certificates. One officer stated that he had requested his certificate on numerous occasions, only to be met with the response that there was 'not enough special paper' for printing the certificates. There are also problems in that only one person (the part-time Director of Human Resources) was apparently qualified to issue certificates.
- 7.21 Like prisoner training programs, staff training therefore appears disorganised, under-developed and a source of frustration.

### Pay and Employment Contracts

- 7.22 Acacia's staff were initially recruited on workplace agreements, and it appears that remuneration levels were well below those in the public sector. With the change in government in 2001, the industrial relations framework shifted, so the prison and the union have recently been negotiating enterprise bargaining agreements. It is difficult to make direct comparisons between pay and conditions in the public and private sectors, not least because staff carry different titles. However, two points should be noted. First, Acacia appears to rely more extensively on casual and part-time staff than the public sector. Secondly, on the figures provided to us, we estimate that Acacia staff are probably paid between 20 and 30 per cent less than their public sector counterparts.<sup>138</sup> Management salaries, on the other hand, are well above comparable public sector positions.
- 7.23 Casual employment contracts, lower pay rates and stressful work conditions are not conducive to staff retention. Together with disillusion with management, these factors undoubtedly account for the high staff attrition rate.

## PRISON MANAGEMENT

- 7.24 The job titles of Acacia's management team have an unfamiliar ring. There is no superintendent and there are no assistant superintendents. Instead, there is an array of managers. At the peak of the hierarchy is the General Manager (GM). By legislation and contract, the GM is the equivalent to a public sector superintendent (albeit that he has no role with respect to adjudications). The next level down consists of the Assistant General Manager (AGM), the Executive Secretary and the Manager of

<sup>138</sup> In the UK, the average basic pay of a prison officer in the public sector is about 28 per cent more than that of a prison custody officer employed in the private sector: see National Audit Office, *The Operational Performance of PFI Prisons*, Table 17 at p. 27 (HMSO, London, 2003).

Finance and Administration. Directly under the AGM are four more managers: the manager of operations (intelligence, security and accommodation); the manager of medical services; the manager of industry implementation and development; and the manager of offender services. The manager of offender services has particular responsibility for prisoner services, including education, programs, recreation, psychological services and Indigenous support staff.<sup>139</sup>

7.25 On paper, Acacia's organisational flow charts look impressive, but there are several problems. The first is that, like lower-grade staff, management appeared to be struggling to cope with the demands of the job. Secondly, we found that, with some exceptions, senior levels of management were defensive and would unswervingly paint a rosy picture even in the face of glaring difficulties. They were either so removed from the realities of life 'on the ground' that they were unaware of the problems or they were in a state of corporate denial.

7.26 Thirdly, there were manifest gaps between management and general staff. In surveys, staff reported poor levels of morale and they linked such feelings (and the fact that so many staff were leaving) directly to a lack of management support. Only five per cent of respondents reported a good relationship with management and 70 per cent categorised the relationship as poor. Communications were rated as poor by 75 per cent and an even higher number criticised a lack of leadership (80 per cent rating 'clarity of direction' as poor). Public sector staff also commonly report poor relations with management, but there is no doubting the strength of feeling and the sense of disillusionment at Acacia. The gap between management and staff was reinforced by our observations during the on-site Inspection. Staff also told us that they held 'Brisbane' in very low esteem.

7.27 A fourth area, and probably the greatest concern, is the yawning chasm between management and prisoners. In good public prisons, prisoners often know the superintendent by name and by sight. If they do not know the superintendent, the chances are that they will know one or more of the assistant superintendents. This can be a valuable safety valve; it provides an avenue for complaints to be addressed and for prisoners to sense that management is accessible and listening. At Acacia, as we have seen, prisoners are frustrated as much by their inability to get quick and clear answers as they are by the answers themselves. However, because of the other requirements placed on them, neither the GM nor the AGM could meet the expectations placed on them in this regard. This undoubtedly helps to explain Acacia's very high level of grievances.

7.28 In summary, management do not seem to have provided adequate leadership, direction and support to staff and were regarded as faceless bureaucrats by prisoners. This cannot be allowed to continue and, along with a general staff review, there should be an evaluation of the current management structure and position descriptions.<sup>140</sup> In re-scoping management positions, we recommend that the key starting point is to identify the GM or AGM as having direct and explicit responsibility for

<sup>139</sup> Since the Inspection, the incoming General Manager has initiated an organisational re-structure.

<sup>140</sup> The whole question of management problems at Acacia is addressed in the Inspector's Overview, above.

prisoner well-being. The GM's position description does make some rather ethereal references to the 'protection of residents' rights' but in reality he has been absorbed by corporate, financial management and public relations functions. Responsibility for prisoner well-being needs to be amplified and firmed up in either the GM's or the AGM's position. A redefined role of this sort will inevitably generate greater interaction with staff as well as prisoners and should ensure that senior management is connected with the realities of prison life.

### SUMMARY

- 7.29 One of the driving forces behind the establishment of a private prison was efficiency. In terms of costs per prisoner per day, the figures are impressive. However, to this point the services simply are not being delivered to an acceptable standard.
- 7.30 Thus Acacia faces major challenges in terms of improving service delivery. We believe that an essential starting point is an appraisal involving AIMS, the Department and perhaps independent consultants of staffing levels and needs across the whole spectrum of the prison's operations. If this is to occur, it is important for all sides to recognise areas of shortfall and to discuss them openly and honestly. We have identified some areas where it may be possible for AIMS to trim its corporate overheads in the interests of more efficient and effective service delivery, but this can only be a starting point.
- 7.31 From what we observed, staff attitudes still provide a sound basis upon which to build. Indeed, the pro-social culture was one of the best features of the prison. However, unless staffing issues are addressed within the near future these foundations may crumble. It also appears necessary for management responsibilities at the prison to be re-scoped if the vision of a pro-social regime is to become a reality.

# Chapter 8

## ACCOUNTABILITY AND CONTRACT MANAGEMENT

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### THE FRAMEWORK

- 8.1 It has become clear that Acacia is not performing to the standards that we would expect, including those that are articulated in the contract. However, Parliament established a strong accountability framework that was supposed to ensure that shortfalls were identified, reported and actively managed; and it placed the Director General of the Department at the heart of this system. The contract then gave the Department robust powers with respect to all aspects of the prison. These included the minimum standards in Annexure A (which reflected the principles contained in the RFP), the requirement that the contractor comply with 'best industry practice', a system of PLF payments and a capacity to withhold operational charge payments.
- 8.2 The figures in Chapter 7 indicate that substantial resources are allocated to head office costs. These are spread across various heads, the biggest single item being capital user and depreciation costs.<sup>141</sup> They also include contract management costs. Given Acacia's performance, however, questions must be asked about the effectiveness of the Department's contract management arrangements. The whole philosophical basis of outsourcing is that the purchaser must actively manage risks to service provision; consequently, continuing poor performance or failure is indicative of dysfunctional risk management processes and thus as much the responsibility of the purchaser as that of the provider.
- 8.3 The Department has in fact withheld some parts of the PLF and has briefly noted its reasons. However, its reports have not contained any analysis of major trends and have tended to paint a rather uncritical picture.<sup>142</sup> None of its submissions to us, or its 2002 formal report to Parliament, has revealed the extent of under-performance that we quickly encountered.<sup>143</sup> This Chapter first outlines the processes of contract management that have been put in place, including the presence of on-site monitors. It then examines a number of key themes with respect to contract management. These include not only prisoner services but also financial accountability and risk management.<sup>144</sup> It reveals deficiencies on the part of AIMS and the Department, and concludes that there are significant business improvement opportunities.

### CONTRACT MANAGEMENT AND MONITORING ARRANGEMENTS

- 8.4 The Director General of the Department established the Custodial Contracts Directorate to monitor the Acacia Prison Services contract and the Court Security and Custodial Services (CS & CS) contract. The Director of Custodial Contracts heads this Directorate, and, under the Department's

<sup>141</sup> For a detailed explanation and discussion, see paragraphs 7.4-7.7, above.

<sup>142</sup> This includes the Department's submissions to this Office: *The Acacia Prison Annual Performance Review: July 2002* (Ansor Consulting and Department of Justice, Perth, 2002); *Prisons Division Monthly Performance Report: January 2003* (Department of Justice, Perth, 2003); and *WA Prison System: Role and Function Profile* (Department of Justice, Perth, 2003).

<sup>143</sup> However, the 2003 report to Parliament explicitly draws upon material contained in the Draft Inspection Report circulated to the Department in July and is much more informative.

<sup>144</sup> We again record our appreciation of the investigations and analytical skill of the staff seconded from the Office of the Auditor General. Their work forms the basis of much of this Chapter.

## ACCOUNTABILITY AND CONTRACT MANAGEMENT

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corporate structure he is directly responsible to the Executive Director of Prisons who is, in turn, responsible to the Director General. There is no doubt from our briefings that the Director General has a strong recognition of his statutory authority and responsibility. Unfortunately, there have been a number of personnel changes in the position of Director of Custodial Contracts and its earlier equivalents that has not lent itself to continuity.<sup>145</sup>

- 8.5 Directly under the Director of Custodial Contracts are two Contract Managers, one for Acacia and one for the CS & CS contract. Again, there have been some personnel changes at these levels. Broadly speaking, there are two limbs to the Acacia contract management group: the Contract Management Team based in Head Office and the on-site monitors. In total the work of 18 people is directly involved with managing the Acacia contract.<sup>146</sup> The head office team includes some people with a corrections background, but the majority have a generic management focus. The monitors provide the bulk of operational experience. It is important, in the light of the discussion that follows, to think of the contract management group as being one team with two functions, rather than two distinct teams.
- 8.6 The main role of the monitors is to provide information and feedback from 'the coal face'. The head office team visits the prison more rarely, but tends to do so when notifiable incidents occur and does make one announced on-site check each month. There is anecdotal evidence that AIMS, being aware of the date of such checks, puts particular effort into the prison's operations on the relevant day. Ultimately, the Director General, through the head office team, is responsible for all financial and compliance decisions.
- 8.7 The Monitor has developed a monitoring system that has been accredited to AS/NZS ISO 9001:2000 standard as a quality management system that meets industry best practice. We agree with that assessment; the plan is detailed, highly structured and has a clear recognition of Acacia's contractual expectations. The main components of the Monitor's plan have been weekly and monthly reports to the Contract Manager and a range of other procedural tests and audits. Initially, the primary focus of these reports had been on issues relating to security and safe custody,<sup>147</sup> and in that regard could be said not to have been comprehensive enough. However, this preoccupation was understandable, and is in any case now starting to be balanced by some reports relating to areas of well-being and rehabilitation.<sup>148</sup>
- 8.8 There are a number of inter-related issues surrounding the role of the monitors and their relationship with the head office team and local prison staff. The first concerns limitations that exist

<sup>145</sup> The position, either in an appointed or an acting capacity, has changed hands on no fewer than four occasions in the two years since the first prisoners arrived at Acacia.

