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OFFICE OF THE INSPECTOR OF CUSTODIAL SERVICES

REPORT OF AN ANNOUNCED  
INSPECTION OF METROPOLITAN COURT  
SECURITY AND CUSTODIAL SERVICES



## Report of an Announced Inspection of Metropolitan Court Security and Custodial Services

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# The Inspector's Overview

## PRIVATISING CRIMINAL JUSTICE SERVICES AND THE QUESTION OF AMBIVALENCE

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The usual mode of assessing whether privatisation of criminal justice services has been successful is to look at the performance of the contractor in providing those services – in this case AIMS. That is obviously the core question. However, the attitude and skills of the purchaser – the Department of Justice and ultimately the State of Western Australia – are also relevant. If the performance of the contractor is not up to standard, the likelihood is that the performance of the purchaser in managing the contract is also not up to standard. The State cannot obliterate its responsibility and risk by contracting out services, so the purchaser must remain vigilant and involved.

The most striking example of State failure in recent Australian history concerns the privatised Immigration Detention Centres. The performance has been deplorable in terms of the maintenance of decency, human rights, equity and order – as evidenced by the long sequence of riots, hunger strikes, psychiatric stress and neglect documented in several reports, notably those of HREOC and of Mr Mick Palmer (into the case of Cornelia Rau). Successive contractors – GEO and GSL – have rightly been criticised for these things. Yet no less at fault has been DIMIA, the responsible Commonwealth Department that was meant to be managing the contract so as to ensure the appropriate standards were met. Documentation before HREOC established both its lack of commercial competence, its ignorance of applicable international standards, its deficient grasp of the notions of accountability and the public interest, and its active indifference to achieving the outcomes.

In Western Australia we are, fortunately, far short of this catastrophic situation, either on the provider or the purchaser side of the privatised arrangements. Yet, as our own inspections of Acacia Prison have shown, the Department has not always fully understood the responsibilities that go with contracting out services to private providers. On the one hand, poor performance on site has quite often been tolerated; on the other hand, improvements and assistance have been made available to AIMS. All this within a context where the full tool set of accountability has not been used.

Similar ambivalence has marked the CSCS contract, relating to court security and custody as well as prisoner transportation. It is as if the Department, or the State, has still not really made up its mind whether it positively wants privatisation to deliver the results or whether it would not be unhappy if the whole thing fell over. This ambivalence emerged during this inspection in several ways:

- a cost-based rather than a needs-based financial model;
- under-resourcing of the contractor;
- related to this, under-investment in infrastructure;
- poor communication between the parties;
- lack of apparent belief in the notion of Parliamentary scrutiny; and
- inadequate appreciation of the concept of accountability.

### **COST-BASED FINANCIAL MODEL**

The Report describes the arbitration process involving the parties. The decision that it was properly construed as a ‘costs plus’ rather than a fixed price contract meant that the Department had to pay for the services actually delivered. Because they had been underestimated, the contract price consequently increased. (This was an illustration of the point made earlier, that the purchaser often lacks the skills or experience to understand the commercial context of contracting out; to anyone versed in business matters, it is impossible to imagine that any arbitration could reach the decision that a party had contracted for unlimited services at a fixed price.)

Once bitten, twice shy – the Department has now imposed a supposedly fixed upper limit on a costs-plus contracting model, stating that the ‘risk will be shared’ thereafter – i.e. that there will have to be further negotiation as to costs and services once the money runs out. Inevitably, it will do so before the end of the financial year; and the services cannot simply cease at that point. It is a very peculiar way of doing business.

### **UNDER-RESOURCING**

In that context, the Department needs to keep costs down, and staffing levels can only be varied for various services by mutual consent. That has meant that the contractor sometimes is expected to perform tasks at a level that is far too lean. The best example relates to the Children’s Court custody centre. Having taken it back in-house, the Department has staffed it at a level almost twice as great as it permitted AIMS. Whilst the point of privatisation is to get costs down whilst continuing to provide an acceptable level of service, the disparity might suggest that the Department was forcing AIMS down to a staffing level where the service was at real risk of falling below an acceptable standard. If so, the driver would have been costs, yet the standard should be a safe and decent level of human service.

### **UNDER-INVESTMENT IN INFRASTRUCTURE**

It will be recalled that the Department declined to address security issues at the Supreme Court on the basis that the risk was not such as to justify expenditure at a time when a new Courts building was planned for 2007/08 – seven years later than the problem was identified by this Office and the recommendation made. It must be said that some real efforts have now been made to improve the infrastructure at several court complexes. But the Central Law Courts remain problematic on the same basis – it would be wasteful, the Department says, to spend relatively modest amounts now. This is a risk calculation that the Department is entitled to make, and it may well be a perfectly sensible one. However, it needs to satisfy itself that the human management systems are additionally robust in the interim to compensate for the infrastructure risk.

### **POOR COMMUNICATION**

In February 2005, the Chief Justice drew the Department’s attention to a series of late or non-arrivals of prisoners at various Supreme Court venues. An internal investigation by the

Department (Critical Incident Review IN090305) identified communication failures, both IT and interpersonal, between prisons and AIMS transport and the courts. This had also been a factor in the Supreme Court escape incident.

#### **PARLIAMENTARY SCRUTINY AND CONTRACT VARIATIONS**

An absolutely central aspect of the statutory framework enabling privatisation was transparency; thus the requirement that not only the head contracts but also subsequent contract variations should be tabled in Parliament. This Office has previously documented breach of that obligation in relation to the Acacia Prison contract; breaches in relation to the CSCS contract have been even more numerous and flagrant. This omission seems inexplicable – and is certainly inexcusable.

#### **ACCOUNTABILITY**

The other major accountability failure concerns this Office. As the Report shows, undertakings made in relation to Report No. 7 have not been energetically pursued. This point is summarised in the Score Card (Appendix 2.)

The above factors may be explicable simply in terms of “normal” bureaucratic inertia. Or they may demonstrate ambivalence about the contracting arrangements themselves. In either event, given that the contract is now in its sixth year of operation, there must now be real commitment to ensuring that the court custody and security functions are properly resourced, produce decent outcomes for prisoners, meet the legitimate expectations of courts and judges, and possess sufficient stability for the contractor to invest in the workforce by way of training, wide-ranging recruitment and systems.

This is particularly so with the advent of a further complication – the foreshadowed splitting of the Department of Justice into two entities – the Department of Corrections and the Department of the Attorney General. When that occurs, responsibility for and involvement with the operational outcomes of the CSCS contract will straddle the two Departments – prisoner transport with Corrections and court custody and security with Attorney General’s. The system needs to be robust and working smoothly by the time that this administrative complexity is added to the issues on the ground.

On balance, the evidence to date suggests that the CSCS arrangements as a whole could provide an integrated service of reasonable quality, whilst achieving its initial objective of freeing up police and corrections personnel for their own core tasks. It is now time to settle once and for all the extent of the commitment that the Department(s) and the State are prepared to put into making the system work.

Richard Harding  
Inspector of Custodial Services  
5th December 2005.

# Chapter 1

## CHANGES IN THE OPERATIONAL ENVIRONMENT: THE INSPECTION IN CONTEXT

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### THE CONTRACT

- 1.1 On 17 January 2000 the Contract for the Provision of Court Security and Custodial Services ('the Contract') was entered into between the Department of Justice ('the Department') and AIMS Corporation<sup>1</sup> ('AIMS') for the provision of court security, court custody and certain transport services of persons in custody in Western Australia. On 31 July 2000 AIMS commenced management of eight metropolitan court custody centres, with ownership of the facilities remaining the property and responsibility of the Department.<sup>2</sup> The Contract is understood to be the focal document defining the relationship between AIMS and the Department and therefore provides a context for this Inspection. Also pertinent to understanding and interpreting the relationship between the Department and AIMS is the *Court Security and Custodial Services Act 1999* ('the Act'), which provided the legal framework for the Department to contract out specified services to private companies.
- 1.2 The original intention behind contracting for the provision of court custody services was to combine the responsibility under one authority for 'adults, juveniles, accused persons, offenders', certain intoxicated and mentally ill detainees in court custody and in police lockups, and for the movement of persons in custody generally<sup>3</sup> and to 'eliminate existing impediments to continuity of service delivery and accountability'.<sup>4</sup> This intention was never fully realised. While the Chief Executive Officer of the Department of Justice did assume responsibility for all persons within court custody centres<sup>5</sup> and other parts of the court premises at the eight metropolitan court custody centres and a number of regional centres, lockups were never incorporated into the contractual framework<sup>6</sup> and in more recent times certain functions under the Contract have been reclaimed by other government agencies.

### Financial Arrangements

- 1.3 Since its inception, the parameters of the Contract have changed markedly, both in terms of the demand for services and the scope of the services provided. From the outset it became apparent that the Department had substantially underestimated the demands of its own services, with an increase in service demand of about 30 per cent higher than planned.<sup>7</sup> This was recognised by a letter of agreement between the Department and AIMS that varied the original Contract price from \$11,725,465 to \$15,875,485 – an increase of 35 per cent. A 2001 Departmental review estimated that the resource hours required for both court

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1 Corrections Corporation Australia (CCA) was half owned by Sodexo Alliance, a French multinational. Subsequently, Sodexo became sole owner of CCA and changed its name to AIMS.

2 A more extensive discussion of the history of the legislation permitting the contracting of services and the Contract can be found in Report No.3, *Report of an Announced Inspection of Adult Prisoner Transport Services* (Office of the Inspector of Custodial Services, Perth, 2001) and Report No. 7, *Report of an Announced Inspection of Metropolitan Court Custody Centres* (Office of the Inspector of Custodial Services, Perth, 2001).

3 Second reading speech, *Hansard*, 12 November 1998, p. 3372.

4 *Ibid.*

5 Court Security and Custodial Services Act 1999 (WA) s 10.

6 With the exception of the Carnarvon lockup.

7 Department of Justice, *Court Security and Custodial Services Contract: Annual Report 2000–2001* (undated), p. 1



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custody and security functions for all courts serviced by AIMS totalled 326,979.5 hours per annum, considerably higher than the 293,720 hours claimed in the first year of operation.<sup>8</sup>

Despite this the Department refused to accept the budget proposal from AIMS for the second service year and the matter went to arbitration. At the core of the dispute was the Department's belief that the Contract was one for a fixed cost service, whereas AIMS interpreted it as 'cost plus', which would allow the company to pass on certain increases in costs for services. This was the point at which the parties found themselves at the conclusion of this Office's first Inspection of metropolitan court custody centres.<sup>9</sup>

- 1.4 Reporting on the second year of operation, the Department described the arbitration as 'a protracted and costly' process that 'ultimately defined a contract that was very different to that envisaged by the State. At the close of arbitration, the Department found itself in a position where its ability to behave as a true client, and manage the contract in terms of price and value, has been severely diminished.'<sup>10</sup> At arbitration the Contract was determined to be 'cost plus', which meant the Department was generally liable for any cost increases where these were incurred in the delivery of services. This heightened the risk of AIMS driving its own costs (especially as its profit margin is calculated as a percentage of the total Contract cost) and caused the Department to label the Contract as a 'financial risk' to the State for the remainder of its term. Contrary to this apparent risk, the Department insisted on discounting court security and custody hours for the second service year by four per cent, or 12,000 hours.<sup>11</sup> The final payment for the second service year totalled \$17.5 million.
- 1.5 The difficulties surrounding the Contract continued in the third service year with the Department stating that it continued to 'present enormous challenges'.<sup>12</sup> This was so much so that in March 2003 the Department undertook a comprehensive review in order to identify 'effective, efficient and economical ways of delivering these service elements' and found services could be delivered for at least \$1.5 million less.<sup>13</sup> However the number of persons being held in custody continued to rise sharply, which resulted in an increase in the Contract cost to almost \$18 million.<sup>14</sup>

8 Department of Justice, 'Court Services and Prisoner Movements – New Resourcing Levels' (undated), p. 1. This does not include allowance for gallery guards other than in superior courts. In fact AIMS is yet to claim for that number of court security and custody hours in any service year to date.

9 Report No. 7, *Report of an Announced Inspection of Metropolitan Court Custody Centres* (Office of the Inspector of Custodial Services, Perth, 2001).

10 Department of Justice, *Annual Report: Court Security and Custodial Services Contract* (September 2002), p. 1.

11 Department of Justice, 'Two Year Schedule Only Yr 3 TBA' (undated).

12 Department of Justice, *Annual Report: Court Security and Custodial Services Contract* (September 2003), p. 2.

13 *Ibid.*, p. 2.

14 *Ibid.*, pp. 6 & 20.