<sup>146</sup> This does not amount to 18 FTE's, as some of these people work partly in other related functions. The core team consists of 10 people - four at Head Office and six at Acacia. The figures cited are derived from a Department of Justice document entitled 'Custodial Contracts Directorate (as at 27/06/03)'.

<sup>147</sup> Chapters 2 and 3, above.

<sup>148</sup> See 8.10, below.

on the Monitor's sphere of operations. Although the Monitor has reported concerns about staffing issues and rostering practices, he has apparently been directed not to pursue these issues any further. This direction seems to have been made on the basis that the contract does not specify staffing levels and that they are an 'input' rather than an 'output'. However, staffing levels are so basic that they appear to be self-evidently a matter that should be actively examined and reported upon.<sup>149</sup>

8.9 A second issue concerns the resources allocated to the monitoring role, especially in light of the Department's total contract management budget and Acacia's unsatisfactory performance. The aim is for the monitors to be on-site during the prison's unlock periods (i.e., 12 hours per day, seven days per week). Originally, the on-site deployment was five people (the Monitor, Assistant Monitor, plus three others). However, the Monitor was directed to reduce this to four. He was also appointed as Monitor of the CS & CS contract - a new position that followed from one of our earlier reports.<sup>150</sup> There may be debates about the number of monitors who are required in theory, but it does seem surprising to have reduced the level of practical experience at the very time when Acacia's problems should have been becoming obvious and had already featured in the Monitor's reports.

8.10 However, the Monitor did retain the budgetary allocation for the staff member. He has used this money to commission the focused reviews of programs and education that were conducted prior to the Inspection and are now forming the basis of Departmental action and negotiations. We believe that this extension of the Monitor's role into a thematic review of prisoner services is to be welcomed, and that there is much to be said for the commissioning of expert reports.

8.11 A third issue is the use of information provided by the Monitor. There is no doubt that in some areas it is acted upon (including programs, education and many basic compliance issues). However, the contract management group as a whole does not have a systematic approach to the collation of data and the analysis of trends and their implications. In our view, the Monitor's reports readily lend themselves to such analysis and this is crucial to effective contract management. For example, if incident reports are carefully categorised (e.g., self-harm, assaults, bullying, threats) it is possible to identify recurring patterns, to consider cause/effect relationships, and to develop remedial strategies.

8.12 Finally, there is the issue of 'capture'. In some jurisdictions where private prisons have been opened, monitoring services have been 'captured', identifying too closely with the system they are supposed to monitor. At Acacia, the Monitor's role has become complicated because AIMS management have been somewhat remote from prison life, and the monitors have more custodial experience than AIMS staff. It became clear that the monitoring team sometimes gives practical advice to staff when asked. The staff surveys show that the monitors are held in very high regard by staff, precisely because of their correctional 'know-how'; but their position is an awkward one. On the one hand, monitors

<sup>149</sup> See paragraphs 8.49-8.52, below.

<sup>150</sup> Report No. 3, *Report of an Announced Inspection of Adult Prisoner Transport Services* (Office of the Inspector of Custodial Services, Perth, 2001).

must not usurp AIMS' management responsibilities, and Acacia was intended to offer a different approach from the public system in which the monitors cut their teeth. On the other hand, simple advice may help improve matters for both prisoners and staff. Overall, despite this awkwardness, there was no sense of capture or of improper advice. We anticipate that, if the staffing/management situation improves, the monitors' lines will become sharper; and this needs to happen.

### FINANCIAL VIABILITY AND RISK MANAGEMENT

#### Contingency Planning

8.13 The Director General of the Department has the formal responsibility of ensuring proper financial monitoring and risk management processes as well as prisoner service delivery. It is both common sense and accepted best practice to develop a contingency plan, before contract commencement, to ensure continuity of service in the event of contract failure. It is especially important to develop a detailed plan where, like Acacia, the contract is both high value and high risk.<sup>151</sup> Such planning has assumed heightened importance given AIMS' financial position; it has been running at a loss in the two years since Acacia opened and its future viability depends on the goodwill of its parent company, Sodexo. As a House of Commons Public Accounts Committee recently put it, in the context of a UK private prison: 'No department ... can afford to relax its guard against ... incentives which might tempt the private sector side, in adverse circumstances, to cut and run'.<sup>152</sup>

8.14 However, at the time of our Inspection, the Department had not formulated adequate contingency plans.<sup>153</sup> Whilst a Risk Management Plan dated August 2001 existed, it seemed to be rather thin on content in the sense of identifying both risks and responses in rather generalised terms. A Transition Plan, in the event of contract failure or termination, is also required, and this was in the course of development. It was subsequently submitted to this Office in response to the Draft Inspection Report. This is a far more thorough piece of work; it correctly recognises that such a Plan should be a living document, and recommends that a Project Manager be appointed to address the numerous issues requiring further resolution and to ensure that the Plan is developed in line with emerging contract management issues. Welcome as it is, the Transition Plan is still incomplete and was significantly overdue.

<sup>151</sup> *Contract Management Best Practice Guidelines* (State Supply Commission, Perth, 1997), p. 17.

<sup>152</sup> House of Commons Select Committee on Public Accounts, *The Refinancing of the Fazakerley PFI Prison Contract* (UK Parliament, London, 2000), paragraph 18. See also paragraphs 8.30-8.33, below.

<sup>153</sup> A report by the Commonwealth Joint Committee of Public Accounts and Audit, citing Report No. 12 of the Australian National Audit Office 1999-2000, recently noted: 'Public sector organisations generally only considered risk in the context of the initial procurement decision and in the tendering, contract evaluation and negotiation stages. There was minimal consideration of the contract management risks with the final two stages of the contract life cycle - contract administration and performance monitoring and *contract succession*' (our italics). See 79 JCPAA, p. 83 (2003).

- 8.15 The delay in developing a Transition Plan arose out of the Department's over-reliance on the fact that the contract includes a \$3 million bank guarantee that could be accessed in the event of contract failure. The Department evidently considered that continuity of service was sufficiently underwritten by this arrangement. Utilising these funds, it could at short notice put in place a management team and use its own staff, together with willing contractor staff, to run the prison. There is some force in these arguments but they did not constitute a 'plan' required by best practice and do not seem to recognise the practical difficulties of managing a transition during the upheaval of contract failure.<sup>154</sup>
- 8.16 Nor does it take account of the fact that the whole strategic purpose of contracting out may be lost if the only contingency in the event of failure is to resume the old style of service delivery that the Department sought to change in the first place. Indeed, the weak spot in the Transition Plan that has now been developed is a strategy for market testing, though the possibility of another private contractor taking over is at least acknowledged. In light of our own estimate that direct Department of Justice management of Acacia could add \$15 million per annum to operating costs,<sup>155</sup> it is important that this aspect be given due weight.

#### Financial Viability and Contract Performance

- 8.17 Contract failure is a dramatic event, but there can be many slips in service delivery that fall short of this. Contract managers should therefore be actively seeking information about any factors that may affect performance. This is especially true in a contract such as Acacia that involves human services and that is characterised as output-based. Declining financial viability is a factor that should serve as a red alert to contract management that some aspects of performance may deteriorate or even fail, and should trigger rigorous financial scrutiny and active monitoring of service delivery.
- 8.18 The RFP clearly identified financial viability as a risk factor requiring strong management. All short-listed bidders were required to demonstrate their financial capacity by providing projections on a range of matters for the first five years of the project. These included projected financial statements (such as balance sheets and profit and loss statements), cash flow projections and project-specific budgets. Unfortunately, in our view, the Department has subsequently failed to manage the risks with sufficient vigour and in the manner anticipated by the contract and foreshadowed by the RFP.

#### Financial Projections and Access to Financial Systems

- 8.19 Since Acacia was commissioned, the Department has never sought or received financial projections of assets and liabilities, profit and loss, cash flows or budgets from AIMS Corporation. This is despite the fact that the RFP had identified these as areas of importance. Irrespective of the RFP, they are obvious indicators of financial viability.

<sup>154</sup> For example, there would be system-wide impacts in drawing staff from public prisons and it is far from clear how many AIMS staff would stay on.

<sup>155</sup> See paragraph 7.7, above.

- 8.20 The contract includes a strong contract management tool in the form of a right to access AIMS' on-line financial systems.<sup>156</sup> This could have provided current rather than historical information, including the adequacy and timeliness of cash flows from AIMS Corporation to the prison and the level of corporate charges. Access to the contractor's financial systems was intended, put crudely, to ensure that payments were properly directed (whoever the contractor was). However, we understand that the Department did not have access to AIMS' financial systems for around 12 months after the contract commenced, and that Departmental access to detailed general ledger transaction reporting and enquiry screens has subsequently been removed.<sup>157</sup>
- 8.21 It should be stressed that access to financial systems is a contractual right and not an act of grace on the part of the contractor. A failure or inability to monitor key financial information could result in poor operational performance. AIMS' accounts as at August 2001 showed a loss with the termination of its contract to manage Borallon Prison, Queensland, as well as on the CS & CS contract in this State. In such circumstances, the risk of deficient performance in its only remaining prison management contract is self-evidently greater than it would be if the company was operating profitably. Consequently, this is a matter that should not have been allowed to drift.

### AIMS' Financial Statements

- 8.22 There are major issues with respect to the belated production of financial statements by AIMS and the form and content of the statements that have been provided. AIMS should have provided audited financial accounts for its first operational year, ended 31 May 2002, by 31 August 2002.<sup>158</sup> The accounts were not provided until 4 October 2002, and they related to the financial year ending 31 August 2001. Historical financial information, 13 months out of currency, is simply not good enough in a contractual situation where the State's interests are at stake, and the Department should have been more rigorous in seeking compliance.
- 8.23 A second issue relates to the nature of those financial accounts. AIMS has provided only 'special purpose' accounts and not 'general purpose' accounts. Special purpose accounts and the attached audit opinion do not need to comply with full accounting standards and professional reporting requirements. In particular, the auditor is not required to sign off that the audited company is a 'going concern', i.e. is solvent. 'General purpose' accounts must contain more detail and meet higher standards, including the 'going concern' criterion. AIMS' directors have taken the view that the company is not a 'reporting entity' that is required to furnish 'general purpose' accounts because

<sup>156</sup> Clauses 22.4-22.6.

<sup>157</sup> The Department has responded that the purpose of these arrangements was to enable them to *monitor* (Department's italics) the status of the company and that this has been done. The development of a Transition Plan was, it is stated, a response to this - but that is something that should have been done in its own right regardless of financial monitoring. The Inspector simply does not accept that the Department's responses are adequate in this whole area. See also note 162, below.

<sup>158</sup> Clause 29.3(a)(2).

there are no 'users' who would be dependent on such accounts. This view is presumably based upon the fact that there are no shareholders - but the Western Australian Government, as the 100% business purchaser from AIMS, would seem to be a primary 'user'.

8.24 It is clear that, when the accounts were belatedly provided, the Department took account of their limited nature, and we understand that discussions are now underway between the Department and AIMS on this issue. As noted earlier,<sup>159</sup> however, this may prove complex and protracted because Sodexho's Paris head office has responsibility for in-principle accounting decisions of this sort.

8.25 Although the contract merely refers to 'audited accounts' and does not specify whether they should be special or general purpose,<sup>160</sup> we believe that 'general purpose' accounts should be provided so that the Department can discharge its obligations on behalf of the Western Australian Government. In the event that the issue is not resolved, the Department will have cause to consider its contractual powers. They include the power to call for 'all books of accounts, records and documents, financial and other accounts insofar as they relate to this Agreement or the Services' and to subject these books to 'audit by the CEO or the CEO's nominated auditor'.<sup>161</sup>

8.26 Our third concern relates to the contents of the audited accounts and related documentation. 'General purpose' accounts would have required greater levels of disclosure, but even the special purpose accounts showed a company under great stress. It had incurred operational losses in the 2000 and 2001 operational years, and at 30 August 2001 its liabilities exceeded its assets. There were also issues with respect to its liquidity ratios. On top of this, the Director's Report that accompanied the accounts included a disturbing statement to the effect that some information on the expected operations of the company had been excluded to avoid possible 'unreasonable prejudice'. Taken together, this painted an unhealthy picture of AIMS' financial position. The question that then arises is how the Department responded to such belated but conclusive evidence of what many observers had suspected.

### The Department's Response

8.27 Internal correspondence suggests that the Department was hesitant and uncertain about what action it should take when it did receive the 2001 accounts. Undoubtedly, this is in part because the Department, confident in its ability to keep the prison operational in the event of contractor failure, had not previously identified the contractor's financial viability as a risk to be managed. It is striking that the Department wanted, in November 2002, to seek Crown Law advice about its powers with respect to the 2001 financial statements. In our view, the contract management team should have been more conversant with their powers, which are extensive. It seems quite inadequate to be seeking advice in the aftermath of very late 2001 accounts and at a time when the 2002 accounts

<sup>159</sup> See paragraph 7.11, above.

<sup>160</sup> Clause 29.3.

<sup>161</sup> Ibid.

were already due. It is also surprising that the on-site monitoring team was not informed of the seriousness of AIMS' financial position, in view of the possible adverse implications for performance.

### The Sodexo Link

8.28 Sodexo is, of course, another key player in the equation. When the ownership of CCA changed hands, the Department sought advice from Sodexo about its financial arrangements with respect to CCA. In November 2000, Sodexo advised that it had provided a loan facility that was contingent on CCA's continuing financial viability, as measured by specified financial ratios. Having thus informed itself in 2000, the Department did not subsequently monitor whether the contractor was meeting such ratios.<sup>162</sup>

8.29 In fact, the Department was unable, upon request, to locate any correspondence with Sodexo relating to the financial health of AIMS in the period from November 2000 until late February 2003 (around the time of our pre-Inspection briefings), when the Director General requested a meeting with Sodexo Asia-Pacific. The Department candidly advised that it did not give this aspect of financial monitoring a high priority because it was confident that Sodexo would continue to support AIMS. This conclusion was based on the view that Sodexo was keen to expand its private prison operations and would therefore be prepared to wear some losses; that any losses by AIMS would be readily absorbed by Sodexo given its consolidated global sales of around A\$15 billion per annum; and that Sodexo would not want to risk damage to its reputation in Australia.

8.30 As with its views about monitoring AIMS' financial viability,<sup>163</sup> these comments carry some weight but appear somewhat disingenuous. Public sector organisations should be wary of attributing motivations to commercial conglomerates, which may well be operating within quite a different strategic framework. Furthermore, whatever the original thinking may have been, the Department did not contact Sodexo until several months after loud alerts should have been sounding. The belated AIMS' accounts had been provided some four-and-a-half months before the Director General sought a meeting with Sodexo and in mid-2002 there had been well-publicised concerns about aspects of Sodexo's operations. These included what Sodexo itself termed 'serious errors of management as well as accounting anomalies' in its UK operations and a 30 per cent plunge in its share price on the Paris stock market.<sup>164</sup>

<sup>162</sup> The Department's response states that there was no contractual obligation for CCA/AIMS to maintain those liquidity ratios and thus that it was sufficient for these to be *monitored* (Department's italics). That is literally correct - but once more seems to be inappropriately passive in relation to a high-cost contract in a sensitive area of public administration. The very point of monitoring is to take remedial action as necessary. Section 15X(2)(a) of the *Prisons Act 1981* provides that insolvency of the contractor is a ground for contract termination.

<sup>163</sup> See paragraph 8.20, above.

<sup>164</sup> *Prison Privatisation Report International No. 49* (Public Services International Research Unit, University of Greenwich, UK, August/September 2002) (<http://www.psir.org/justice>).

8.31 We were advised by AIMS that Sodexho provides written guarantees of support on a year-to-year basis, but we understand that the Department does not have copies. We recommend that, in the interests of risk management, the Department should obtain copies of such guarantees and a written assurance that they will not be varied or cancelled without first notifying the Department. Ideally, the Department should go further and seek its own written guarantee from Sodexho, outlining the conditions and duration of their support for AIMS. This will reinforce both the \$3 million guarantee by AIMS and the corporate relationships.

### Controls with Respect to Contract Fees

8.32 Moving away from the 'macro' financial world of corporate accounts, guarantees and structures, there are many more mundane areas where financial controls are essential. Again, we identified points of significant weaknesses.

8.33 The first concerns the way in which prisoner numbers are counted and verified. Accuracy is essential given that the average daily population (ADP) determines the monthly operational charge and that the Department keeps numbers close to 700, just below the next payment band. In simple terms, an AIMS employee notifies the Contract Manager of the prison's daily population and then enters the figures onto the TOMS system for payment purposes. Our initial misgivings about this process were confirmed by an audit of records relating to May 2002. This month was selected because AIMS requested, and was paid, an extra \$30,000 on the basis that the ADP had crossed into the higher band. We worked through the AIMS physical records and compared them with the TOMS figures.

8.34 We concluded that the extra payment was justified, but were concerned to discover that there was no independent check by the Department of the ADP figure provided by AIMS. This is a control weakness that should be remedied. The most obvious solution would be for the Monitor to be given responsibility for daily validations.

8.35 Another weakness to emerge from our audit of prisoner numbers in May 2002 was that there were discrepancies between the ADP figures entered into TOMS and the count details in journals maintained by AIMS staff.

8.36 We also discovered that there is not always independent validation of data submitted by AIMS with respect to PLF measures, including the provision of education and treatment programs and prisoner attendance at such. In addition, the Monitor reported instances of prisoners registered on the TOMS system as being at Acacia even after they had been transferred out.

8.37 All of these control weaknesses should be remedied to ensure that there are no overpayments under the operational charge or PLF.

### Prisoner Trust Accounts

8.38 We have already mentioned that prisoners have many grievances over gratuity money. This is an area that cuts across both financial responsibility and prisoner welfare. The theory is that gratuities and spends are automatically processed through the ATM smart card system. The Department's initial response to our inquiries about prisoners' monies was that 'TOMS ... provides a great deal of accountability' and that 'AIMS has established a trust account ... that is audited every 12 months'. In other words, the first audit should have been for the period from May 2001 to May 2002. However, the initial assurances proved to be short-lived and we were soon informed that the audit has not yet been completed for the period up to May 2002.

8.39 Thus, accounts for this crucial area are more than 12 months overdue. This is unacceptable practice on the part of AIMS. Just as worrying, the Department does not seem to have identified or vigorously pursued this deficiency in a timely manner. We were informed in early June 2003 that Contract Management had raised the issue with AIMS in September 2002; that there had been some follow-up discussions, but that computer system difficulties remained and that the accounts for the period to May 2002 were still two to three months off. At the earliest, therefore, we can expect the accounts to be 15 months late.

8.40 This situation should never have been allowed to materialise or to last so long. Gratuities are a major source of prisoner concerns and an area that calls for rigorous financial controls. It is unedifying and unacceptable to be told that 'computer program problems' are to blame. Under the circumstances, it should have been possible to revert to the quaint but effective practice of people using manual ledgers or less elaborate electronic processes.

### CONTRACT VARIATIONS

8.41 The Prisons Act requires contract variations to be tabled in Parliament within 30 days of the variation.<sup>165</sup> Again, this is an area where there appears to have been significant slippage between what Parliament intended as an important accountability mechanism and what has actually happened. To date, no contract variations relating to operational matters have been tabled, even though there are areas that seem to constitute variations.

### PLF Payments

8.42 The contract states unequivocally that the PLF is to be assessed on an annual and not a monthly basis (even though annual compliance is measured by reference to the Monitor's shorter-term reports). This has two consequences. First, if Acacia performs to the appropriate standard over the year as a whole, it must be paid the full 12 month PLF even if service delivery fell short in some months. Secondly, it should not be paid a proportionate monthly fee if it fails to meet annual targets. For

<sup>165</sup> Section 15(G)(4).

example, no PLF money should be paid if the prison achieves its targets for eight months but not on the year taken as a whole.