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- 1.6 In December 2003 negotiations between AIMS and the Department over the fifth and final year of the Contract were underway with a view to its subsequent extension. These negotiations resulted in AIMS' proposal to operate at a fixed<sup>15</sup> and reduced price (\$2 million less than the previous year) based, in part, on the loss of significant functions. The proposed functions reclaimed by the Department included the transport and custodial services for juveniles; the ownership, maintenance and management of the secure transport fleet; medical, funeral and hospital transports for metropolitan minimum-security prisoners; and the redundancy of a number of permanent staff at metropolitan and regional custody centres.<sup>16</sup> Despite the arbitration finding that the agreement was a 'cost plus' contract, AIMS identified 'the pressure to remain within an agreed budget while meeting the fluctuating demand for service'<sup>17</sup> as one of the challenges facing the service. The cost of the fourth year of the Contract was more than \$18.5 million.
- 1.7 Fifth year contract negotiations were interrupted in June 2004 when nine prisoners, who had been in AIMS custody, escaped from the Supreme Court custody centre.<sup>18</sup> At the time the Department reported that:

*Despite some basic services being delivered well, the report of Richard Hooker into the Supreme Court escapes, tabled in Parliament on August 2004, confirms issues of concern and reinforces the imperative that the Department carefully considers the options for managing court security and custodial services in the future.<sup>19</sup>*

Notwithstanding this apparent cautionary stance, at the time of writing the Department and AIMS had agreed that the Contract would be extended (albeit with a reduced scope of services) but the terms had yet to be finalised. Interestingly, also at the time of writing, the running of the Supreme Court custodial functions had been returned to AIMS 'upon the refurbishment of the facility being completed'.

15 Although it was proposed that additional fees would be payable annually for increased volume of court resourcing hours and prisoner movements beyond three per cent.

16 Correspondence from AIMS to the Acting Director of Custodial Contracts, 12 December 2003.

17 AIMS Corporation, *Court Security and Custodial Services: Annual Report 2003–2004*, p. 3.

18 A more extensive discussion on the impact of this event on the Contract and its performance can be found at paragraphs 1.13 to 1.17.

19 Department of Justice, *Annual Report: Court Security and Custodial Services Contract* (September 2004), p. 2.

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**Service Demand and Resources**

1.8 The following table<sup>20</sup> provides an overview of the demand for court security and custodial services under the Contract, and the resources utilised to meet that demand, over the first four years of operation.<sup>21</sup>

	Year 1 2000/01 <sup>1</sup>	Year 2 2001/02	Year 3 2002/03	Year 4 2003/04
Actual AIMS staff numbers:				
- Permanent	121	110	N/A	73
- PFT	59	78	N/A	110
- Casual	95	107	N/A	78
<b>Total staff numbers</b>	<b>275</b>	<b>295</b>	<b>264</b>	<b>261</b>
Court security hours	157,706	142,626	139,199	144,489
Court custody hours	133,586	128,887	129,247	134,289
Court sitting hours	34,979	36,115	34,328	33,897
Ratio of court security resourcing hours to court sitting hours	4.75 <sup>2</sup>	3.98	4.06	4.27
Prisoner movement hours	137,741	126,037	122,950	116,047
<b>Total service delivery hours</b>	<b>431,461</b>	<b>397,550</b>	<b>421,981</b>	<b>423,882</b>
Number of persons managed in custody	29,170	26,447	28,777	28,981
Prisoners in custody transported	43,149	58,641	54,650	58,925
Road kilometres <sup>3</sup>	2,205,310	1,991,159	1,890,673 <sup>4</sup>	1,904,166
<b>Total Contract Price</b>	<b>\$16,842,063</b>	<b>\$17,409,990</b>	<b>\$17,852,587<sup>5</sup></b>	<b>\$18,607,496<sup>6</sup></b>

Notes:

1. AIMS financial years run from August to July.
2. Based on average October 2000 to July 2001.
3. Data for August, September and October 2000 was not collected because AIMS Corporation did not have the appropriate systems in place.
4. Year 2 does not include hospital sit hours.
5. Performance linked fee may be adjusted as a result of coronial inquiry.
6. This figure may vary following reconciliation of the performance based fee.

20 Compiled from information provided in the Annual Reports of the Department and AIMS from 2000–2001 to 2003–2004.

21 While falling outside the timeframe of the Inspection period, a table including operational services for year five of the Contract can be found at Appendix Three.

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- 1.9 While this illustrates that the overall level of court security and custodial services staff has marginally decreased over the term of the Contract, it clearly shows the significant decline in the number of permanent full-time staff and a corresponding growth in the number of permanent part-time workers.<sup>22</sup> Also clear is that despite the increasing number of prisoners being transported, the prisoner movement hours have declined dramatically. This effectively means that although AIMS is transporting more people, it is using less time (and covers less distance) to do so.<sup>23</sup>

### Scope of Services Provided

- 1.10 Throughout the course of this Inspection<sup>24</sup> it became clear that not only had the Contract altered in terms of the demand for services provided, but that many of the actual terms of the Contract itself had altered. Variations to the Contract noted throughout the course of the Inspection included:
- AIMS transporting persons in custody from lockups where they have not yet been dealt with by the courts;<sup>25</sup>
  - An agreement on 12 April 2001 to substantially vary the Contract services and Contract prices for the first year of operation;<sup>26</sup>
  - AIMS servicing District Court and Supreme Court hearings at the Rockingham and Fremantle Courts;<sup>27</sup>
  - AIMS servicing District Court hearings at the Joondalup Court;<sup>28</sup>
  - AIMS servicing the Mandurah courts and custody centre;<sup>29</sup>
  - The suspension of AIMS' contracted custodial duties at the Supreme Court from 14 June 2004;<sup>30</sup>
  - The removal of AIMS' contracted custodial services to juveniles at the Perth Children's Court and contracted metropolitan transport services for juveniles from 1 August 2004;<sup>31</sup>

22 Further discussion of service demand and resource availability can be found in Chapter 2 with relation to staffing issues.

23 It should be noted, however, that there has been some loss of functions in the second half of 2003-2004 but this has not had a significant impact.

24 Court custody centres were inspected throughout December 2004.

25 In the case of the East Perth lockup, an agreement was reached between AIMS and the Department to transport arrested persons to the CLC even before the Contract had commenced.

26 See paragraph 1.3.

27 Refer to the Contract, Schedule 2, Part 2, clause 2.2.

28 Ibid.

29 Ibid. See also the Contract, Schedule 2, Part 3, clause 3.3.1.

30 It appears that this action was taken by the Director General of the Department under the terms of section 59 of the *Court Security and Custodial Services Act 1999* (WA) which allows for the Director General to intervene in a contract if the contractor has failed to effectively provide a service. It might be arguable that this is a variation to the Contract; however, given that it has substantially changed the scope of the Contract, it would be prudent to comply with the requirement of notification to Parliament.

31 The Department has also removed AIMS' contracted function of transporting juveniles in the metropolitan area but retained AIMS' court security functions and custodial services to adults in custody at the Children's Court.

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- Two deferrals of the time required to make a decision on Contract renewal, firstly to 30 October 2004 and then until 31 March 2005;
- AIMS' establishment of a Security Support Group, which has capacity to undertake transport of prisoners assessed by the Department as high security, contrary to the original understanding of the Contract terms;<sup>32</sup>
- Transfer of 'ownership of vehicle fleet' (lease agreement) to the State.

1.11 Also apparent was that none of these agreed changes had complied with the legislative requirement that all such variations be tabled in Parliament within 30 days of the House next sitting, or indeed at all.<sup>33</sup> This Office has a number of concerns in relation to this disregard of process and an extensive discussion of variations to the Contract and the accompanying issues of accountability and legality can be found in Chapter 3 of this Report.

### Conclusion

1.12 The paragraphs above have endeavoured to provide a context for the Inspection in describing the contractual position that has governed the performance of the Contract, the delivery of services and the relationship between the contracting parties. It is evident that over the course of five years of the Contract that pressure existed on AIMS to ensure costs remained low to assist its position in negotiations with the Department for the extension of the Contract. This meant that rather than driving its own costs up (as profit margin is calculated as a percentage of total cost to the Department) the Inspection has found that AIMS is most likely driving costs down – often at the Department's insistence. In addition to the decreasing number of service hours outlined in the table at paragraph 1.8, evidence of this was found during the course of the Inspection in relation to staffing, training, services provided to persons in custody and the resources available to provide court security services. These issues will all be discussed in the following chapters of this Report.

### THE ESCAPES FROM THE SUPREME COURT

1.13 On 10 June 2004 nine prisoners escaped from the custody cells at the Supreme Court while under the supervision of AIMS. Following the escape an inquiry was established under the *Public Sector Management Act 1994* and the *Court Security and Custodial Services Act 1999* in order to (among other things) establish what occurred, the respective roles of AIMS and the Department in the occurrence of the event and the adequacy of infrastructure at the Court.

1.14 The event caused a number of immediate reactions that changed the service provision under the Contract and are significant in providing a context for this Inspection. On 14 June 2004 the Director General of the Department resumed control of the court custody facilities at the

32 Refer to 4.3 Policy Directive 50 and Contract clause 3.3.3(a), which stipulate that AIMS should not undertake high security escorts, although it should be noted there has been a history of dispute between the Department and AIMS as to the interpretation of this clause.

33 *Court Security and Custodial Services Act 1999* (WA) s 45(4) and *Court Security and Custodial Services Regulation 1999* (WA) reg 3.

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Supreme Court pursuant to s 59 of the Act and Departmental staff replaced AIMS in the custody centre. AIMS continued to provide front-of-court security and support services. Following on from this, a number of operational changes were put in place, mostly in relation to matters of security. Another immediate consequence was the suspension of negotiations for the extension of the Contract with AIMS.

- 1.15 As a result of the arrangements put in place – and in light of relevant recommendations made in relation to the Supreme Court custody centre by this Office in its first Report on metropolitan court custody centres<sup>34</sup> – an Inspection of the custody centre was conducted by this Office commencing on 18 June 2004. As the Inspection of that centre had occurred only recently before the completion of this Inspection,<sup>35</sup> the Supreme Court complex was not included in the gambit of this Inspection.
- 1.16 Since the Inspection there has been an emphasis across all court complexes and custody centres on issues related to security and many of the security changes implemented as a result of the Supreme Court escapes have subsequently been put into place at the other metropolitan court custody centres. Chapter three will focus on the impact of some of these changes, the processes involved in their implementation and the implications for resources and service delivery at the various court custody centres. Training delivered to AIMS staff has also been affected, and this will be discussed in Chapter two.
- 1.17 A final impact of the escapes on the scope of this Report relates to court security and custodial services operating from Fremantle and Rockingham Courts. Capital works authorised by the Department as a result of the escapes has meant that the capacity of the Supreme Court complex has been limited and a number of Supreme Court trials have been transferred to Fremantle and Rockingham. In light of the proposed transfer of some Supreme Court functions to these centres, the Inspector was requested by the Minister for Justice to make an assessment as to whether they were fit for this purpose. As Rockingham and Fremantle had therefore been recently subject to review, they were not included in the scope of this Report. A copy of the report provided to the Minister with regards to Rockingham and Fremantle is attached as an Appendix to this Report.

### THE SCOPE AND METHODOLOGY OF THE INSPECTION

- 1.18 Similar to the inaugural inspection of metropolitan court custody centres undertaken in 2001, this Inspection has focused on the treatment and conditions of persons in custody, the performance of AIMS in meeting the service requirements stipulated in the Contract<sup>36</sup> and the relationship between the Department and AIMS in the delivery of services. However, it

34 Report No. 7, op.cit.

35 Report No.25, *Inspection of the Interim Arrangements at the Supreme Court following the Escape of Nine Prisoners from the Custody Area on 10th June 2004* (Office of the Inspector of Custodial Services, Perth, December, 2004).

36 Stipulated in the Contract, Schedule 2, Part 3.

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should be noted that this Inspection is wider in scope, in that it is not only restricted to court custody centre services, but also examines the provision of front-of-court services including court complex security, courtroom security and court orderly duties.

- 1.19 Despite the Supreme Court's exclusion from this Inspection, the number of court complexes and custody centres inspected has increased since the first round inspection. In addition to Armadale, Fremantle, Rockingham, Midland, Central Law Courts (CLC) and Joondalup – each inspected in 2001 – the Perth Children's Court and Mandurah court complex<sup>38</sup> were included in this Inspection.
- 1.20 Because this Inspection constitutes a reinspection of the original six court custody centres, the method for inspecting them falls within the 'second phase' inspection approach outlined in detail in Report No.24 of this Office. This approach requires the Inspector to assess the progress made against recommendations and baseline findings from the preceding inspection, as well as identifying any new trends and issues.<sup>39</sup> The findings from the Inspection of the two 'new' centres – Perth Children's Court and Mandurah – will be discussed in the context of findings at other centres, but a number of issues at these two centres are highlighted in Chapter three as new and emerging issues.
- 1.21 Another development for this Inspection was the use of staff and prisoner surveys. Although a standard practice for the inspection of adult prison facilities, this tool had not previously been used in inspections of any of the services provided under the Contract. For this Inspection surveys were issued to all AIMS staff employed in court security and custodial service duties. A prisoner survey was distributed to a sample of prisoners at Hakea Prison on 14 January 2005 and Bandyup Women's Prison on 24 January 2005.<sup>40</sup>
- 1.22 The staff survey was designed as a short survey comprising 13 questions. Areas covered included general demographic information and questions about training, conditions in court custody centres, safety issues, resource and support. A total of 55 completed surveys, of a possible 279, were returned. Half of the respondents were working under permanent flexi status with 26 per cent permanent and 24 per cent on contract. The average hours worked per fortnight was 71.7, with permanent staff working the longest hours (mean of 93.25 hours), followed by permanent flexi (mean of 71.34 hours) and contract staff the lowest (mean of 50.88 hours). Of those staff responding to the survey, 36 per cent worked at the CLC (either

37 Custodial services relating to juveniles only became a part of this Office's jurisdiction on 15 December 2003 following the assent of the *Inspector of Custodial Services Act 2003*, and had therefore not been included in the first round inspection of metropolitan court custody centres. It should be noted, however, that the Inspector would have had jurisdiction to inspect juveniles in custody at the Perth Children's Court under the terms of the *Court Security and Custodial Services Act* in any event.