8.43 However, payments have been made with respect to significant parts of the PLF relating to programs, work and training on a pro rata basis, reflecting monthly performance.<sup>166</sup> We were also informed that the Department had granted a concession to AIMS with respect to urinalysis testing levels to assist with ongoing drug investigations. For the sake of argument, it may be conceded at this stage that some fine-tuning is desirable, but that is not the present issue.<sup>167</sup> The issue is that the changes amount to a contract variation that has not been notified to Parliament as required by the Prisons Act. Nor have we been shown any written authority for these variations as required by the contract.<sup>168</sup>

### Health Services

8.44 The contract specifically states that health services should be provided by a 'health care provider approved by the Contract Manager'.<sup>169</sup> However, when AIMS was unable to find a suitable provider at what was regarded as a reasonable cost, it was allowed to directly employ its health service providers. This seems to us to be a clear contract variation on a matter of principle and systemic importance, but it was not tabled in Parliament.

### THE RFP AND OTHER STANDARDS

8.45 Some of the Department's contract management decisions are defensible in themselves, in the sense that they may well make the contract more viable and be broadly (as with the enhanced security) in the public interest. Of course, they have all benefited the contractor, either in direct financial terms or indirectly by reducing the risk of an escape (and the liquidated damages that would ensue from such an event). Our primary concern is not as to the substance but as to accountability. The statutory requirement to notify Parliament simply has not been met.

8.46 On the other hand, in attempting to enforce standards, the Department sometimes appears to be hesitant and to hold back for fear that a contract variation is at stake. The best example is probably contract management's view of the RFP. Those who were aware of its existence considered that it had little or no practical relevance and that the contract is a stand-alone document. They told us that they could not require the contractor to meet the detailed performance measures that were set out in the RFP without generating a claim for a contract variation payment.

<sup>166</sup> This has occurred in relation to measures G, H, I and J, which involve employment and program participation, work and vocational training. See also paragraphs 8.60-8.61, below.

<sup>167</sup> In fact, programs work and training are areas where, in our view, no concessions should have been made: see paragraphs 8.57-8.58, below.

<sup>168</sup> Clause 39.18. In August 2003 the Director Custodial Contracts recommended that the contract be formally varied to reflect this position.

<sup>169</sup> Annexure A, Clause 2.2(a). See also paragraph 4.17, above.

- 8.47 A careful reading of the contract suggests that this is not the case. Even though the contract does not include the detailed performance measures of the RFP, it does require the Contractor to comply with 'best industry practice' and defines this as 'the best standards that would reasonably apply' subject to the 'contractor's philosophy ... and the provision of services set out in the contractor's proposal' (emphasis added). The most obvious interpretation is that the contractor is tied to the RFP performance measures.
- 8.48 However, it is important to avoid becoming sidetracked by technical arguments about the precise status of the RFP performance measures. Under the contract itself, AIMS is required to deliver services that meet the 'minimum standards' in Annexure A and it is the responsibility of Contract Management to monitor these standards. If the detailed RFP performance measures (which a few years ago were considered by the Department to represent best practice) are now thought inappropriate, then Contract Management with input from AIMS should develop, articulate and apply new standards and measures, and should start managing the contractor's performance against those standards. In this regard, the UK National Audit Office has recently emphasised that 'performance against quantitative targets does not provide a complete picture of standards in a particular prison', and has commenced the process of developing a more comprehensive range of indicators, including qualitative matters.<sup>170</sup>

### STAFFING LEVELS AND OUTPUT-BASED CONTRACT MANAGEMENT

- 8.49 Throughout this Report we have raised concerns about daytime, weekday staffing levels at Acacia. It is our view that low staffing levels are having an adverse impact on dynamic security, safe custody and service delivery and that staff training is problematic. The Monitor has raised similar concerns within the contract management team. However, Head Office has taken the view that these are not the Monitor's concern and has not raised these issues with AIMS as serious matters requiring resolution. Their explanation for adopting a non-interventionist approach is that the contract is performance-based and that their task is to measure outputs rather than inputs.
- 8.50 This position is unduly simplistic and untenable in principle. In some contracts, such as engineering works, the 'output' is clearly the key. For example, with a bridge building contract, the contract manager's 'bottom line' is to ensure that it is built to an appropriate design and standard, using the right quality and type of materials. It is not really of concern whether the contractor chooses to use 500 labourers with shovels and wheelbarrows or five bobcat operators, as long as the job is completed to the required standard and in a timely fashion. Prison service delivery is quite a different matter. It is a human service and adequate staff resources (both number and skills) are critical to outcomes. This fact is clearly recognised in health services (nurse/patient ratios) and schools (teacher/pupil ratios). In principle, prison services are no different.

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<sup>170</sup> National Audit Office, *The Operational Performance of PFI Prisons* (HMSO, London, 2003), p. 28.

- 8.51 The position adopted by contract management is also directly at odds with the expectations of both the contract and the RFP. The RFP sought to ensure that private contractors did not attempt to cut costs through low staff numbers. It therefore included specific service requirements, and all bidders were required to present details of proposed staff numbers and their deployment throughout the prison and across shifts. To win the contract, CCA/AIMS provided such details and were evaluated against them. Quite apart from the tender process, the contract gives the contract manager robust and relevant powers, including the approval of 'operating manuals' for the prison. The operating manual was to include details of 'management and staff structures'.<sup>171</sup> However, Acacia's operating manual was approved without a detailed staffing plan. This seems quite incongruous in the light of the importance that was placed on staffing during the tender process.
- 8.52 The end result is that the Department has never examined proposed staffing levels and has never asked the contractor to provide a template, against which it could compare promises with reality. This is, in our view, a major weakness that has fed into the prison's performance. Whilst we would accept, as stated above,<sup>172</sup> that the realities of running Acacia have moved on beyond the bid stage when staffing projections were made and that there is no magic in the particular numbers invoked at that time, it is evident that a ground-up review of the numbers and deployment of staff at Acacia is required. This should be done in the first instance by AIMS itself, with subsequent coordination with the contract management group of the Department.

#### CONTRACT MANAGEMENT, SAFE CUSTODY AND PRISONER SERVICES

- 8.53 Firm contract management should provide safeguards for prisoners' safe custody and for proper service delivery. Weak or diffident contract management creates risks. It is not possible to analyse each aspect of Acacia's shortfalls and ask what more contract management should have done but the following examples are indicative of a rather soft approach that falls short of good practice.

##### The Missing Knife

- 8.54 Shortly before our Inspection there was a notifiable incident involving the disappearance of a knife from the kitchen. It later turned up (in the kitchen) but not before considerable angst and a lockdown of prisoners. In this case, a report was provided to the Contract Manager, but it was cursory and uninformative. More forceful and directive contract management would have been appropriate.

##### The Case of the Patchy Oval

- 8.55 Acacia's oval should be a good, well-used facility. However, at the time of our Inspection, it was an unpleasant yellow/brown colour, hard and uneven underfoot, and virtually unused. It emerged that

<sup>171</sup> Clause 13.

<sup>172</sup> See the discussion at paragraphs 7.13-7.17, above, and in particular notes 133 and 135.

this situation had arisen because the reticulation system was unsafe. The intention had been that the prison would process its effluent through a variety of treatment ponds so that the water would be sufficiently clean to be recycled onto the oval. However, the Environmental Protection Authority (EPA) ran tests, found the water was not suitable for such use, and issued an improvement notice. It was clearly the contractor's responsibility to fix the problem and the Department's responsibility to ensure that it was fixed or that alternative measures were taken in a timely manner.

- 8.56 The situation was slightly complicated in a bureaucratic sense because the maintenance contract manager operates quite independently from the manager of the prison services contract. However, both should, in our view, have pressed the contractor more forcefully on the state of the oval. It was, after all, the State's asset (not an AIMS asset) that was deteriorating, and contract management have a responsibility to protect the asset. If the reticulation system could not be fixed quickly, the contractor should have been pressed to develop an alternative watering system or to purchase water from another source.

### Education, Programs and Work

- 8.57 Earlier chapters have traced the prison's failings with respect to education, programs and work. Without rehearsing the problems, questions must again be asked about whether contract management has been sufficiently robust. For present purposes, two examples will suffice. First, as noted earlier, the Contract Manager has approved the payment of a proportionate PLF in these areas even at a time of failing service delivery. Secondly, the sex offender programs that are offered at Acacia do not meet the needs of the majority of sex offenders and are only appropriate for lower risk, non-Indigenous groups. We understand that negotiations are currently underway between the Department and AIMS with a view to running the Department's medium intensity program but that AIMS claims that this will constitute a contract variation for which it should be paid. AIMS' argument is apparently based on the fact that it submitted its proposed programs for Departmental approval and received such approval.
- 8.58 It is not for us to comment on the outcome of such negotiations, but it does seem that the problem could have been cut off at the pass with more rigorous contract management scrutiny of the proposed programs, coupled with an unequivocal direction to AIMS that more would be needed to meet its contractual obligation to provide programs in accordance with IMPs. The net result is that the Department has not only paid AIMS for its limited sex offender programs, but has itself continued to wear the costs of more comprehensive programs for higher risk offenders.<sup>173</sup>

<sup>173</sup> See now paragraphs 5.16-5.18, below.

### Welfare Agencies

8.59 The contract identifies a number of expectations in terms of welfare service provision. However, there is very poor provision in this regard and little evidence of contract management pursuing the matter with vigour.

### EXECUTIVE-LEVEL RELATIONSHIPS

8.60 We have already noted that the relationships between the parties are complex. Different parts of the Department have varying obligations, with the Director General holding ultimate authority and responsibility. Within AIMS, authority is dispersed between Acacia and Brisbane, and AIMS is apparently subject in some respects to Sodexo Asia-Pacific in Sydney as well as Sodexo Alliance's head office in Paris. Given such a complex framework, it is important to develop effective executive level relationships.

8.61 At the time of our Inspection, the Contract Manager had developed a relationship with Acacia's General Manager that included regular meetings between key staff. However, the Department's relationship with AIMS head office appeared to be underdeveloped and too informal. We commonly heard mention of high-level discussions between the Department and AIMS corporate, but there are no records or minutes of such discussions or meetings.

8.62 Relationships between the Department and Sodexo Alliance appeared to be virtually non-existent at the time of the Inspection and, as we have seen, there was no formal correspondence with respect to the financial health of AIMS for over 26 months, between November 2000 and February 2003. This seems to have put the Department rather on the back foot when it finally became formally aware of AIMS' financial position. Again, some of this may come back to the Department's instinctive faith in Sodexo's goodwill and commitment.