38 AIMS commenced the delivery of court security and custodial services to the Mandurah Court in October 2004.

39 Report No. 24, *Report of an Announced Inspection of Roebourne Regional Prison* (Office of the Inspector of Custodial Services, Perth, October 2004).

40 Departmental staff operating services at the Perth's Children Court, numbering 11, was considered too small a sample to provide sufficient anonymity. Juveniles in custody were not surveyed at this time.

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exclusively or in conjunction with other metropolitan sites), with the remainder spread between centres and a large number (38%) working at multiple sites. The average years of AIMS service of respondents was 3.07 years, with ten per cent having less than one year's service. As might be expected permanent staff had worked for AIMS longer (4.5 years) than permanent flexi staff (3.3 years) who, in turn, had worked for AIMS longer than casual staff (1.6 years).

- 1.23 The prisoner survey was designed as a short survey comprising 14 questions. Areas covered included general demographic information; questions about the conditions in, and their experience of, the last court custody centre they attended; identification of safety issues; and suggestions prisoners might have for improvements in the services and conditions relating to court custody. A total of 56 surveys were collected from 31 males and 25 females in an opportunistic sample. Bandyup and Hakea were selected as prisons likely to be holding larger numbers of prisoner recently having contact with a court custody centre. The average age of prisoners responding to the survey was 28.3 years. The sample was evenly split between Aboriginal and non-Aboriginal Australians. The majority of prisoner surveys were currently on remand (52%), with 36 per cent sentenced and 12 per cent a combination of sentenced and remand. Prisoners with a maximum-security rating accounted for 42 per cent of the sample, with medium-security at 35 per cent and minimum-security at 21 per cent. Over two-thirds had last attended the court custody centre at the CLC with the remainder relatively evenly spread over the remaining metropolitan centres.



# Chapter 2

## PROGRESS AGAINST RECOMMENDATIONS

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### DELIVERY OF THE SERVICE

- 2.1 At the conclusion of the 2001 Inspection of metropolitan court custody centres, six recommendations were made by this Office with the aim of improving the quality of services delivered to persons held in custody. As the whole experience of attending court can be extremely stressful and the majority of those attending have yet to be convicted, it is important that persons in custody are treated with respect and given the best opportunity to be able to represent themselves in court.
- 2.2 This Chapter will examine in detail each of the six recommendations made in the 2001 Report<sup>41</sup> and the progress made by AIMS and the Department towards achieving those outcomes. In this context the discussion will be outcome focused; that is, an assessment will be made on the basis of the desired outcome in making each recommendation, the written responses of AIMS and the Department to the recommendation, the actions taken to work toward achieving those outcomes, and the evidence (in terms of the experience of those held in custody) of achievement of those outcomes.

### STAFFING

- 2.3 Court complexes and custody centres rely on their staff to ensure that they are operated safely and securely. It is the duty of AIMS to ensure that staffing arrangements are sufficient to provide the services stipulated in the Contract to a level that will ensure the safety, welfare and security of persons in custody, staff and the general public. The Department, which is responsible for staffing at the Perth Children's Court, is under a similar obligation in respect of that centre. The first set of recommendations in the 2001 Report reflect the findings of that Inspection that the staffing arrangements were such that a deficiency in service delivery was being experienced to various extents across all metropolitan court custody sites. It was recommended generally that AIMS 'should review staffing and rostering policies and procedures so as to better provide the required services'.<sup>42</sup> The aim of the recommendation was to ensure that staffing levels and policies were such as to enable the delivery of all services stipulated in the Contract in a manner that is safe for staff, that would ensure the safety of the public and would provide the best amenity for accused being held in custody.
- 2.4 AIMS responded positively to this recommendation, stating that it was examining the rationales for allocating hours to each court centre and how budgets are allocated. The Department agreed with the recommendation and stated it needed to be consulted during such reviews where services or costs would be impacted. However, this Inspection found that very little had altered since 2001. The following sections will look in detail at the various aspects of this recommendation to assess the progress made by AIMS and the Department.

41 Report No. 7, *op.cit.*

42 *Ibid.*, recommendation 1.

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### Safe and Secure Delivery of Court Custody Services

- 2.5 Under the terms of the Contract AIMS staffing levels are subject to negotiation and agreement with the Department,<sup>43</sup> which results in an agreed staffing level. However, as outlined in Chapter one, there is significant pressure on AIMS to provide services at reduced costs and with optimum staffing flexibility. Both parties must therefore take responsibility for the staffing configuration at court custody centres and front-of-court services.<sup>44</sup>
- 2.6 Each centre has an allocated number of permanent full-time staff. At some centres there is only one staff member in this category – the supervisor. Over the duration of the Contract there has been a reduction in the number of this category of staff.<sup>45</sup> Flexi-time staff are permanent part-time workers who are guaranteed a minimum of 30 hours work per week but can be required for a minimum shift of only three hours at any metropolitan custody centre. Casual staff can be offered shifts at any time at any court location and may be required for as little as three hours a shift. Supervisors at some of sites reported difficulties in attracting the required number of part-time and casual workers to fill positions, meaning staff numbers sometimes fell below the agreed level.
- 2.7 Staffing levels must be such to ensure adequate services to the custody centre (which should always have two staff present while persons are held in custody), as well as court services such as dock guards, court orderlies and perimeter guards. AIMS are also responsible for security in the public gallery of most courts. Most centres inspected experience a tension between adequately staffing the custody areas and having sufficient staff to provide expected courtroom services. This tension has increased since the Supreme Court escapes, as the tightened custody centre security increased the likelihood of escape attempts from the courtroom. The movement of staff into the court to counter this risk has meant custody centres are often left under resourced, on occasion with no officers being in the custody centre. The examples of this provided to the Inspection Team primarily occurred when the designated custody centre officer is called to assist another officer in a public area in an emergency situation. This is unacceptable.
- 2.8 Persons in custody were generally positive about the quality of interaction with AIMS staff and overwhelmingly preferred the current arrangements to those previously, when police operated the centres. However, the survey responses indicated that a significant number of persons in custody, 43 per cent, had poor access to AIMS staff. This was most pronounced at the CLC, where respondents were three times more likely to state this. In addition, just under half of the respondents stated that they felt unsafe in custody centres and this was related to threats arising from other prisoners and lack of supervision by staff.

43 Clause 5.7.1.

44 In response to a draft of this Report, the Department noted that this changes the basis for the determination of FTE. It states that: '[T]he use of a demand model as the basis for estimating service hours is a major improvement on the previous FTE arrangements. The service hours components are considered during negotiations between AIMS and the DoJ.' Department of Justice, *Response to a Draft Report of Announced Inspection of Metropolitan Court Custody Centres*, 20 October 2005.

45 See the table at paragraph 1.8.

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- 2.9 Consistent with the findings of the previous inspection, in almost all of the AIMS-run court custody centres inspected, the major concern expressed by staff was the lack of staff numbers and the consequent safety issues that arose from this. Frequent staffing shortfalls were covered by deploying transport drivers, new graduates or other casual staff who were unfamiliar with the centres or the required processes and procedures. This could result in the serious compromise of the safety and wellbeing of persons in custody and of staff. In addition, where drivers are diverted from their other duties it can add to delays in prisoner movement (including those escorts required to empty court custody centres holding persons in custody that had already completed their court appearances).
- 2.10 During the Inspection, AIMS staff recounted an incident which illustrates how the use of drivers as a gap filling measure could jeopardise the safety of persons in custody. Staff reported that a driver was left alone in the custody centre while other officers attended to court-related duties. There were four men in custody in one cell and a female in another who had come from arrest by police and was affected by alcohol. She kept asking to go to the toilet and eventually started screaming. The driver let her out of the cell and gave her access to the toilet, but did not have a key to unlock the toilet door. The woman, who was trapped in the toilet, became distressed and began screaming. Because staff were not in radio contact the driver could not alert his colleagues to the situation and he was unable to leave the centre unattended. Another officer eventually heard the screaming and came down from court, located a key and let the woman out. After the other officer returned to his court duties, the driver noticed the woman was so distressed that she was having difficulties breathing, but he could not access the first aid cabinet as he had no key. This incident reveals a number of unacceptable risks to staff and persons in custody by the practices currently in place to prop up staff numbers at courts. Six weeks following the event there had been no response to the driver's report. In the opinion of the Inspector this reveals unacceptable management practice in not providing support to staff.
- 2.11 Similar to findings of the 2001 Inspection, most centres reported that perimeter security duties were usually the first sacrificed when staff levels were inadequate. Many court officers interviewed during this Inspection voiced concern with the lack of perimeter security and the risk to the safety of court staff this caused. Some supervisors commented that although log books often stated that perimeter checks had been undertaken these were often cursory. As a service stipulated in the Contract this is not acceptable. With regard to front-of-court services (which it should be noted are not provided for in the lower courts under the terms of the Contract), gallery guards were also often required to act as runners to the Magistrates and Justice of the Peace, which again left a security gap.
- 2.12 Staffing at the Perth Children's Court custody centre was considered to be at an acceptable level. The numbers of Department staff that are on site to service the needs of the juveniles in the custody centre are such that the centre is always staffed at appropriate levels. AIMS fill numerous roles at the court including perimeter patrols and public area security, as well as

## PROGRESS AGAINST RECOMMENDATIONS

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providing a gallery guard for one court and one court orderly. AIMS has also retained responsibility for adults in custody appearing at this site. The split responsibilities have resulted in some issues, primarily relating to access to the custody area. AIMS are required to wait to be let into the custody area, as staff do not have access to keys.<sup>46</sup> An average of six adults per week will be held in the Children's Court custody centre, and on these occasions one AIMS officer must be present at all times and two staff are required to escort an adult to court. This necessitates more staff, and often a driver or the supervisor will be required to take on an operational role. It is also common for Department staff to supervise an adult in custody while AIMS staff escort another adult to court. The direct contrast between the adequacy of staffing resources between Department and AIMS staff at this centre was obvious.

- 2.13 The Department's insistence that services can be adequately provided at currently agreed staffing levels is understandably met with a great deal of cynicism by AIMS staff who experience the reality of trying to deliver the range of services on a daily basis. This was exacerbated when the Department took over the custodial functions at the Supreme Court and Perth Children's Court complex and immediately increased the staffing level at both centres. It must also be remembered that all Departmental staff are also full-time employees, unlike AIMS staff who were mostly permanent-flexi or casual employees. At the Supreme Court AIMS had employed two custodial officers, a control operator, a supervisor and three dock guards: a total of seven officers. When it took over the provision of custodial services at centre on 14 June 2004 (following the escape of prisoners) the Department installed a manager, a senior officer, a movements officer, four dock guards, three custody officers and one AIMS administrative officer: a total of 11.
- 2.14 In this context it becomes clear that the Department must re-examine agreed staffing levels. The agreed staffing levels for each centre vary significantly and the Inspection Team could discern little direct correlation between the number of persons being managed in custody, the volume of court work and staff levels. For example, Albany with a monthly average of 52 persons in custody (taken over the period July to December 2004) has nine staff, Bunbury with a monthly average of 80 persons in custody has ten staff, while Joondalup and Midland with a monthly average of 81 and 94 persons in custody respectively have only four staff.<sup>47</sup> At Midland (one of the worst physical facilities) the 'preferred number' of staff now identified by the Department is nine. While this is a positive advance on the previously unacceptable level of four, it raises legitimate concerns regarding how the agreed staffing levels are currently assessed.<sup>48</sup>

46 Nonetheless, there appears to be a good relationship between the two staff groups.

47 Taken from information provided in electronic form by the Department of Justice, 'Yr 5 current preferred staffing model 11.08.041.xls', 'PIC numbers per centre per day NOV 2004 to DEC 2004.xls', 'PIC numbers per centre per day JUL 2004 to OCT 2004.xls'.

48 In its response to a draft of this Report, AIMS stated that it had experienced difficulties retaining adequate staffing levels primarily due to its staff being recruited to various State government agencies or the private sector coinciding with a time of increased service demand. AIMS reported that it had developed a number of strategies to address this issue that has begun to show fruition.

### The Role of Supervisors

- 2.15 In 2001 it was recommended that AIMS supervisors at custody centres not be expected to back-fill vacant positions, particularly on the busiest court days, as it negated their capacity to manage staff, oversee operations and conduct incident management. It was found that ‘unless there is a clear separation of the duties of the supervisor from that of rostered staff, there is a tendency to manage downwards without proper regard to policy and operational principles.’<sup>49</sup> AIMS stated that it would examine this issue, and ‘would be pleased to see the reduction in risk that implementation of this... would achieve’.<sup>50</sup>
- 2.16 Across all court complexes it was found that, because of insufficient staffing, supervisors continue to take on operational roles as a matter of course, including on the busiest court days. The situation is worse at some centres, with Mandurah and Midland being particularly reliant upon the ongoing operational deployment of the supervisor. At Mandurah, despite firmly stating that the role of supervisor was not being overtaken by operational requirements, the Inspection Team constantly witnessed the supervisor being called to perform various operational duties, in particular the processing of persons into custody. In part this seemed to reflect the reliance on transport drivers (who were not adequately equipped to undertake the more rigorous duties required of court custody centre staff) to supplement staff numbers. The employment of an additional custody centre officer should be a priority at Mandurah.
- 2.17 The situation at Midland was also serious due to a combination of staffing issues that needed to be resolved. Not only had the centre experienced staff shortages, but the supervisor had been absent due to a work-related injury, staff conflicts had been ongoing, there was a lack of permanent staff at the site and casual staff were difficult to secure. All these issues need to be taken into hand by AIMS management to ensure adequate ongoing service delivery at the centre.
- 2.18 The situation at Perth Children’s Court presented as best practice. The supervisor at that facility was able to dedicate his efforts to the management of staff and the oversight of operations. He was rarely required to take on operational tasks due to staff shortages, although there was interaction with juveniles in custody throughout the day. The additional staff allocated to the centre by the Department upon resumption of responsibility has enabled this desirable situation to occur.
- 2.19 The Department and AIMS have not addressed this recommendation adequately. Both will need to reassess the staffing levels at each centre, particularly for high volume days, to ensure that the centre supervisor is able to properly oversee operations and not have to assume routine operational duties. The situation is most pressing at Mandurah and Midland and as such, these centres should urgently be reviewed and staffing improvements implemented.

49 Report No.7., op.cit., p. 14.

50 Ibid., p. 46.

### Casual Staff

- 2.20 AIMS had made the use of casual and part-time staff a feature of its workforce in order to maximise flexibility and efficiency and to have the required number of staff at any centre at any given time. This meant it could request staff to attend any centre during busy periods but rely on only a skeleton staff when courts were not sitting or the custody centre was not being used. The first Inspection found that the system had not been operating effectively, primarily due to a high rate of casual staff attrition. As a result it was recommended that the system be reassessed to better meet service requirements.
- 2.21 As mentioned earlier, over the past three years the number of full time staff has been further reduced by AIMS (by approximately 40 per cent) and there has been a slight decrease in casual staff. The balance has been a growth in part-time positions, which have almost doubled in number since the Contract commenced. This category of worker has a minimum of 30 hours guaranteed per week, with a minimum of three hours per shift. The commonly held view that there was not enough work to retain casual staff was not supported generally by Inspection Team discussions with staff or by the survey results. The survey indicated that, on average, casual staff were working 26 hours per week. Interviews indicated that it is the unpredictability of work that created the most difficulties for casual and part-time staff, and many felt that the three hour shifts, particularly at the rate of pay received (\$16 per hour) made such shifts unattractive. This continued to be an issue at some outer metropolitan centres as there is no recompense for travel time.
- 2.22 This issue, along with the 'flat' staffing structure (there are no pay differentiations other than at the level of supervisor), contribute to what staff perceive as the continuing high attrition rate. Although AIMS management do not concede that there is a high attrition rate, the views of staff gain support from data supplied by AIMS for December 2004. It shows that of a workforce of 261 uniformed staff there were six 'terminations' in that month alone.<sup>51</sup> By way of contrast the Department, with a uniformed staff of approximately 1200, allows for an attrition rate of just four officers a month.<sup>52</sup>
- 2.23 In this context the information that AIMS has initiated a process for converting 50 staff to permanent full-time positions and offering additional permanent flexi time status to its casual staff is positive.<sup>53</sup> However, the disappointing aspect of this is that it seems to have been initiated as a result of negotiations over a new Enterprise Bargaining Agreement rather than through management identification of need for workforce stability and improvement to service delivery. The problems being experienced in staffing have also led to the concerning practice of AIMS hiring emergency staffing from local hire firms to undertake limited Contract duties.

51 AIMS, 'CSCS staff list', December 2004.

52 Correspondence Workforce Planner to Executive Director of Prisons, 5 July 2004.

53 AIMS Internal Advertisement (undated), closing for applications closed 14 February 2005.

- 2.24 While it is acknowledged that a flexible workforce is necessary to maximise efficiency, how this is being managed remains a concern. It is hoped that the conversion of a number of positions to permanent and full-time status will address the problems with regard to shortages being experienced in the current pool of staff. Because this issue has continued without improvement since the first Inspection, the Inspector considers that inadequate progress has been made in response to this recommendation.

### TRAINING

- 2.25 All AIMS court security and custodial services staff receive initial in-house recruit training. Until recently, this training had incorporated all aspects of court requirements, including court orderly, dock guard, gallery guard, runner and perimeter guards, as well as training in the processes, security and safety aspects of working in the custody centres.<sup>54</sup> This system was intended to increase staff flexibility by allowing any individual to take on any assigned task at any court centre. The first Inspection of court custody centres found that both staff and supervisors did not receive adequate initial training and that ongoing training was non-existent. Consequently it was recommended that 'AIMS should provide training that will fully prepare staff to fulfil contract service requirements in a safe manner. Training should be of an ongoing nature to ensure the maintenance of necessary primary response qualifications and to promote professional development.'<sup>55</sup> At the time of the last Inspection staff were frustrated with the lack of training for many of their operational duties and the ongoing gaps they identified in their knowledge, which were being filled by unauthorised and inconsistent sessions being operated by many supervisors on-site.
- 2.26 Both the Department and AIMS agreed with the recommendation. However, dispute arose between the parties as to who was responsible for the resourcing of both initial and ongoing training. While the Department commented that it would 'ensure that the Contractor complies with its contractual obligations', AIMS committed itself to the development of a training plan but complained that 'the ability of the Contractor to provide more than the minimum training to maintain safe operation is limited by the State's refusal to pay costs'.<sup>56</sup> This deadlock lasted for some period after the publication of the first Inspection Report, until the outcome of arbitration determined that the Department was generally liable for any cost increases where these were incurred in the delivery of services (including the cost of training).<sup>57</sup> From this time on it was accepted by both parties that not only did the Department have to approve the training delivered by AIMS, but that it must fund it. This resolution should have allowed a fully appropriate training schedule to be developed and implemented.

54 It also includes training for the provision of transport services not examined in this Report.

55 Report No. 7, op.cit., recommendation 2.

56 *Ibid.*, p. 47.

57 See para 1.3–1.4.

- 2.27 Since this time training for AIMS staff has been inconsistent, with the most marked changes being seen between training regimes and systems prior to and following the Supreme Court escapes in June 2004. Initial recruit training seemed to vary very little throughout the period immediately following the first Inspection; however, AIMS did develop packages of 'training grabs' for ongoing professional development. These packages involved worksheets based on discrete areas of operations that were provided to supervisors who were given the task of leading their staff through the worksheets and then returning them to head office. While head office saw this as ongoing training, it was evident through staff surveys and discussions with staff during the Inspection that they did not see the packages as enhancing their skills. Surveys indicated that staff felt up to date with very few of their skills and that they had received no training of significance in the past two years. Discussions with staff clarified that they did not see the grabs as 'training', but merely going through the operations manual.
- 2.28 Surveys also indicated a strong desire for more training, particularly in the management of disruptive persons in custody. People skills and self-defence response training made up 70 per cent of the requests for additional training. This skill deficit was also reflected in the survey of persons in custody where feelings of being poorly managed by staff were highlighted. More generally staff indicated that shadowing more-experienced AIMS officers on the job was more useful than the training grabs, and that the focus on theoretical, rather than practical training was misguided. Some AIMS staff indicated that they relied heavily on previous work experience (such as in security, the armed forces or prisons work) to compensate for the inadequacy of the training they received from AIMS. Many of these staff members were relied upon by less-experienced officers for tutoring. This reflects poorly on AIMS who, together with the Department, have the responsibility of ensuring that staff are equipped to carry out their roles safely.
- 2.29 Following the Supreme Court escapes AIMS made a number of management changes and instituted some new training initiatives. In late 2004 AIMS conducted a training school that combined recruits for both the court security and custody contract and the operation of the AIMS-managed Acacia Prison. It was expected that those attending this training course would be able to cover duties as required either at court complexes or the prison. Two such combined training schools have been completed and were the subject of mixed comment from AIMS staff. Some staff believed that there was no capacity in the combined course for adequate training on the various court security and custodial services roles. This was especially so given that the length of the course combining both functions was only six weeks – the same length previously dedicated separately to each course. Others believed it would provide more work options and therefore improve the conditions of employment for casual staff and help staff retention rates.



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- 2.30 A significant proportion of staff indicated that ongoing training had improved since the escapes, although this was focused in the area of security management. Many staff reported recently receiving a refresher course in handcuffing and a separate session for baton training delivered by the recently formed AIMS Security Support Group.<sup>58</sup> Some staff questioned the quality and quantity of the training, stating that the baton training received was only half an hour in duration and was in the use of batons not actually available at some court custody centres. Also of note was a lack of training in relation to the new key protocols introduced following a Departmental security audit of court custody centres, with the understanding of the protocol varying considerably between sites.<sup>59</sup> While this is addressing an area of need for AIMS staff it fails to provide training in a more diverse range of areas that would enhance service delivery to those being held in custody.
- 2.31 Discussions with staff also highlighted the issue of the lack of time available to undertake the training offered. Training grabs are expected to be managed within staff members' working day. It has been detailed in paragraphs 2.5–2.14 that most court complexes do not have the staff to cover the services required under the Contract, let alone have spare capacity to complete training. Supervisors at some centres informed the Inspection Team that they had not completed all training grabs required due to time pressures. In this context the quality of the training outcomes is questionable.
- 2.32 Departmental staff responsible for the custody of juveniles at the Perth Children's Court reported receiving detailed adequate training in preparation for the resumption of duties at the centre. All staff rostered to the custody centre are already trained group workers and the vast majority had been employed at one of Perth's two juvenile detention centres and therefore had experience in the security and management of juvenile offenders. The training program included:
- escort and restraint training (two days);
  - e-dart refresher course (two days);
  - use of the freeway bus lane for transports (half day);
  - orientation of metropolitan court sally ports and major hospitals (one day);
  - shadowing of AIMS officers on duty (three days); and
  - court protocols, procedures and expectations (half day).
- 2.33 In contrast, AIMS staff that provide court security services and are responsible for the custody of adults attending the Children's Court indicated that their training had not provided them with the range of skills required for their work. While there was a definite level of confidence in the job knowledge for the provision of court support services (such as the orderlies and front desk services), training for skills necessary in the custody centre were seen as inadequate.

<sup>58</sup> See para 2.45 for further discussion about the Security Support Group and its functions.

<sup>59</sup> For a full discussion about the key protocols introduced following the escapes from the Supreme Court, see Chapter 3, para 3.20–3.25.

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- 2.34 At the commencement of the Contract there was a commitment by AIMS that its entire staff would be supported to achieve Certificate III accreditation. This Inspection found little evidence to support that this was occurring. In December 2004, AIMS employed 280 individuals to provide court security and custodial service functions. Of these, only nine had completed Certificate III and only 45 were enrolled and participating in the 16 units required to gain accreditation. Of particular concern was that a number of supervisors had not completed the certification and were not even enrolled, raising issues about the reliance on these individuals to lead the ongoing training of their staff through the system of training grabs.
- 2.35 Since the previous inspection of court custody centres there appears to have been only minor progress with regard to the quality and quantity of initial and ongoing training for staff. While most staff felt confident in the delivery of front-of-court services, this Inspection found that staff are not as prepared to perform their roles in the custody centres. This has resulted in staff still feeling left to rely almost exclusively on more experienced staff, and particularly supervisors, as a mentoring mechanism. This is not acceptable. While there appears to have been some improvement in the delivery of more interactive and practical training since June 2004, this had still not been rolled out to all court custody centres at the time of the Inspection. This recommendation has, therefore, not been acted upon to an acceptable standard.<sup>60</sup>

### AIMS HEAD OFFICE MANAGEMENT STRATEGIES

- 2.36 During the 2001 Inspection it was evident that the majority of staff held an extremely negative attitude towards AIMS head office management. AIMS senior management were rarely seen at court custody centre sites and this caused a great deal of resentment from staff, who believed that management lacked appreciation of the work being performed, the (generally) good work of staff and the issues faced in delivering the services. AIMS management themselves were well aware of this problem having recently commissioned its own staff survey that provided similar feedback.
- 2.37 Consequently, this Office recommended that ‘AIMS senior management should develop and implement active management strategies with regard to on-site court custody centre support, service delivery, compliance assessments and contract performance’ (recommendation 3).<sup>61</sup> Implementation of this recommendation would require demonstrable improvement in the support of AIMS custody centre staff (including supervisors), a recognition of good (as well as an identification of inappropriate) performance from its workforce, improved staff morale and the consequential improvement to service delivery that would flow from this.