8.63 We are firmly of the view that executive-level relationships between the Department, AIMS and Sodexo need to be developed. To achieve the level of accountability and transparency that Parliament intended, much greater formality is also required so that it is known who in the Department and AIMS/Sodexo has taken decisions and the basis of those decisions.

### SUMMARY

8.64 The Acacia contract is complex and, as a new venture in this State, was bound to generate some teething problems. A degree of flexibility was also going to be required given the complexity of the contract and the nature of services that are at stake. However, it is a high-value, high-risk contract and we were disappointed by the overall level and results of contract management to date. The resources of the contract management directorate as a whole would seem to have been sufficient to do somewhat better,<sup>174</sup> but there appears to have been a degree of fragmentation within the group.

<sup>174</sup> See note 146, above.

## ACCOUNTABILITY AND CONTRACT MANAGEMENT

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8.65 The deficiencies include the following:

- There have been inefficiencies and tensions within the contract management group, with those based on-site and those based in head office sometimes pulling in different directions.
- The on-site Monitor has developed a comprehensive monitoring plan but has been given a rather restricted role.
- Data provided by the Monitor have not been collated and used to analyse trends.
- The Department appeared over-confident about its ability to manage the prison in the event of contractor failure and also about Sodexho's continuing support for AIMS. Consequently it had no contingency plan and had not sought written assurances from Sodexho.
- AIMS has not given the Department access to its financial systems as required by the contract.
- AIMS' financial statements for 2000-2001 were 10 months late.
- As special purpose accounts, AIMS' financial statements lack detail, authority and value.
- The Department was hesitant and diffident when it did become formally aware of AIMS' financial position.
- Although measuring performance for PLF purposes, the Department does not seem to have given much thought to its power to withhold part of the operational charge in the event of a failure to deliver contracted services.
- The Department has not independently validated key payment-related data submitted by AIMS (for example, prisoner numbers and program/education delivery).
- AIMS has not been vigorously interrogated in a timely manner with respect to prisoners' trust accounts.
- Contract management has not pursued the question of staffing levels, despite their inherent importance to service delivery.
- A more active and assertive approach was required in areas such as the dying oval, programs, education, work, welfare services, and disciplinary and grievance procedures.
- Executive relationships between the Department and AIMS are underdeveloped and not sufficiently formal or transparent. Relationships between the Department and Sodexho have been almost non-existent.
- The Department does not seem to have a sharp sense of what constitutes a contract variation that must be notified to Parliament.

- 8.66 In summary, AIMS appears to have pushed the boundaries in some areas and the Department has not been able to demonstrate a prompt and purposeful response. Its philosophy has been reactive rather than challenging; bureaucratic rather than dynamic and business-like.
- 8.67 Members of the contract management team appear keen to improve systems of accountability but there is still, in our view, an insufficiently clear sense of purpose and direction. This is most evident, perhaps, in Contract Management's view that the RFP standards are not to be applied. If this is the case, then it is their responsibility to develop, promulgate and apply new standards. They are responsible for people, not just a contract; and it is possible to have active monitoring without impinging on the capacity of AIMS itself to manage the prison.
- 8.68 In conclusion, it is worth returning to the statutory accountability framework.<sup>175</sup> Under section 15G of the Prisons Act, the Director General must deliver to the Minister, by 30 September each year, a report that contains: 'such information as is required ... to enable an informed assessment to be made of - (a) the operations of each contractor; and (b) the extent to which there has been compliance with the ... contract.' The Minister must then table the report in Parliament within ten sitting days of receipt. The differences between this Report and what is contained in the Department's annual report of September 2002<sup>176</sup> raised some concerns as to whether the Minister and Parliament had to that point been provided with sufficient information to make such an 'informed assessment'; so we welcome the enhanced quality of the draft 2003 annual report,<sup>177</sup> which, in conjunction with this Report, should now enable an informed assessment to be made.

<sup>175</sup> See Chapter 1.

<sup>176</sup> Department of Justice, *Acacia Prison Services Agreement: Annual Report 2001-2002* (Department of Justice, Perth, 2003).

<sup>177</sup> See note 143, above.

# Chapter 9

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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- 9.1 Acacia has been a particularly challenging prison to inspect and upon which to report. Operationally, it is a complex amalgam of what are virtually three prisons in one (self-care, protection, and the Aboriginal-dominated 'rest'). In addition to its operational complexities, Acacia presents some intricate and sometimes technical problems of financial accountability and contract management. However, we are confident that our methodology (including the expertise of staff from the Office of the Auditor General) has met these complex evaluation requirements.
- 9.2 This Report has revealed a wide range of problems and issues, some of which require immediate attention and others that require longer-term solutions. It has also become clear that some issues are Acacia-based and some are systemic; some are the responsibility of AIMS, some are the responsibility of the Department, and others are a joint responsibility. This Chapter begins with some general conclusions about short-term directions before developing some more specific recommendations.

### GENERAL CONCLUSIONS

- 9.3 The establishment of a new private prison was intended not merely to provide more beds but also to promote efficiency, flexibility and innovation in service delivery. The ultimate goal was system-wide improvement.<sup>178</sup>
- 9.4 Clearly, Acacia cannot currently be regarded as a flagship for service delivery. Instead, the prison's operations appear under-developed, under-resourced and under stress. Both staff and prisoners express a good deal of frustration and disenchantment. Whilst their specific grievances may differ, they share a common refrain - the gap between paper promises and life 'on the ground'. Staff do not feel sufficiently safe, are not given adequate training and professional development opportunities, and are spread too thin to be able to deliver the level of service they would like. General staff are alienated from management (both on-site and AIMS corporate) and appear to lack the authority even to answer relatively simple inquiries from prisoners.
- 9.5 Throughout the prison, prisoners experience a sense of frustration and there are many areas that call for attention by AIMS and/or the Department. The areas of shortfall include the following:
- Disciplinary proceedings have collapsed.
  - Grievances have mushroomed.
  - Treatment and education programs are disorganised and have been undermined by unacceptable practices.
  - Work and vocational training have not developed as anticipated.

<sup>178</sup> The UK National Audit Office report, *The Operational Performance of PFI Prisons*, pp. 31-34, contains a very interesting discussion of the question of exchanges of good practice between prisons generally and, in particular, the incorporation of innovation from the private sector into the public sector.

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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- There are basic management deficiencies in accounting for prisoners' gratuity monies and personal property.
- In cases of bullying, victims rather than offenders are being 'removed'.
- Recreational facilities and gym equipment are not being kept in good repair.
- Services and supports are limited across the prison and are especially weak in Blocks I, J, L and M.
- Welfare and community supports from external agencies have not been developed.
- Indigenous prisoners are in lower levels of accommodation, gratuities and work.
- The Wongi prisoners were dislocated, isolated and palpably unhappy.
- Too many minimum-security prisoners are at Acacia and too few prisoners are moving to minimum-security status prior to release.
- Visitors are subjected to slow and demeaning security procedures.
- Re-entry services are inadequate.

9.6 Overall, therefore, we found a prison under considerable stress. The contract management system does not seem to have effectively integrated on-site monitoring and off-site administration activities. So some service deficiencies have not been pursued in a purposeful and business-like manner. Instead, the overall approach has been rather bureaucratic and diffident. Service delivery has been checked for PLF purposes some PLF payments have been withheld, but nevertheless some such payments have been approved on a pro-rata monthly basis even though the contract clearly requires annual performance levels. In other areas contract management appeared hesitant, even when faced with blatant issues of financial accountability (such as very belated financial statements of limited value), and there does not seem to be a sharp understanding of reporting obligations to Parliament. There was also no sign of suitable structures and protocols at the highest executive levels for discussions on failing performance or financial accountability.

9.7 Despite these manifest failings, there were, on the ground, some positive features and useful foundations upon which to build. The physical environment (including accommodation) is generally good and the facilities are adequate to meet the needs of the prison's population. Health care provision is better than in most prisons (though access to doctors could be improved) and the food philosophy is sound. There have been no escapes, no deaths in custody and no major disturbances - very important achievements. Prisoners in self-care and the geriatric unit generally appear to be well provided for and there are some positive aspects of the regime for protection prisoners, including access to work. Whilst frustrated, staff remain keen to do a good job and to improve their skills.

9.8 When a privately operated prison faces difficulties, or fails to deliver services to the expected standard, some commentators inevitably call for the prison in question to be taken into public sector

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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management - though the inverse argument is rarely used where a public sector prison is found wanting. Calls to take a prison back into public sector management are understandable but simplistic, and it would be wrong to assume that the public sector would necessarily provide better service delivery. Unfortunately, our earlier reports have revealed a very patchy public sector system in the State. Some prisons (including Woorloo, Karnet, Bunbury, Greenough and Albany) are generally operating well, but others (notably Bandyup Women's Prison, Eastern Goldfields, Hakea and Roebourne) fail to come close to best practice. Acacia has undoubtedly to this point failed to meet our aspirations and expectations and is not meeting acceptable standards in a number of areas. However, staffing attitudes are much more positive than at some public prisons, and we found no sign of the more scandalous problems that we discovered at Eastern Goldfields (lack of hygiene and threadbare blankets), Bandyup (women shackled during childbirth) and Roebourne (lack of hygiene and prisoners eating from the floor).<sup>179</sup> Acacia's programs may be deficient but they are not virtually non-existent (as they have been at some public prisons).

9.9 In terms of standards and service delivery, therefore, we do not consider that it would be desirable, at the present time, to contemplate Acacia being taken over by the public sector; like AIMS, the public sector has a good deal to do in order to meet best practice on a consistent basis. Furthermore, international experience demonstrates that private prisons can improve their performance significantly even after a difficult start.<sup>180</sup> We have, therefore, concluded that the better option is for the Department and AIMS to engage in honest and forthright discussions as to the best way forward and for a further formal inspection to be conducted by this Office within the next two years, in advance of the expiration of the Prison Services Agreement in May 2006.

9.10 These conclusions are further bolstered by our findings with respect to costs. The Department's figures, recently provided, bring into sharp focus the differences between public and private sector costs. It is evident that there would be major financial costs to the State in transferring Acacia to the public sector under current cost structures (probably about \$15 million per annum). These costs would seem clearly to outweigh any possible benefits.

9.11 In summary, we believe that it is time for active negotiations between the Department and AIMS as to future directions.<sup>181</sup> We are well aware that, in the aftermath of the Inspection, there were major management personnel changes on-site at Acacia. However, it must be stressed that personnel

<sup>179</sup> It should be put on the record that there have been tangible moves towards improving deficiencies that we have identified in these prisons.