60 In its response to a draft of this Report, AIMS acknowledged ‘the shortcomings in its training framework and delivery model... To this end AIMS have commenced a full review and rewrite of training material and delivery by a third party expert in close consultation with our training department.’ It includes providing a clear pathway for staff to achieve Certificate III. AIMS Corporation, *AIMS Response to the Draft Report of an Announced Inspection of Metropolitan Court Custody Centres*, September 2005, p. 3.

61 Report No. 7, op.cit, p. 47.

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- 2.38 AIMS agreed with the recommendation and immediately began to act to address the deficiency by relocating a coordinator to an office in the central business district to enable the person in that role to have better access to the main court complexes in the city. Another coordinator was appointed 'to manage better the issues pertaining to casual and permanent flexi-time staff'.<sup>62</sup> Head office also started keeping a register of visits by more senior members of management to the various court centres in order to coordinate visits. At the time of the Inspection, however, this situation had altered somewhat, with two managers at head office becoming the main contact points for resolving issues for supervisors at court custody centres – the Manager of Courts and Manager of Security. While attitudes towards the managers personally were positive throughout the court complexes, the experiences as to how much assistance these managers could practically give to supervisors on-site were mixed. Some supervisors reported receiving immediate and generally successful outcomes following contact with the managers about specific issues, while others were equally negative.
- 2.39 Comments made to the Inspection Team throughout the course of this Inspection indicated a mixed view of the status of the relationship between AIMS head office management and operational staff. Some were vehemently critical, while others indicated that relations had improved over time and that often very positive assistance and support was available from local managers. This was consistent with the results of the survey of staff which found that approximately half of the respondents (54%) believed there was a 'poor' relationship with AIMS management and half describing the relationship as 'satisfactory' (22%) or 'good' (24%). Comments made in the staff survey included: '*AIMS gives out little or no information flow from top down*' and '*management from supervisors up have no idea how to manage staff and make no effort to raise morale*'. While overall this reflects an improved experience for staff, it is still a concern that just over half of respondents do not experience a positive relationship with their employer. Many of the comments made during the course of the Inspection reflected staff not feeling supported by management on issues relating to the welfare of persons in custody, while acting immediately on issues of security.
- 2.40 In contrast with the mixed response to AIMS management, respondents to the staff survey indicated high levels of satisfaction with the nature of their relationship with the Department (79% 'satisfactory' or 'good'), Department monitors (81% 'satisfactory' or 'good'), Court staff (82% 'satisfactory' or 'good') and overwhelmingly positive relations with police (96% 'satisfactory' or 'good').
- 2.41 Generally, this Inspection found improvement to the relationship between AIMS head office management and its staff. More staff on this Inspection reported experiencing support and effective response to issues raised and being aware of whom managers were and their roles. However, this does not mean that the systems and supports in place are adequate: more than half of AIMS staff still reported poor relationships and more support for their work issues coming from sources other than management. Additionally, as has been detailed above, issues

62 Ibid.

relating to training and staffing levels have also not assisted in positive workforce relationships. AIMS has marginally fallen short of making adequate progress on this recommendation, and should engage staff in finding solutions to the issues raised again during this Inspection.

### HIGH-SECURITY ESCORT PRISONERS

- 2.42 A contentious issue arising from the 2001 Inspection was the practice of the Department transporting and delivering its most dangerous prisoners ('high-security escort' prisoners) by specially trained armed guards to the custody of AIMS staff who were not appropriately trained or equipped. The position of this Office was that the management of high-security escort prisoners was excluded from the Contract under the provisions of Schedule 2, Part 3, where it states that such prisoners 'will not be managed by the Contractor, albeit that they may be held and guarded in facilities managed by the Contractor'.<sup>63</sup> The potential dangers of AIMS staff being responsible for this category of prisoner was also discussed at length<sup>64</sup> and resulted in the recommendation that the Department should cease the practice as a matter of urgency (recommendation 4).
- 2.43 The Department rejected this position outright, stating that 'it is not aware of any reason for excluding high-security prisoners from the scope of the services' but that it would undertake a risk assessment of the practices in place. In contrast AIMS agreed with the recommendation and had been for some time putting this same position to the Department.<sup>65</sup> As commented by the Inspector at the time: '[I]t is not the point to claim, as the Department does, that this is what the contract requires. These prisoners either pose an unusual danger or escape risk, or they do not.'<sup>66</sup> This Office found no evidence of the Department carrying out a risk assessment with regard to the custody of high security escort prisoners in the time prior to the escapes from the Supreme Court in June 2004.
- 2.44 Following the Supreme Court escapes it appears that the Department accepted that a risk management issue did exist and set into motion a review of all security measures at that court, as well as all others in Western Australia. As detailed in Report No. 25<sup>67</sup> new Policy Directives were implemented in relation to high-security escort prisoners and a Court Security Branch was created to oversee security issues, initially at the Supreme Court but extending to other court complexes and coordinate security issues with AIMS. Some positive results have emerged from the creation of the Branch. Whereas previously AIMS would receive prisoners without the benefit of any Departmental intelligence, there is now an information sharing process in place that allows AIMS to better risk-manage persons in its custody. The Branch has also been responsible for infrastructure audits that have resulted in security improvements at many custody centres<sup>68</sup> and changes to procedures at centres that have also improved security.

63 Court Security and Custodial Services Contract, Schedule 2, Part 3, para 3.3.3.

64 Report No.7, op cit., para 2.51–2.53.

65 Ibid., p. 47.

66 Ibid., p. 4.

67 Report No. 25, op cit., para 1.50–1.54.

68 Although many serious issues still exist at some centres as will be detailed later in this chapter.

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- 2.45 In addition AIMS created its own Security Support Group (SSG) – consisting of officers provided with extra training in security management – to assist with the custody of high-security escort prisoners, provide security orientated training to AIMS staff and provide a roaming security presence at custody centres. The SSG is a mobile group of officers who have been bought offline from their regular staff duties. At the time of the Inspection there were only a small number of trained SSG officers who had to divide their attention between the Supreme Court complex, Supreme Court trials being conducted at Rockingham and Fremantle courts and other metropolitan court custody centres that had been identified as in need of a high-security presence due to intelligence received. While the creation of the SSG has ameliorated some of the risk identified in the previous Inspection, the limitations of the group are also apparent. Regular AIMS staff highlighted the limited capacity of the SSG to meet the existing demand for custodial services for all high-security escort prisoners, and complained that in the Group’s absence they were still required to take custody of such prisoners.
- 2.46 Despite rejecting recommendation four of the previous report the Department has, in fact, made some efforts to address the concerns regarding the custody of high-security escort prisoners placed in AIMS custody. In particular the creation of the Court Security Branch has enabled an acceptable level of progress towards achieving safer service delivery through the combination of intelligence sharing, infrastructure improvements and the identification of procedural changes. Nonetheless, concerns remains that high-security escort prisoners are still left in the custody of non-SSG AIMS staff despite the risk assessment of these prisoners by the Department indicating that they require special handling: the Department must address this issue.

### DEPARTMENTAL MONITORING

- 2.47 While AIMS performs the day-to-day delivery of court security and custodial services, the Department, and specifically its Chief Executive Officer (the Director General), is ‘responsible for the security, control, safety, care and welfare’<sup>70</sup> of all persons in custody and in the court complex generally. For this reason it is important that the Department maintain a system for monitoring the performance of the Contract by AIMS to ensure services are being delivered to an appropriate standard.
- 2.48 During the course of the last Inspection a number of serious incidents were brought to the attention of this Office that indicated a deficiency in the monitoring process of the Department at that time. Monitoring was focused almost exclusively on commercial issues and paper audit process rather than on an active, field-based approach scrutinising the daily

69 There was also some resentment among staff in that while they undertook similar SSG duties in taking high-security escort prisoners into their custody, they are paid less than the SSG officers, although they assume the same, if not more, risk given their training levels.

70 *Court Security and Custodial Services Act 1999* (WA) s 10.

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delivery of contracted services and interacting with persons in custody for their input. That Inspection found the chosen method of monitoring resulted in many deficiencies in services to persons in custody that had not been identified by the Department.<sup>71</sup> The Department and AIMS also lacked any formal grievance process for persons held in custody to raise complaints, and a formal process for investigating critical incidents or use of force in custody centres.

- 2.49 As a result of these observations a comprehensive recommendation<sup>72</sup> was made for the ‘implementation of field-based monitoring of service delivery under the Contract’ including compliance checks, incorporation of views of persons in custody and Contract staff, processes to investigate critical incidents and formal grievance processes for persons in custody. The intent of the recommendation was to ensure the Department fulfilled its statutory duty as the body ultimately responsible for the safety and security of persons in court complexes, its duty of care to persons held in custody and its obligation to ensure compliance with the Contract.
- 2.50 Both the Department and AIMS agreed with the recommendation. The Department stated that it would be introducing a dedicated monitoring capacity and that it would work with AIMS to ensure grievance processes were put in place and complied with. AIMS specifically committed to the development and implementation of ‘the AIMS Corporation Prisoner Grievance Policy’, which would include a process for persons held in court custody centres.<sup>73</sup>
- 2.51 A monitoring team was created within the Department in the months following the recommendation. In its 2001–2002 Annual Report on the Contract, the Department stated that it ‘had to dedicate significant resources to monitoring this contract... and appointed a monitoring team of three full time staff – an expensive but very necessary step given the history of AIMS’ performance under the contract’.<sup>74</sup> The monitors dedicated a large proportion of resources in monitoring the activities at the two main court complexes in the central business district, but also visited the other metropolitan courts on a regular basis.<sup>75</sup> The result was that monitors were at various court custody centres on a daily basis observing the delivery of Contract services and interacting with AIMS staff, court staff and persons held in custody.
- 2.52 Reporting mechanisms were established within the monitoring unit to inform the Department Contract Managers of their findings at sites, and discussions were also held with AIMS management as to issues arising from monitors’ reports. Over the last three years this Office has also been provided copies of the daily and weekly reports from monitors on the activities at court custody centres. While the reports have shown that the monitors were diligent in identifying issues of concerns and changes in demand for services, this Office frequently held concerns about the actions, or lack thereof, in response to those reports.

71 See Report No. 7, op.cit., para 2.40–2.46.

72 Ibid., recommendation 5.

73 Ibid., p. 48.

74 Department of Justice, Annual Report: *Court Security and Custodial Services Contract* (September 2002), p. 2.

75 Note that the monitoring resources were later also used to occasionally audit the delivery of services at regional court custody centres.

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Identified issues could remain unresolved or in a state of negotiation between the Department and AIMS for extended periods of time; in the meantime the centres continued to operate while the problem remained. Similar concerns with the monitoring process were raised in the inquiry report ('the Hooker Report') following the escapes from the Supreme Court.<sup>76</sup>

- 2.53 AIMS staff attitudes towards the monitoring process were mixed, although during the course of this Inspection there was a substantial amount of negative comment, such as:

*[T]hey were of no help whatsoever. It would have been good if they suggested changes, but it was silly. Once they observed two [AIMS] officers on the stairs with a prisoner. They never said anything; asked anything; just reported it. However, the prisoner had head injuries and needed assistance. The attitude was just not constructive.*

Comments such as this indicate that while the monitoring process may have informed head office managers about issues arising at court complexes and custody centres, staff at the coalface delivering the services on a daily basis were not a part of the information sharing process in a constructive way. Service delivery cannot be expected to improve in these circumstances. However, it should be noted that these comments seem to apply far more to the format of the monitoring process rather than to the monitors themselves. Respondents to the AIMS staff survey overwhelmingly assessed their relationship with Department monitors as either 'satisfactory' (55%) or 'good' (26%). The monitoring procedures appear to be discrete rather than integrated in the operational systems.

- 2.54 The Department reported in its 2003–2004 Annual Report on the Contract that it was revising its monitoring plan. At a joint briefing by the Department and AIMS to this Office in preparation for this Inspection in November 2004, the Department advised that it was developing a new audit system that would involve moving monitors away from day to day monitoring and towards a targeted audit of specified services. It believes that the new processes will 'have an outcome-based focus that will not only focus on shortfalls in service delivery but importantly will see actioning of solutions to improve service delivery.'<sup>77</sup>
- 2.55 The changes should, in theory, address all of the concerns identified above, and in that context, appear positive, particularly as it removes the apparent reticence of monitors to interact with and/or advise AIMS staff because of the limited scope of the previous role. An additional benefit of the new audit process is the production of cumulative 'issues' matrixes, recording issues as these are identified and actioned by audit staff. However, as the new form of operational review was only implemented in November 2004 it remains to be seen whether the stated objective of having 'an outcome focus that... will see actioning of solutions to improve service delivery' actually translates into practice. Whereas the monitoring

76 Richard Hooker, *Inquiry into the Escape of Persons held in Custody at the Supreme Court of Western Australia 10 June 2004*, (Perth: WA State Law Publisher, 2004), pp. 71 & 77.

77 Department of Justice, *CSE&CS Operation Review Plan* (November 2004), p.4.

resources were initially concentrated in the Perth CBD, these limited resources have now been spread more widely across the State.<sup>78</sup>

- 2.56 While positive progress has been made in Departmental monitoring of the Contract, there does appear to have been a failure by the Department to prosecute charges recommended by AIMS staff following incidents at court custody centres. The Department has the power (and responsibility) to prosecute charges relating to the treatment of AIMS officers exercising custodial functions under schedule 2 of the Act, s 171 of the *Young Offenders Act 1994* and s 71 of the *Prisons Act 1981*. It is important that AIMS staff have confidence that the formal avenues for dealing with alleged abuse or physical assault are accessible to them and that proper standards of conduct are maintained, in particular if inappropriate retaliatory action is to be avoided. As a private company, AIMS has no capacity to take action to prosecute such charges and must rely solely on the Department or, when appropriate to the allegation, the police. In discussing this issue with AIMS staff, some also highlighted the need for further training in how to complete appropriate reports of such incidents and the need for AIMS management to ensure that staff are advised of the outcome of prosecutions.
- 2.57 AIMS agreed with the entirety of this recommendation and in particular committed itself to developing and implementing a prisoner grievance policy to address part (d) of the recommendation. AIMS policy number 6.120 now contains all procedural aspects relating to formal complaints and includes the requirement for written complaints to be lodged, staff members to respond in writing, the keeping of a complaints register and investigations of all complaints. In reality this Inspection found that persons in custody were not aware of their right to make complaints and were not aware of the procedures being in place. Most persons attending court custody centres from prisons opted to lodge any complaints via mechanisms within the prison rather than endeavouring to do so through AIMS.
- 2.58 It is the assessment of this Office, therefore, that the Department has made acceptable progress towards this recommendation. While the first incarnation of its monitoring process did not achieve the intended purpose of the recommendation to improve services, it did achieve the purpose of ensuring the Department was aware of service delivery deficits and allowed risk assessments on the operations at court complexes and custody centres. The revised monitoring plan may well address the problems identified in this discussion and this Office will continue to review the process. The extent of resources available to the expanded coverage will necessarily condition the quality of this service. However, it is clear that a more proactive approach must be taken with regard to a grievance process for persons in custody (particularly those exiting to freedom rather than returning to prisons) that better alerts persons in custody to their options and rights in relation to complaints.

78 In its response to a draft of this Report the Department also noted an increased focus on security risk assessments since the Supreme Court escapes. It stated that: '[O]perationally, security risks are attended to on the basis of assessments of intelligence reports and other factors and there has been and continues to be a significant commitment in this area'. It has also resulted in the creation of a Court Security Operational Review Framework. Department of Justice, *Response to a Draft Report of Announced Inspection of Metropolitan Court Custody Centres*, 20 October 2005.



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**FACILITIES**<sup>79</sup>

- 2.59 The impact that the conditions in which people are kept has on their ability to represent themselves in court cannot be overstated. This was recognised in 1999, even before the establishment of this Office, when the Law Reform Commission of Western Australia (LRCWA) found that: ‘The environment provided for [persons in custody] is of the utmost importance yet in nearly all facilities inspected for this Report the holding cells and detention facilities were psychologically depriving’.<sup>80</sup> The LRCWA Report concluded that ‘[H]olding individuals in demeaning conditions contradicts notions of justice and signals that accused persons are considered guilty before their cases are heard’.<sup>81</sup> It should be noted, however, that not only do inadequate facilities place unnecessary stresses on those held in custody, but staff also experience strain when working in these conditions.
- 2.60 Court custody centres hold people waiting to appear in court who have been received from prisons or from police lock-ups or who have surrendered from bail. While most prisoners will spend only short periods of time in cells at court custody centres (four or five hours), it is not unusual for prisoners being transported to centres to be held for nine or ten hours due to untimely transport arrangements.<sup>82</sup> These extended stays in custody centres can exacerbate the effect of inadequate facilities and lack of amenity.
- 2.61 The 2001 Inspection of court custody centres found an extremely wide variation in the quality of facilities and their suitability for holding persons in custody. Facilities available at a number of centres did not permit AIMS to deliver the service in the way stipulated in the Contract and compromised the safety and security of persons in custody, court custody centre staff and the public. In particular, serious deficiencies were highlighted at Armadale, the CLC and Supreme Court through specific recommendations, but adverse findings were also made about facilities at Midland. Generally, the facilities at Fremantle, Rockingham and Joondalup (being newer centres) were acceptable. It was recommended that a system-wide assessment of facilities focusing on the safe delivery of contracted services was required. Following such an audit, provision could be made for capital and minor works improvements.

79 A detailed discussion in the 2001 report surrounded the infrastructure of the Supreme Court Complex and Court Custody Centre, which resulted in the finding of inadequacies in the safety and security of the facilities and associated recommendations. The consequent escapes from this location and Report No.25, *Inspection of the Interim Arrangements at the Supreme Court Following the Escape of Nine Prisoners from the Custody Area on 10 June 2004* (Perth: Office of the Inspector of Custodial Services, December 2004) has resulted in this court complex being excluded from this Inspection. No discussion will therefore be undertaken in this Report about recommendation 6(c) regarding Supreme Court infrastructure.

80 Law Reform Commission of Western Australia, Report No. 92, *Reform of the Criminal and Civil Justice System in Western Australia* (1999), p. 308.

81 Ibid.

82 This will be discussed further in Chapter 3.

- 2.62 Rather than taking responsibility for its court custody centres and the need for works to make them fit for purpose, the Department rejected the recommendation by stating that it ‘is not funded to undertake the capital works implications of this recommendation’.<sup>83</sup> The Department missed the point that as the body ultimately responsible (both contractually and legally) for court custody facilities and those held in them<sup>84</sup> it should assess the deficiencies in its infrastructure and then put the business case to Treasury for funding of the required works. AIMS agreed with the recommendation and supported the need for more appropriate facilities. Since the escapes from the Supreme Court, security audits have occurred at all sites and minor works completed in response to identified security issues. The same cannot be said in relation to issues related to amenity and safety for persons in custody and staff and the recommended assessment of facilities for fitness for purpose have not been adequately completed.
- 2.63 The surveys of both staff and persons held in custody were critical of the facilities at many court custody centres, and in particular the CLC. Staff particularly labelled office facilities (61%), courtroom security (60%), fit out of cells (58%) and the number of cells (56%) as less than adequate. Seventy-five per cent of persons in custody responded that the quality of cells was inadequate. This reflected a corresponding response to the preference for video court appearances (84% preferring this method in some circumstances) with the reasons given a combination of the unsatisfactory condition of the cells and the disruption to normal routine for prisoners (primarily related to medication and family visits).
- 2.64 The following will examine the Department’s actions against the specific recommendations made in relation to Armadale and the CLC. It will then turn to an examination of the facilities at Midland (as the centre of most concern to the Inspection Team during this Inspection) and Mandurah and the Perth Children’s Court (as the centres subject to their first inspection).

### **Armadale**

- 2.65 At the time of the 2001 Inspection the custody centre at Armadale presented the most pressing need for immediate capital works. The centre consisted of only two cells, making it impossible for the separation of detained persons as required under the Act according to gender, age, protection status, intoxication and mental health issues.<sup>85</sup> This resulted in persons being detained in rooms not designed for this purpose, such as interview rooms, and posed a threat to the safety and security of persons in custody and staff. There was also no access to drinking water or toilets within the cells and no means available to alleviate long hours of confinement to the cells. Staff facilities were also inadequate with inappropriate space for processing persons received in custody, the keeping of files and staff amenities.

83 Report No.7, op.cit., p. 48.

84 *Court Security and Custodial Services Act 1999 (WA)* ss 9 & 37.

85 *Court Security and Custodial Services Act 1999 (WA)* s 30.

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- 2.66 Positive steps have been taken at the Armadale court complex to improve the amenity for persons held in custody and staff with major capital works having been completed. The centre now operates with five cells – three primary cells in a downstairs area and two upstairs cells used primarily as holding cells for persons waiting to move into courtrooms. While this is an improvement, three cells still do not allow for the appropriate separation of persons detained should there be more than three categories of prisoners. The two smaller holding cells upstairs can be used to supplement the main cells, but they are not designed to detain people for any length of time. Access to these cells is also an issue for staff, as it requires escorting persons in custody up a narrow flight of stairs. Only one cell has been fitted with closed circuit television (CCTV) that allows for observation of persons in custody for their own safety. Nonetheless, the Department has adequately addressed the specific recommendation of improving cell capacity at the Armadale centre.
- 2.67 Although the three new cells contain toilets, these can be viewed clearly from the corridor representing an incursion on privacy. AIMS officers generally use a cell at the closed end of the corridor for female detainees in an effort to alleviate this problem, but the toilet could still be seen from the staff office/control room. This was disappointing considering the facilities are new and could have been better designed. Some additional minor works should be undertaken to remedy this issue.
- 2.68 The centre also lacks an appropriate space for the processing of persons into custody, with personal questions (relating to medical issues, drug use, protection needs, etc) being asked of new arrivals in the corridor within earshot of other persons in custody in the cells. Interview space for the use of legal counsel has not been adequately addressed, with only one room available. This necessitates a queue to form and some lawyers have reported not having sufficient time to consult with their clients prior to appearing in court.

### Central Law Courts

- 2.69 The CLC processes and detains the highest volumes of persons in custody of any metropolitan court custody centre, with as many as 25 courts operating on one day. Courts operate from the main CLC building as well as in the May Holman building next door. As a result the cells regularly accommodate large numbers of people. Six cells are situated in the ‘high-security area’, all of which face into a corridor that is constantly patrolled by a number of AIMS staff members. Cell numbers one to three cater for approximately three persons each; cell four, approximately ten; cell five, approximately 15; and cell six, 20. Despite this capacity staff reported that up to 40 prisoners had sometimes been held in cell six. Control in this area is high, with only one person in custody allowed out of any cell and in the corridor at one time. The high numbers in cells made ventilation extremely difficult to control and air circulation inadequate. The low-security area consists of four cells that are used for females in custody, protection prisoners, bail surrenders and other categories of prisoner not designated ‘high-security’.

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- 2.70 The amenity within the cells is extremely limited, with only one cell in the low-security section containing a toilet, and no toilets in the high-security area. The communal toilets for use of high-security area detainees offer no privacy. No drinking water facilities are available in any cells and there were no facilities available to alleviate boredom of long days in the cells (such as television). The boredom factor impacts on staff needing to actively supervise large groups of persons in custody.
- 2.71 The low-security area contains what is designated as a 'safe cell', for the detention of individuals who are at risk as a means of minimising the opportunities for self-harm. There is no visual access into the cell from outside other than via CCTV and it appears more designed to inflict sensory deprivation than to assist in the care of persons at risk. In this way it resembles padded cells traditionally found in police lockups that were the subject of adverse comment by the Royal Commission into Aboriginal Deaths in Custody. In light of this, the Department and AIMS should be aware of the 2004 South Australian case *Grey v Police*<sup>86</sup> in which it was held that the use of such cells in that State was allowed only upon medical advice and under proper medical supervision.
- 2.72 The main recommendation in relation to the CLC in the previous Inspection Report related to the practice of escorting persons in custody from the custody centre to courts in the May Holman building next door in restraints through public areas. The Inspector assessed this practice as unsafe (because of the potential for escape) and inappropriate (because of the potential for an accused to come into contact with witnesses and/or victims). The potential of unnecessary exposure to the media was also a factor in the Inspector's assessment. The Department responded by stating that the practice was avoidable through the use of a sally port in the May Holman building and that it would resolve the matter with AIMS. The position of the Department was not practical because it failed to acknowledge that persons would need, at some stage, to be held for a period of time in the custody centre in the building next door.
- 2.73 The 2004 Inspection found that nothing had changed in the period since the last inspection and the situation continues to be unsatisfactory. It is totally inappropriate for accused persons to be escorted in restraints exposed to the public. There have also been numerous occasions where media have photographed or filmed accused persons being escorted. With the preoccupation with security issues since the escapes from the Supreme Court, the escape risk posed by this practice is also clearly evident. The Inspection Team was advised that the Department planned to construct gates at each end of the public access way through which persons in custody are escorted to restrict movement when transport vehicles are delivering or clearing prisoners. This may address some concerns related to public access, but does not alleviate the problems associated with the escort of persons in restraints being escorted to courtrooms.

86 [2004] SASC 109 (23 April 2004).

- 2.74 While funding for a new court complex has been approved and planning is well underway, completion is not anticipated until at least 2008. This situation cannot be left unaddressed as it poses unacceptable risks to security and due process. The Department has failed to adequately respond to the recommendation and it must act as a matter of urgency to rectify the issue.