<sup>180</sup> The UK National Audit Office report discusses this at length at pp. 14-17. The most outstanding example concerns Parc Prison, Bridgend, which in its first year of operation (1997-98) was chaotic but which on the 'traffic light' test of performance adopted by both the National Audit Office and the Home Office is currently one of the best-performing prisons in England and Wales. The Inspector has spent considerable time at Parc Prison - in 1997 when it was so dysfunctional, in 2000 as it clawed its way back, and most recently in June 2003 - and endorses the view of the National Audit Office.

<sup>181</sup> As noted in the Inspector's Overview, it is gratifying that a new partnership approach seems to be growing since the on-site phase of this Inspection and the distribution of the written de-brief.

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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changes - whether in the Department or in AIMS - will smack of scapegoating unless they are accompanied by concrete steps to address the systemic problems related to Acacia's operations, including staffing levels and deployments, financial accountability and contract management. Both AIMS and the Department should urgently explore ways to reduce overheads and improve service delivery within the prison.

9.12 The following recommendations do not reflect all of the issues that have been raised in this Report, though these issues will all be revisited in the next Inspection. Our objective at this stage is to make a number of general recommendations designed to enhance financial accountability, contract management and service delivery.

### RECOMMENDATIONS

#### Financial Costs and Accountability

1. *AIMS' contract costs should be reviewed and changes implemented to improve service delivery. The review should include a consideration of staffing levels and AIMS corporate structure and overheads and, should this be necessary, contract variations as to functions and prices.*

(Chapter 7, *passim*)

2. *The Department must ensure that there are appropriate and detailed contingency plans in the event of contract failure. These plans should preferably address options other than bringing Acacia back into the public sector in a way that equates it with public prisons.*

(Paragraphs 8.15-8.17 and 9.8-9.9)

3. *AIMS should provide, and the Department should insist upon, financial projections and access to financial systems, as required by the contract.*

(Paragraphs 8.20-8.22)

4. *AIMS should provide, and the Department should insist upon:*

- *The timely production of annual financial statements; and*
- *General purpose rather than special purpose accounts.*

( Paragraphs 8.22-8.27)

5. *Executive-level links between the Department and AIMS and between the Department and Sodexo should be developed, formalised and documented.*

(Paragraphs 8.13-8.16, 8.28-8.31 and 8.60-8.63)

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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6. *Controls must be developed with respect to contract fees and payments, including validations of prisoner numbers and PLF measures, and prisoners trust account monies.*

(Paragraphs 8.32-8.40)

7. *The Department must be alert to, and comply with, its statutory obligation to table contract variations in Parliament and to provide sufficiently detailed annual reports for Parliament to make an 'informed assessment' of Acacia's performance.*

(Paragraphs 8.41-8.44)

### Contract Management of Service Delivery

8. *On-site monitoring should be enhanced and the Monitor's regular reports should be used within the Contract Management Directorate to undertake trends analysis.*

(Paragraphs 8.4-8.12)

9. *The head office contract management team should adopt a more systematic, assertive and business-like approach when faced with issues of contract compliance.*

(Chapter 8, *passim*)

10. *Contract management should either use the RFP standards (as the contract seems to us to permit) or should develop detailed new performance measures and templates by which to measure contractor performance.*

(Paragraphs 1.32-1.33, 8.45-8.48 and 8.67)

11. *Contract management measures must include key 'inputs' such as staffing levels and competence and not merely 'outputs'.*

(Paragraphs 7.14-7.21 and 8.49-8.52)

### Staffing and On-Site Management

12. *There should be a ground-up review of staffing levels and needs across the prison involving, if necessary, an independent human resources consultant. The review should include:*

- *Staffing needs to meet contractual obligations (as done during the tender process);*
- *A staffing template for all shifts; and*
- *Strategies to recruit and retain more Aboriginal staff.*

(*Passim*, and particularly paragraphs 7.13-7.23)

13. *Improved staff training and professional development programs should be introduced.*

(Paragraphs 7.18-7.21)

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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14. *The role of the GM and/or the AGM should be re-scoped to have unequivocal and direct responsibility for prisoner well-being and to improve staff/management relationships.*

(Paragraphs 7.24-7.28)

### Security and Safety

15. *Memoranda of understanding should be agreed between:*

- *Acacia Prison and fire, police and ambulance services; and*
- *Acacia Prison and the Department's Emergency Support Group.*

(Paragraphs 2.7-2.9)

16. *Acacia must refocus on dynamic security through:*

- *A philosophy and practice of proactive and interactive unit management;*
- *Appropriate staffing levels; and*
- *Improving the accuracy of smart card movement control.*

(Chapters 2 and 3, *passim*)

17. *Acacia should develop and implement a comprehensive anti-bullying strategy and cease the practice of removing victims rather than offenders.*

(Paragraphs 3.26-3.29, 3.33-3.38 and 4.17)

18. *Procedures relating to visits should be amended to reduce the focus on intrusive checks of visitors and to increase the focus on prisoners and to allow appropriate searching of staff.*

(Paragraphs 3.5, 3.39-3.41 and 4.29-4.36)

19. *Procedures for entry to and use of 'O' Block facilities should be reviewed.*

(Paragraphs 3.30-3.31)

### Placement at Acacia

20. *The Department should assess its classification and placement practices with reference to all prisoners, and especially minimum-security prisoners and prisoners from remote areas, in order to avoid inappropriate placements.*

(Paragraphs 4.2-4.5, 5.35-5.37 and 6.5-6.7)

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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21. *In the event that Aboriginal prisoners from remote areas continue to be accommodated at Acacia, the Department and AIMS should develop and implement plans for subsidising travel so that close relatives may visit at reasonable intervals. In addition, the question of subsidised phone calls and/or video visits should be further explored.*

(Paragraph 6.7)

### Record Keeping

22. *Acacia must improve its record keeping and compliance with reporting requirements with respect to all facets of management, including:*

- *Prison incidents*
- *Prisoners' property*
- *Loss of privileges*
- *Protection status and reviews*
- *Lockdowns*
- *Programs*
- *Staff training.*

(*Passim*, and particularly paragraphs 3.4, 3.15-3.18, 3.23, 3.26, 3.37, 3.41, 5.19-5.20, 5.26 and 7.20)

### Grievances and Disciplinary Procedures

23. *Acacia should develop a detailed action plan and timetable with respect to disciplinary and grievance procedures, including:*

- *Proposed staffing allocations;*
- *Staff training programs; and*
- *Review of the practices in relation to Loss of Privileges.*

(Paragraphs 3.10-3.24)

### Health

24. *To meet its contractual obligations (including the best industry practice standard), AIMS should:*

- *Increase GP services to five days per week; and*
- *Ensure that annual health assessments are completed.*

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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- *In addition, consideration should be given to the extension of psychiatric services.*

(Paragraphs 4.21-4.22 and 4.24)

### **Prisoner Well-being**

25. *The following areas should be evaluated and actioned where necessary:*

- *The induction process (especially health and the use of smart cards);*
- *Allowing prisoners to use fans; and*
- *Food quantity and quality.*

(Paragraphs 4.7-4.9, 4.11 and 4.14-4.16)

26. *The oval and gym equipment should be properly maintained.*

(Paragraphs 4.39-4.40 and 8.55-8.56)

27. *Given the size and diversity of the prison population, Peer Support Group services should be expanded in order to better represent the total prisoner population - either by having a number of different groups representing different parts of the prison or by an expanded membership.*

(Paragraphs 4.46-4.48)

### **Community and Welfare Support**

28. *As required by the contract, AIMS should, as a matter of urgency, engage appropriate community agencies to offer support and advice for prisoners, both pre- and post-release.*

(Paragraphs 4.49-4.51 and 5.41)

### **Education, Programs and Work**

29. *AIMS and the Department must review Acacia's compliance with its contractual obligation to deliver treatment programs in accordance with IMPs. Action is needed to address problems relating to program overlap, program intensity and the integrity of program delivery (including excessive reliance on prisoners, staff qualifications and availability, and the shortening of programs).*

(Paragraphs 5.3-5.24)

30. *Education should be improved in terms of the range of course offerings (including a greater focus on core subjects) and program integrity (including excessive reliance on prisoners).*

(Paragraphs 5.25-5.27)

## REVIEW, PROGNOSIS AND RECOMMENDATIONS

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31. *Vocational training packages should be developed and tied into prison-based work opportunities.*

(Paragraphs 5.25-5.28)

### Re-Entry

32. *The Department and AIMS should address areas of shortfall, including:*

- *Inappropriate prisoner placements (and consequential delays in release);*
- *Provision of adequate CCO support by the Department and support of CCOs by AIMS; and*
- *The development of firmer links with relevant community and welfare agencies.*

(Paragraphs 5.33-5.41)

### Aboriginal Prisoners

33. *AIMS and the Department must develop a detailed plan and timetable for addressing the systemic discrimination faced by Indigenous prisoners, including:*

- *Cultural dislocation.*
- *Access to the cultural area.*
- *Interpreters and other culturally relevant supports.*
- *Funeral applications.*
- *Transfers to other prisons for visits.*
- *Assistance for families from remote areas to visit prisoners.*
- *Financial support to return home on release.*
- *Over-representation in lower levels of accommodation and work.*
- *Lack of culturally relevant programs.*

(Chapter 6, *passim*)

# Appendix 1

## THE INSPECTION TEAM

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Professor Richard Harding	Inspector
Robert Stacey	Director of Operations
Peter Upton-Davis	Senior Inspections Officer
Lynn Atkinson	Manager Research and Publications
Jocelyn Jones	Senior Research Officer, Special Projects
Natalie Gibson	Inspections Officer
Andy Fitzgerald	Inspections Officer
Kerri Bishop	Inspections Officer (seconded)
Joseph Wallam	Community Liaison Officer (seconded)
Dr Peter Barrett	Department of Health
John Podmore	Expert Inspections Consultant
Dr Keith Carter	Expert Inspections Consultant
Dr Neil Morgan	Expert Inspections Consultant
Peter McCann	Office of the Auditor General
John Hull	Office of the Auditor General

## Appendix 2

### RECOMMENDATIONS AND RESPONSES

The Response column sets out Department of Justice responses for Recommendations 1-11 and common DOJ/AIMS responses for Recommendations 12-33.