#### **Midland, Mandurah and Perth Children's Court**

- 2.75 Midland custody centre operates utilising three cells: two main cells are located upstairs on the same level as the courtrooms and the other is at the bottom of a long, steep set of stairs on the same level as the staff office, kitchen, storeroom and sally port entry. The Inspection Team had some concern about the design of this lower level cell, in particular its obvious ligature points, and visibility of (and access to) the cell. This split-level arrangement requires staff to monitor persons held on two levels and places extra demand on staff resources. The number of cells available at Midland does not allow for the legislatively required segregation of different categories of persons in custody. There are no call systems, toilets, drinking water or door hatches in any of the cells, requiring staff to frequently open doors in order to service the needs of persons in custody. If all cells are being utilised to hold persons in custody there is no private space to conduct searches of new custody centre arrivals.
- 2.76 Interview rooms located within the custody centre were not fit for purpose. It was possible to clearly hear conversations between persons in custody and legal counsel, affording no privacy. As a high-volume centre, AIMS staff servicing public needs at the front-of-court also found facilities to be inadequate, with basic needs such as seating for waiting members of the public inadequate, which caused stress in the public areas.
- 2.77 The Clerk of Courts advised the Inspection Team that a proposal existed for extensive capital works to be undertaken at the court complex, similar to those completed at Armadale. While we were shown drawings by staff on site that included additional cells, a custody centre control room and search room, there was no commitment from the Department for funding or a timeline for the works to be completed. Combined with the stresses caused at Midland by the staffing arrangements and tensions, the inadequate facilities result in a custody centre being operated in a barely controlled manner. Capital works at the site must be a matter of priority.
- 2.78 Court custody facilities at Mandurah also pose a challenging environment for AIMS staff to appropriately provide required services to persons in custody. The lack of cell numbers and amenity reflect the previous police practice of using the centre only as brief holding cells while persons escorted from the police station cells next door were waiting to appear in court, and then immediately taken back to the police cells. The custody centre consists of only two relatively small cells making segregation extremely difficult. At peak service times, cells at the police station (accessed by secure passageway) must be used for overflow. There are no in-cell toilets, drinking water facilities, televisions or cell call buttons. Pat searches of persons in custody have to be conducted outside cell doors and there is no appropriate space in which strip searches could be conducted. The interview room affords no privacy and conversations could clearly be heard in the open staff counter area.

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- 2.79 Staff have no office space to work from and there is no private area to process persons received into custody. New arrivals are questioned at the small counter in the centre of the custody area only a couple of metres from the cells where others detained in cells can hear all their details. The counter also acts as the space for filing all paperwork and the control centre, with computers, radio transmitters, landline and mobile phones were exposed to sight and reach of persons in custody when out of cell.
- 2.80 The sally port at Mandurah is not capable of accommodating one of the transport vehicles used to transport prisoners from prison to court. When this vehicle arrives at the centre the prisoner is double cuffed to be escorted inside. This is not appropriate. Better planning should occur to ensure this vehicle is not used to transport to Mandurah, or the Department should complete works to rectify this problem. Like many other custody centres, access to cells from the sally port is via a steep flight of stairs, which results in potential problems for the management of difficult prisoners or disabled persons.
- 2.81 The court custody centre at Mandurah is currently inadequate to provide services to persons in custody to an acceptable standard. It also presents a number of security risks and safety issues for staff. The Inspection Team were informed that the Department were negotiating with the police service to permanently take over a number of cells not in use at the adjoining station that would be accessible through the secure tunnel. This would result in a split command centre and appropriate staffing arrangements would need to accompany this plan to ensure constant supervision by two custody officers at all times in both custody areas.
- 2.82 Facilities at the Perth Children's Court custody centre were generally of an acceptable standard and appropriate for the holding of juveniles. A number of items of new equipment were installed by the Department when it resumed staffing at the centre, including eleven security cameras and monitors. These were all external, however, and there were no cameras in any cells. Staff stated that the high level of interaction between staff and juveniles in custody, as well as the fact that all cells could be seen from the permanently staffed control room meant cell cameras were not necessary.
- 2.83 The centre consists of five cells that must be used for detaining a combination of juveniles and adults of both genders, some of whom may have special needs requiring segregation. Staff indicated the number of cells was usually adequate, although some problems were experienced when faced with holding multiple categories of people requiring separation. Each cell contained a toilet and a television was available with a video connection to keep those in custody occupied. Only one cell door was given a door hatch at the request of staff as juvenile management philosophies encourage interaction.

### Conclusions

- 2.84 The improvements found at the Armadale Court Complex were the most positive aspect of the progress made since the 2001 Inspection. However, the addition of the particularly deficient facilities at the Mandurah court custody centre, the unaddressed deficits at Midland and – most significantly because of the volume of persons in custody held there – at the CLC, mean that the standard of facilities continues to seriously compromise the standard of care provided for many persons in custody.
- 2.85 It is disappointing that the significance of this issue has not been reflected in the Department’s capital works program. It is not sufficient to state that what are in many instances terribly deficient facilities will be remedied at some time in the distant future when simple changes could be implemented immediately to greatly relieve the pressure at custody centres. For example, the installation of televisions in cells would be an immediate improvement in the conditions in which persons in custody are detained and also bring a significant dividend to staff in terms of management. If infrastructure changes can be implemented so quickly in respect of security issues in light of the Supreme Court escapes, then similar priority should be given to other, equally as important, issues raised here.<sup>87</sup>

87 It a response to a draft of this Report, the Department advised that a standard design brief is being developed for courts. While the Office welcomes this, the timeframe for change will continue to be an ongoing issue. Department of Justice, *Response to a Draft Report of Announced Inspection of Metropolitan Court Custody Centres*. 20 October 2005.

# Chapter 3

## NEW AND EMERGING ISSUES

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### VARIATIONS TO THE CONTRACT: ISSUES OF ACCOUNTABILITY AND LEGALITY

- 3.1 The contracting out of justice services to a private corporation was, and remains to some extent, a contentious initiative in Western Australia. One of the significant measures put in place to ensure that the arrangements concerning the provision of such services were transparent and subject to public scrutiny was the requirement that all such contractual arrangements be tabled in Parliament. These measures included not only the tabling of the original Contract for Services, but also any variations to the contract<sup>88</sup> within 30 days of the House next sitting following the lodging of the amendments. In addition the Contract itself stipulates that any variation to the Contract must be in writing.<sup>89</sup>
- 3.2 As outlined in Chapter one, it became obvious during this Inspection that a number of substantial changes had been made to the original Contract.<sup>90</sup> The Inspection could find no evidence of written variation (as required by the Contract) or that variations had been tabled in Parliament. The Department does not appear to have felt compelled by either the principles of accountability or the legislative requirement to table these contractual amendments in Parliament.
- 3.3 The Department's failure to comply with its legal obligations with respect to contractual variations leave it open to potentially serious legal ramifications. There are a number of services being provided by AIMS with questionable legal authority to do so. A significant example of this is in the arrangement for AIMS to transport persons who have yet to appear in court from lockups following arrest to court custody centres. At the time of Inspection this arrangement was verbal only, rendering AIMS' legal authority to transport such people to be questionable.<sup>91</sup> Despite this, there are almost daily movements by AIMS of significant numbers of persons from police custody at East Perth lockup to the CLC without those individuals having appeared in court. Internal Department notes dated as early as 2 May 2001 indicate that:

*[A]lthough not included in the original contract prior to service commencement it is included as one of the additional services required to support the smooth transition of the contract.*

It is clear that even before this Contract became operational its publicly available terms did not accurately reflect the services being provided.

- 3.4 Such informal arrangements have the potential to create legal complexities and risks. For example, in whose custody are these individuals from East Perth lockup when they are being transported to the CLC? AIMS' capacity to undertake custodial and security services under

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88 *Court Security and Custodial Services Act 1999* (WA) s 45(4).

89 Clause 11.1

90 See para 1.10.

91 Clause 1.1 of the Contract defines 'Services' as Schedule 2 Part 4, 'but limited to' a number of specific movements of persons in custody. The definition does not include the transport of persons in custody without court disposition. Only those movements defined as 'Services' have become operational under the Contract; 'Second phase Services' which include all of the movements listed in Schedule 2 Part 4 were intended to become operational parts of the Contract at a later date but this has never occurred.



the Act is reliant upon those services being contracted to it by the Director General of the Department.<sup>92</sup> This does not appear to have occurred in any formal way in relation to the transport of persons in police custody who have not been dealt with by the courts. Similar questions regarding the legality of the holding of persons in custody by AIMS can be raised in respect of the other services currently being provided but that have not followed the required statutory and contractual procedures detailed at paragraph 1.10. For example, if AIMS has no formal contractual agreement for operating the Mandurah Court Custody Centre, how can its officers take people into custody, strip search them, remove and hold their property and lock them into cells?

- 3.5 The risks to the Department of persisting with these apparently informal arrangements are exemplified by the potential implications concerning a 2003 death in custody of a person in an AIMS vehicle while being transported from the East Perth lockup to the CLC. The deceased had surrendered to police and was subsequently taken to the East Perth lockup where he spent the night. Following usual practice, the police purportedly released the person into the custody of AIMS the next morning for transport to the CLC. On the short journey the deceased hanged himself from a padlock inside the vehicle pod using his shoelaces.<sup>93</sup> Significantly, the legal capacity for the police to transfer custody of this person to AIMS for the purposes of appearing in court may be questioned. It would seem that under s 94 of the Act, individual AIMS officers are protected from liability so long as they have acted in good faith, and in relation to an action for false imprisonment, provided they acted on a request under the Act. However, AIMS itself only has protection from an action for false imprisonment, and both AIMS and the Department may otherwise be liable.<sup>94</sup> In addition, the Department's capacity to withhold performance-linked fees for this purported death in AIMS custody is also ambiguous.<sup>95</sup>
- 3.6 The risks and consequences of the failure to comply with the legislative processes that are supposed to apply to the Contract are evident and it is puzzling to this Office why the Department has chosen not to comply with its legislative obligations. This is magnified by the fact that the Department is well aware of these obligations, as in May 2001 it stated that as a result of the agreement 'to vary the contract services' to include the transports from East Perth lockup: 'there is now a requirement for a formal variation to the Contract... the changes to the contract will need to be tabled in Parliament in accordance with the Court Security and Custodial Services Act 1999...'<sup>96</sup> The Department has also expressly acknowledged in at least two other instances the need for a variation to be tabled in Parliament, but has thus far failed to do so.<sup>97</sup>

92 *Court Security and Custodial Services Act 1999* (WA) s 18.

93 State Coroner, *Inquest into the death of Charles Raymond Gamble – Ref No: 35/04* (14 October 2004).

94 *Court Security and Custodial Services Act 1999* (WA) ss 94(2) & 94(3).

95 The Department withheld \$100,000 from the Performance Linked Fee paid to AIMS that financial year by way of penalty for the death in custody.

96 Department of Justice, Internal Document, '*Variations to Court Security and Custodial Services Contract*', 2 May 2001.

97 *Ibid.*

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- 3.7 It is not just the questionable legality of AIMS holding individuals in custody that arises from the Department failing to adhere to its legal obligations. By not tabling variations to the Contract, the extent and scope of contracted services are difficult to identify therefore making it virtually impossible to properly identify the service costs and needs. The public accountability of the Department for the Contract and associated services is lost. It is difficult to argue that the contractual arrangements remain subject to parliamentary and public scrutiny as envisaged under the Act.
- 3.8 The Department must table all variations to the Contract as a matter of urgency in order to comply with legislative requirements. The power to deny a person their fundamental right to freedom, to strip search, to withhold a person's property and to require them to comply with directions given and personal intimate details about themselves is extremely serious. That power should not be given to private contractors by State agencies without following the formal guidelines in place to ensure public accountability and parliamentary oversight. It was a fundamental procedure put into place as a safeguard to protect the rights of individuals, which the Department has, to date, chosen to ignore and in the process opened itself to legal risk. It should not do so in the future.<sup>98</sup>

### Bail

- 3.9 With the greater focus in this Inspection on front-of-court services provided by AIMS, the issues surrounding the custody of those who surrender from bail to the court and those who are granted bail by the court were raised at a number of centres, especially in the context of the increased focus on security since the escapes from the Supreme Court. Most evident to the Inspection Team was the apparent ambiguity surrounding who is responsible for this category of individual attending court centres; that is, whether they come within AIMS' jurisdiction under the Contract and whether or not they are considered to be in custody (both legally and for the purposes of the Contract).

### Custody of Bail Surrenders

- 3.10 It is clear that under the *Bail Act* 1982 a person surrendering to the court from bail is notionally in custody.<sup>99</sup> It appears that the practice in the District and Supreme Courts is for those surrendering to the court from bail for the trial to be directed to the court custody centre.<sup>100</sup> In the Magistrates Court the practice is less clear and no data are available about the number of people attending the criminal courts in these circumstances. Generally, at the

98 Despite the numerous specific instances of variations to service delivery not being tabled in Parliament, the Department stated that: '[T]he issue of accountability and legality concerning the changes to the nature and scope of the service and advice to the Parliament is raised...including the suggestion that the DoJ has ignored procedures. I do not believe this is the case.' As a precaution the Department has undertaken to seek legal advice on this issue. Department of Justice, *Response to a Draft Report of Announced Inspection of Metropolitan Court Custody Centres*, 20 October 2005.