Recommendation	Response
<b>FINANCIAL COSTS AND ACCOUNTABILITY</b>	
<p>1 AIMS' contract costs should be reviewed and changes implemented to improve service delivery. The review should include a consideration of staffing levels and AIMS corporate structure and overheads and, should this be necessary, contract variations as to functions and prices.</p> <p><i>(Chapter 7, passim)</i></p>	<p>Subsequent to the Inspection, reviews have been undertaken in respect to the application of the Performance Linked Fee, operational impost to the maintenance contract and the funding of additional activities such as DNA, drug strategy and a review of arrangements for traineeships.</p> <p>AIMS have commenced a review of practices and procedures, which will consider staffing deployment, overheads and corporate structure.</p>
<p>2 The Department must ensure that there are appropriate and detailed contingency plans in the event of contract failure. These plans should preferably address options other than bringing Acacia back into the public sector in a way that equates it with the public prisons.</p> <p><i>(Paragraphs 8.15-8.17 and 9.8-9.9)</i></p>	<p>The Department has completed a Risk Management Plan for management and operation of the Acacia Prison Services Agreement. Consultants were engaged in December 2002 to develop a Transition Plan for the Acacia Prison Services Agreement - the draft report completed in early April 2003 and the Final Plan was presented in May 2003.</p>
<p>3 AIMS should provide, and the Department should insist upon, financial projections and access to financial systems, as required by the Contract.</p> <p><i>(Paragraphs 8.20-8.22)</i></p>	<p>The Department will enhance the existing system with the objective of receiving financial projections and access to financial systems as required by the Contract.</p>
<p>4 AIMS should provide, and the Department should insist upon:</p> <ul style="list-style-type: none"> <li>• The timely production of annual financial statements; and</li> <li>• General purpose rather than special purpose accounts.</li> </ul> <p><i>(Paragraphs 8.22-8.27)</i></p>	<ul style="list-style-type: none"> <li>• The provision of financial statements is normally received in a timely manner from the contractor. These are required within 3 months after the end of the operational year.</li> <li>• AIMS will provide general-purpose financial statements in the future.</li> </ul>
<p>5 Executive level links between the Department and AIMS and between the Department and Sodexo should be developed, formalised and documented.</p> <p><i>(Paragraphs 8.13-8.16, 8.28-8.31 and 8.60-8.63)</i></p>	<p>Links currently exist on an informal level between Department and AIMS senior management. The Department is developing its senior level relationship with Acacia Prison to a formal arrangement. This includes the establishment of a management board with executive management representatives from the Department and AIMS Corporation. AIMS are currently reviewing its corporate management structure with a view to an increased presence in Western Australia.</p>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>FINANCIAL COSTS AND ACCOUNTABILITY</b>	
<p>6 Better controls must be developed with respect to contract fees and payments, including validations of prisoner numbers and PLF measures, and prisoner trust account monies.</p> <p><i>(Paragraphs 8.32-8.40)</i></p>	<p>Controls are currently in place to ensure that contract fees and payments are made in an accountable and open manner. These payments, as well as all other aspects of contract management, are open to scrutiny and have been reviewed by the Department's internal auditors. The processes utilised are under constant review and improvements are made where applicable.</p> <p>In regards to the prisoner trust account monies; AIMS and the Department are currently establishing a system that will allow auditing of these accounts, an audit on previous records, and the establishment of a double entry accounting system that will facilitate future audits.</p>
<p>7 The Department must be alert to, and comply with, its statutory obligation to table contract variations in Parliament and to provide sufficiently detailed annual reports for Parliament to make an 'informed assessment' of Acacia's performance.</p> <p><i>(Paragraphs 8.41-8.44)</i></p>	<p>The Department will continue to fulfill its statutory requirements as specified within the <i>Prisons Act 1981</i>. Issues identified in the Inspector's report as possible variations will be reviewed and acted upon.</p>
<b>CONTRACT MANAGEMENT OF SERVICE DELIVERY</b>	
<p>8 On-site monitoring should be enhanced and the Monitor's regular reports should be used within the Contract Management Directorate to undertake trends analysis.</p> <p><i>(Paragraphs 8.4-8.12)</i></p>	<p>The processes for the on-site monitoring of Acacia Prison are currently under review with a view to including trend analysis.</p>
<p>9 The head office contract management team should adopt a more systematic, assertive and business-like approach when faced with issues of contract compliance.</p> <p><i>(Chapter 8, passim)</i></p>	<p>A proposed Performance Linked Measure is being developed that will provide the mechanism to allow Contract Management to better regulate contract compliance. The Department will continue to review and improve its contract management process for Acacia Prison.</p> <p>This measure is part of a recent review and is currently being considered prior to formal contract variation.</p>
<p>10 Contract management should either use the RFP standards (as the contract seems to us to permit) or should develop detailed new performance measures and templates by which to measure contractor performance.</p> <p><i>(Paragraphs 1.32-1.33, 8.45-8.48 and 8.67)</i></p>	<p>The performance measures used for Acacia Prison are consistent with performance measures for all prisons within the Western Australian prison system. Results are currently published in a monthly report on prison performance. The Contract management team continually review performance indicators for improvement to assist in decision-making processes. A further review will be conducted of RFP standards.</p>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<p>11 Contract management measures must include key 'inputs' such as staffing levels and competence and not merely 'outputs'.</p> <p><i>(Paragraphs 7.14-7.21 and 8.49-8.52)</i></p>	<p>Contract management of Acacia will continue to focus on improving ways it measures the outputs of performance at Acacia Prison and will consider the usefulness of additional input measures. In addition, compliance with key activities will continue to be applied and improved.</p> <p>The Contract management team and the Monitoring Services will continue to evaluate existing input performance measures.</p>
<p><b>STAFFING AND ON-SITE MANAGEMENT</b></p>	
<p>12 There should be a ground up review of staffing levels and needs across the prison involving, if necessary, an independent human resources consultant. The review should include:</p> <ul style="list-style-type: none"> <li>• Staffing needs to meet contractual obligations (as done during the tender process);</li> <li>• A staffing template for all shifts; and</li> <li>• Strategies to recruit and retain more Aboriginal staff.</li> </ul> <p><i>(Passim, and particularly paragraphs 7.13-7.23)</i></p>	<p>AIMS have established a Joint Consultative Committee, comprising of management, union, staff representatives and a consultant who has extensive experience in designing staffing models for custodial establishments, has recently been set up to review staffing arrangements in all areas of the prison.</p> <p>The review will include an assessment of staff deployment, and staffing templates.</p> <p>The Human Resources Manager has been tasked with devising a strategy for recruiting and retaining more Aboriginal employees.</p>
<p>13 Improved staff training and professional development programs should be introduced.</p> <p><i>(Paragraphs 7.18-7.21)</i></p>	<p>AIMS have developed a new staff-training program, which has been prepared and approved by the General Manager. As part of a review of management responsibilities, and in recognition of importance of professional training and development the Human Resources Manager now reports directly to the General Manager.</p>
<p>14 The role of the GM and/or the AGM should be re-scoped to have unequivocal and direct responsibility for prisoner well-being and to improve staff/management relationships.</p> <p><i>(Paragraphs 7.24-7.28)</i></p>	<p>With the arrival of the new General Manager the senior management structure has been revised, by AIMS, to produce clearer lines of responsibility, greater accountability and speedier decision-making. The new structure identifies the Head of Throughcare as the position formerly known as the Assistant General Manager. This manager will be responsible for all prisoner activity and support areas.</p> <p>The Human Resources Manager will now report directly to the General Manager and a Joint Consultative Committee has been set up to allow management and staff to address issues of mutual concern. There has also been a marked increase in management presence around the prison. This has resulted in improved staff/management relationships.</p>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>SECURITY AND SAFETY</b>	
<p>15 Memorandum of Understanding should be agreed between:</p> <ul style="list-style-type: none"> <li>• Acacia Prison and fire, police and ambulance services; and</li> <li>• Acacia Prison and the Department’s Emergency Support Group.</li> </ul> <p><i>(Paragraphs 2.7-2.9)</i></p>	<p>The following arrangements have been in place since 2001:</p> <ul style="list-style-type: none"> <li>• Joint Ministry of Justice &amp; Western Australia Police Service Memorandum of Understanding for Major Incidents Occurring in Western Australia, which includes Acacia;</li> <li>• Joint Ministry of Justice (SBBU) &amp; Australian Integration Management Services Memorandum of Understanding for Major Incidents Occurring in Western Australia.</li> <li>• Protocol established between Acacia and the Volunteer Fire Brigade (Wundowie Station) and Western Australia Fire and Rescue Service; and</li> <li>• Protocol established between Acacia and the Ambulance Service (Swan Districts Branch).</li> </ul> <p>The following arrangement has been in place since 2002:</p> <ul style="list-style-type: none"> <li>• Memorandum of Understanding for the Exchange of Information Between the Department of Justice (IAS) &amp; Australian Integration Management Services.</li> </ul>
<p>16 Acacia must refocus on dynamic security through:</p> <ul style="list-style-type: none"> <li>• A philosophy and practice of proactive and interactive unit management;</li> <li>• Appropriate staffing levels; and</li> <li>• Improving the accuracy of smart card movement control.</li> </ul> <p><i>(Chapters 2 and 3, passim)</i></p>	<p>With the arrival of the new management team AIMS has a renewed focus on implementing a culture of dynamic security:</p> <ul style="list-style-type: none"> <li>• The new development-training program for staff includes security awareness and unit management training. Management have increased their direct interaction time with prisoners by more time spent within the prison and more frequent meetings with prisoner groups.</li> <li>• Staffing issues are being addressed through the Joint Consultative Committee. One of their priorities will be to ensure that staff deployment enables increased staff/prisoner interaction and the effective practice of unit management principles.</li> <li>• There have been two updates to the system since the Inspection. These were to increase the robustness of the cards to system abuse, (and the subsequent need to take cards out of use.) AIMS will continue to explore ways of improving the movement system to ensure accurate recording of prisoner and staff movements.</li> </ul>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<p>17 Acacia should develop and implement a comprehensive anti-bullying strategy and cease the practice of removing victims rather than offenders. <i>(Paragraphs 3.26-3.29, 3.33-3.38 and 4.17)</i></p>	<p>Subsequent to the Inspection AIMS has introduced an anti-bullying policy which includes the protection area. The Anti-Bullying Committee meets regularly to address any new issues at the prison and will continue to progress all issues associated with this policy.</p>
<p>18 Procedures relating to visits should be amended to reduce the focus on intrusive checks of visitors and to increase the focus on prisoners and to allow appropriate searching of staff. <i>(Paragraphs 3.5, 3.39-3.41 and 4.29-4.36)</i></p>	<p>The AIMS Joint Consultative Committee will review the visits process. This will include staff deployment and visits procedures. The Security Department will increase the number of unannounced staff searches.</p>
<p>19 Procedures for entry to and use of 'O' Block facilities should be reviewed. <i>(Paragraphs 3.30-3.31)</i></p>	<p>This is being reviewed by the AIMS Joint Consultative Committee.</p>
<p><b>PLACEMENT AT ACACIA</b></p>	
<p>20 The Department should assess its classification and placement practices with reference to all prisoners, and especially minimum-security prisoners and prisoners from remote areas, in order to avoid inappropriate placements. <i>(Paragraphs 4.2-4.5, 5.35-5.37 and 6.5-6.7)</i></p>	<p>Agree. Issues have been identified with Director General Rules (DGR) 13 and 14, which apply to these matters. These Rules are currently being reviewed. A position is being created in Offender Services and Sentence Management to coordinate prisoner placement across the system.</p>
<p>21 In the event that Aboriginal prisoners from remote areas continue to be accommodated at Acacia, the Department and AIMS should develop and implement plans for subsidising travel so that close relatives may visit at reasonable intervals. In addition, the question of subsidised phone calls and/or video visits should be further explored. <i>(Paragraph 6.7)</i></p>	<p>A working party has been developed through the Acacia Prison Indigenous Reference group, whereby representatives from both Acacia Prison and the Department of Justice will jointly consider the issues associated with the placement and care of indigenous people. Acacia Prison and the Department of Justice are committed to developing processes, including weekend visits to the EGRP, that will enhance contact with family for indigenous prisoners located at Acacia Prison.</p>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>RECORD KEEPING</b>	
<p>22 Acacia must improve its record keeping and compliance with reporting requirements with respect to all facets of management, including:</p> <ul style="list-style-type: none"> <li>• Prison incidents</li> <li>• Prisoners' property</li> <li>• Loss of privileges</li> <li>• Protection status and reviews</li> <li>• Lockdowns</li> <li>• Programs</li> <li>• Staff training</li> </ul> <p><i>(Passim, and particularly paragraphs 3.4, 3.15-3.18, 3.23, 3.26, 3.37, 3.41, 5.19-5.20, 5.26 and 7.20)</i></p>	<p>As part of the recent senior management restructure at Acacia, a dedicated Contract Compliance Officer will now be reporting directly to the General Manager. One of his first tasks is to review record keeping and reporting procedures, including those highlighted in this recommendation.</p> <p>The Department will ensure compliance in this area.</p>
<p>23 Acacia should develop a detailed action plan and timetable with respect to disciplinary and grievance procedures, including:</p> <ul style="list-style-type: none"> <li>• Proposed staffing allocations;</li> <li>• Staff training programs; and</li> <li>• Review of the practices in relation to Loss of Privileges</li> </ul> <p><i>(Paragraphs 3.10-3.24)</i></p>	<p>A detailed action plan and timetable is being developed in respect of all recommendations in this Report which require further action by AIMS, including those contained in this recommendation. Actions which have already taken place since the Report include:</p> <ul style="list-style-type: none"> <li>• A full-time prosecutions position has been created.</li> <li>• Prosecution officers have now received on-the-job refresher training through the DoJ Monitor.</li> </ul>
<b>HEALTH</b>	
<p>24 To meet its contractual obligations (including the best industry practice standard), AIMS should:</p> <ul style="list-style-type: none"> <li>• Increase GP services to five days per week; and</li> <li>• Ensure that annual health assessments are completed.</li> <li>• In addition, consideration should be given to the extension of psychiatric services.</li> </ul> <p><i>(Paragraphs 4.21-4.22 and 4.24)</i></p>	<ul style="list-style-type: none"> <li>• The number of "Outstanding Annual Health Assessments" has now been reduced to a minimum following the recruitment of more staff for the Medical Centre. The Annual Health Assessments are now completed within the time allocated and there are no outstanding assessments.</li> <li>• Modifications to TOMS MED tracking now record an accurate reflection of the status of annual assessments.</li> <li>• The Department of Justice have made arrangements for the Department of Health to provide forensic psychiatry to metropolitan adult prisons including Acacia, which will result in increased service levels at Acacia.</li> </ul>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>PRISONER WELL-BEING</b>	
<p>25 The following areas should be evaluated and actioned where necessary:</p> <ul style="list-style-type: none"> <li>• The induction process (especially health and the use of smart cards);</li> <li>• Allowing prisoners to use fans; and</li> <li>• Food quantity and quality;</li> </ul> <p><i>(Paragraphs 4.7-4.9, 4.11 and 4.14-4.16)</i></p>	<ul style="list-style-type: none"> <li>• The Induction Process will be reviewed by the joint DoJ/AIMS review team.</li> <li>• The suggestion regarding the use of fans is not clear as all accommodation blocks are air-conditioned.</li> <li>• Acacia is now part of the Department's food and dietary auditing process. Contract Management Branch have arranged for the Department's Catering Coordinator to undertake regular audits of Acacia's kitchen services and catering to include both quality and quantity of meals being provided.</li> </ul>
<p>26 The oval and gym equipment should be properly maintained.</p> <p><i>(Paragraphs 4.39-4.40 and 8.55-8.56)</i></p>	<ul style="list-style-type: none"> <li>• Subsequent to the Inspection AIMS appointed a Maintenance and Health and Safety Manager who will be responsible for ensuring the regular maintenance of all equipment within the prison to ensure it complies with Health and Safety Legislation.</li> <li>• AIMS has commissioned a report into the state of the Oval in order for an objective assessment to be made and the appropriate remedial action taken.</li> </ul>
<p>27 Given the size and diversity of the prison population, Peer Support Group services should be expanded in order to better represent the total prisoner population - either by having a number of different groups representing different parts of the prison or by an expanded membership.</p> <p><i>(Paragraphs 4.46-4.48)</i></p>	<ul style="list-style-type: none"> <li>• The AIMS General Manager attends the Peer Support Group meetings and is currently reviewing; in consultation with peer support prisoners, the number and diversity of prisoners on the committee and whether there should be more than one group.</li> <li>• AVS representatives visit Acacia on a daily basis, as part of that service an AVS employee, who represents the Wongi community, assists Acacia's Wongi population with various issues and debriefs with management after each visit.</li> </ul>
<b>COMMUNITY AND WELFARE SUPPORT</b>	
<p>28 As required by the contract, AIMS should, as a matter of urgency, engage appropriate community agencies to offer support and advice for prisoners, both pre- and post-release.</p> <p><i>(Paragraphs 4.49-4.51 and 5.41)</i></p>	<ul style="list-style-type: none"> <li>• Organisations such as NA and AA, Mirabooka Well Men's Group and Chaplaincy-related organisations attend Acacia Prison on a frequent basis. These have been established by AIMS who will continue to take steps to increase community involvement.</li> </ul>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>EDUCATION, PROGRAMS AND WORK</b>	
<p>29 AIMS and the Department must review Acacia's compliance with its contractual obligation to deliver treatment programs in accordance with IMPs. Action is needed to address problems relating to program overlap, program overlap, program intensity and the integrity of program delivery (including excessive reliance on prisoners, staff qualifications and availability, and the shortening of programs).</p> <p><i>(Paragraphs 5.3-5.24)</i></p>	<p>AIMS and representatives of the Department have agreed to a schedule of delivery to address the shortfall of programs for 2003. AIMS will increase funding for 2004 program delivery and has agreed the number and content of programs with the Department.</p>
<p>30 Education should be improved in terms of the range of course offerings (including a greater focus on core subjects) and program integrity (including excessive reliance on prisoners).</p> <p><i>(Paragraphs 5.25-5.27)</i></p>	<p>Agreed. An education professional from the Department of Justice has been allocated to Acacia on a period of secondment to assist in revitalising the education department.</p>
<p>31 Vocational training packages should be developed and tied into prison-based work opportunities.</p> <p><i>(Paragraphs 5.25-5.28)</i></p>	<p>The AIMS Industries Manager, in consultation with the Offender Services Manager is preparing an action plan to enhance the vocational education training opportunities for prisoners.</p>
<b>EDUCATION, PROGRAMS AND WORK</b>	
<p>32 The Department and AIMS should address areas of shortfall, including:</p> <ul style="list-style-type: none"> <li>• Inappropriate prisoner placements (and consequential delays in release);</li> <li>• Provision of adequate CCO support by the Department and support of CCOs by AIMS; and</li> <li>• The development of firmer links with relevant community and welfare agencies.</li> </ul> <p><i>(Paragraphs 5.33-5.41)</i></p>	<ul style="list-style-type: none"> <li>• A joint DoJ/AIMS review team will address this issue.</li> <li>• There will shortly be an increase in the availability of CCOs at Acacia Prison. Issues in respect to the accommodation of CCOs is being resolved. Other issues will be reviewed by the AIMS Joint Consultative Committee.</li> <li>• AIMS are endeavouring to identify additional links and firm up existing links with community and welfare agencies.</li> </ul>

## RECOMMENDATIONS AND RESPONSES

Recommendation	Response
<b>ABORIGINAL PRISONERS</b>	
<p>33 AIMS and the Department must develop a detailed plan and timetable for addressing the systemic discrimination faced by Indigenous prisoners, including:</p> <ul style="list-style-type: none"> <li>• Cultural dislocation.</li> <li>• Access to the cultural area.</li> <li>• Interpreters and other culturally relevant supports.</li> <li>• Funeral applications</li> <li>• Transfers to other prisons for visits.</li> <li>• Assistance for families from remote areas to visit prisoners.</li> <li>• Financial support to return home on release.</li> <li>• Over-representation in lower levels of accommodation and work.</li> <li>• Lack of culturally relevant programs.</li> </ul> <p><i>(Chapter 6, passim)</i></p>	<p>A joint DoJ/AIMs review team will address these issues.</p>



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES

Level 27, 197 St George's Terrace, Perth, Western Australia 6000  
Telephone +61 8 9212 6200 Facsimile +61 8 9226 4616 [www.custodialinspector.wa.gov.au](http://www.custodialinspector.wa.gov.au)