99 Sections 3(3), 28, 34, Forms 6 and 7.

100 District Court of Western Australia, *Defendants, Documentation & Court Custody Review of District Court Practice* (2000), p. 28.

metropolitan centres individuals attending from bail merely wait in the public gallery areas until they are called to appear and AIMS staff may be unaware which individuals in the galleries are defendants. This would appear to be contrary to the requirement under the Contract that AIMS staff ‘assume charge of persons who surrender their bail directly to the court and are not processed through a custody centre.’<sup>101</sup>

- 3.11 At the CLC, persons who would usually surrender from bail to custody before appearing in Petty Sessions are held in a bail lounge, a pleasant area (previously a staff room) with one AIMS officer in attendance. Persons who are summonsed to report directly to Court wait to be called in the public gallery as occurs at the other metropolitan centres. The Inspection Team was advised that the details of persons surrendering from bail are entered into the Department’s offender management database and if they have convictions for other than ‘white collar crimes’ they would not be placed in the lounge. Instead they would be processed into the court custody cells as a means of ensuring the protection of those waiting in the bail lounge, as there is only minimal supervision in the area.<sup>102</sup>
- 3.12 A number of issues arise from the differential treatment of those surrendering from bail to the higher courts as opposed to the lower courts, between those surrendering at the CLC as opposed to other metropolitan court centres, and for ‘white collar’ defendants surrendering to CLC versus those charged with other crimes. The direction from the higher courts to detain bail surrenders in a custody centre is a clear basis for AIMS’ conduct in relation to those courts and therefore poses fewer concerns. While AIMS obviously owes a duty of care to those being held in a bail lounge, given the significant prejudice to those taken into custody compared to those allowed to simply attend court from the lounge, a clearly articulated and authorised policy in relation to the use of bail lounges should be developed by government in conjunction with the courts and not simply arise as a matter of discretion, no matter how well-intended, on the part of a private contractor. In addition, if AIMS were indeed expected to take custody of those surrendering from bail in all metropolitan court centres, the provision of bail lounge facilities in all courts would be a preferable arrangement to taking all surrenders into the custody centre. This would allow AIMS to properly fulfil its contractual obligations and ensure the proper accountability for, and processing of, defendants while minimising the impact on those surrendering. This would make the development of such a policy on the use of bail lounges even more important.

### **AIMS’ Contractual Obligations**

- 3.13 The Inspection found that the majority of bail surrenders are not necessarily identified by AIMS staff as such, and their attendance prior to their court appearance is simply noted by the court orderly as it is done for others appearing in court, for example by way of summons. There is some issue as to whether this practice is contrary to the obligation under the

101 Schedule 2, Clause 2.3.1, service requirement for in court security for Supreme Court and District Court (d); service requirements for in court security for Magistrates Court (c).

102 AIMS stated that the current policy was working successfully as more than 800 persons had been processed through the bail lounge with no incidents being reported.

Contract on AIMS to ‘take charge’ of such persons surrendering from bail. Technically, the failure of a person to appear in court that may have initially surrendered from bail at the court but then left may constitute an escape from lawful custody for the purposes of the Contract. A clarification of the position must be provided, and if it is expected that AIMS staff are obliged to take charge of such persons, appropriate staffing levels must be authorised.<sup>103</sup>

### Bail Processing Obligations

- 3.14 Another obligation arising under the Contract is for AIMS staff to ‘retain charge of persons until all judicial requirements for release are completed including escorting persons to Justices of the Peace’;<sup>104</sup> that is, to keep custody of persons who have been required by the court to complete paperwork before they can be released to freedom. This obligation has been acknowledged by AIMS,<sup>105</sup> but the Inspection found that it does not appear that adequate staffing has been allocated to meet them. Further, Departmental assessments of appropriate staffing levels for various courts give no consideration to staff members who would have capacity to meet these obligations. While in theory there is an officer allocated to the role of ‘JP runner’, in practice this role is often filled by AIMS staff while they also seek to fulfil other roles such as custodial officers, dock guards, gallery guard, perimeter guards or supervisor.<sup>106</sup> Such an arrangement can result in failure to deliver the service (such as absence of officers from the custody centre); can increase the possibility of escapes or other security incidents; and can cause consequent loss of confidence in the service and repercussions to the performance-based fees and individual employment of affected AIMS officers.
- 3.15 In one court inspected by this Office an employee of the Department has taken on the role of JP runner (among other tasks). Although the cooperative arrangement that is in place works well for the centre and displays a positive relationship between the parties, it raises other issues about the nature of the role. Given that the ‘power to take charge of a person in custody’ appears to be a custodial service<sup>107</sup> it arguably falls within the definition of ‘high security work’ under s 48 of the Act, which would require the person undertaking the work to be duly authorised.<sup>108</sup>

103 In its response to a draft of this Report, AIMS stated that it has submitted to the Department for approval an Operational Policy and Procedure to clarify at what point an individual comes into AIMS’ custody as opposed to the custody of the court and how to deal with persons attending from the public gallery both before and after their appearance. At the time of the response this had not been yet been approved. AIMS Corporation, *AIMS Response to the Draft Report of an Announced Inspection of Metropolitan Court Custody Centres*, September 2005, p. 5.

104 Schedule 2, Clause 2.3.1, service requirement for in court security for Magistrates Court (m).

105 Internal AIMS correspondence, Operations Manager to all AIMS officers, 30 August 2004.

106 Only CLC and Fremantle have dedicated JP Runner roles within the budgetary framework agreed with the Department.

107 Schedule 2, clause 3(1).

108 Sections 25 & 50.

### **Conclusion**

- 3.16 The Department must clarify the Contractual expectations of AIMS with regard to the obligation to ‘take charge’ of individuals surrendering from bail and those waiting to process their release on bail. If AIMS is expected to ensure these individuals are in its custody, then proper account must be taken of the resources required to undertake this function in a way that will not further draw on the existing allocation of resources at each court complex. To this end, the Department should consider the addition of a bail lounge facility at each metropolitan court complex to facilitate the custody of those surrendering from bail to lessen the impact on those individuals who have been assessed as a low enough risk by the court to grant bail.

### **IMPACT OF SECURITY ARRANGEMENTS SINCE THE SUPREME COURT ESCAPES**

- 3.17 Since the escapes from the Supreme Court in June 2004, there has been an emphasis on ensuring security at all the metropolitan court centres in Western Australia. This has manifested itself in many ways including the training available to AIMS (and Departmental) staff that has focused on restraint and baton training, on the development of the AIMS Security Support Group to assist in the custody and transport of identified high risk prisoners, the conduct of a security audit at each court custody centre and the resulting implementation of new secure key protocols, the installation of security-focused infrastructure (such as gun cabinets and CCTV) and changed security practices at some sites.
- 3.18 Some of these changes were identified during the Inspection as having brought benefits for the provision of court custody centre services. An example of this is in relation to the custody of high-security escort prisoners at court centres identified in the previous inspection report. Whereas previously these prisoners were left with general AIMS staff, the SSG now generally attends to assist in the custody of these prisoners, thereby ameliorating some of the associated risks and increasing safety for staff, other persons in custody and the public.
- 3.19 While other reforms outlined above have had positive security outcomes, some have proven problematic for the day-to-day operation of the court custody centres. The following will examine a number of these issues as they impact on individual court custody centres.

### **Key Protocol**

- 3.20 Following the security audits at each court custody centre site, the Department instructed AIMS to introduce a new protocol for the handling of keys that permitted access to the custody centre and other areas throughout the court complex. The protocol was developed by the Department and was substantially based upon procedures in place in prisons. The basic premise was that the custody centre was divided into secure zones, each with its own colour-coded key, and only that colour key could be used to access that zone. No one staff member should carry keys for more than one zone, therefore preventing a person in custody escaping by obtaining the keys of a single staff member.

- 3.21 The Inspection found that both the Department and (consequently) AIMS staff were confused as to exactly how the key protocol should operate. Upon request the Department provided a written document purporting to explain the protocol. The document contained a confused description that provided little substantial information that would assist in deciphering into which zones specific keys should or should not be taken. At the time of the Inspection no orders had been developed to address the practical application of the protocol to assist AIMS staff and little training had been provided. Even staff from this Office and AIMS who have extensive experience in prisons could not understand how the protocol was to work, and the Department also provided a number of contradictory explanations to this Office when clarification was sought on a number of occasions.
- 3.22 The result of this confusion was that while all centres had the same colour identification system, each centre was interpreting its implementation in a slightly different way. In addition, the Inspection found that many centres were not staffed sufficiently to allow the protocol to be implemented, as there were more zones than staff members available to carry the keys and infrastructure limitations also posed problems for the use of the protocol. An example of this is that in some centres only one staff member is sometimes left in the custody area making it impossible for them to be able to open cell doors and doors leading to the court area and having access to a locked control room.
- 3.23 The protocol was also identified by some Clerks of Court and AIMS officers as delaying movements from the custody centre to court, which has impacted on court sitting hours. Procedures for the protocol mean that only certain staff can open certain doors so when there is a need to access two or three doors to get a person from the custody centre to court the procedure is more time consuming and problematic. At some centres the court is delayed while the person who has finished appearing is escorted through a number of doors and secured in a cell before the next person can be moved out of a cell, through the doors and into court. As a result, some staff are not following the protocol to expedite the delivery of people to court or to compensate for the fact there are not adequate staff available.
- 3.24 A practical example of the delays that can be caused by the new system was demonstrated at Midland Court. An alarm was activated in a courtroom by the supervisor and it took 55 seconds for a security officer to move through the doors from the custody centre to the court using the new key protocol. The key protocol has therefore impacted on the ability of custody centre staff to act as security support for those in the courtroom, potentially jeopardising the safety of staff, judicial officers and the public.
- 3.25 A full analysis of staff and infrastructure needs to properly implement the key protocol must be undertaken and resources appropriately applied if the protocol is to continue to be utilised. In addition, clear directions as to the practical implementation of a secure key policy should be developed individually for each centre, in particular with reference to how it should be used in that particular operational environment.

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### Dock Security, Restraints in Court and Video Conferencing

- 3.26 The prominent focus placed upon security within court custody areas specifically following the Supreme Court escapes was commented upon extensively in Report 25 of this Office.<sup>109</sup> In summary the main issue is that by improving security in court custody centres, the focus (and therefore risk) for any possible escape has moved from the custody area to the courtroom itself. This therefore requires an assessment of the current physical conditions in all courtrooms and the security procedures and policies currently in place. Comments upon this aspect of court security services are also relevant in this Report; although courtroom security functions were not a substantive part of the initial metropolitan court custody centre inspection, they were specifically examined on this occasion.
- 3.27 The inadequate dock arrangements at a number of court complexes present serious security issues. While these were infrastructure-based at most locations, these circumstances were exacerbated by the staffing arrangements in place that did not enable these deficiencies to be ameliorated. At all the centres where the physical security is inadequate reliance is placed on the dock guard (aided by the court orderly) as the main deterrent for escape. The centres where dock security is of particular concern are Armadale, Mandurah, Midland and Joondalup. The dock at Armadale consists of a loose chair with only a wooden plank to separate the defendant from other parties in the court. At Mandurah, dock arrangements consist of a low barrier on three sides with the door leading into the airlock to the custody centre behind it. Midland Court also presented docks with low, inappropriate barriers. The proximity of the dock to the magistrate's entrance was the central concern at Joondalup and the relative ease with which a defendant could potentially access the presiding judicial officer. In all cases it would be (and has been, in the case of Mandurah where an escape actually occurred) simple for a defendant to jump the low barrier and exit through the public doorway out of the court complex. The two most obvious solutions are infrastructure works to improve the security of docks at the courts, and/or an increased approved staff complement, although other options can also be considered.
- 3.28 The use of mechanical restraints in certain circumstances in court has previously been the subject of discussion and recommendation by this Office<sup>110</sup> as a possible solution to the issue of inadequate dock security. Since the Inspection the increased concern with escapes from court has resulted in AIMS endeavouring to use restraints in court more often, which has led to conflict in some courts with some judicial officers.<sup>111</sup> The issue was discussed at each court location (with the exception of the Perth Children's Court) with Departmental support staff and, in some locations, Judicial Officers themselves. There was a general level of acceptance that the use of a discrete restraint on judicially approved persons in custody to improve security would be tolerable, and in any case an improvement on the current blatant and

<sup>109</sup> Report No. 25, op.cit., para 1.18–1.21.

<sup>110</sup> Ibid., para 1.45–1.46 and recommendation 5.

<sup>111</sup> The most serious occurrence resulted in an AIMS supervisor at one centre being held in contempt of court by the judge after defying an order of the court to remove shackles from prisoners. The judge consequently corresponded with AIMS management detailing the concerns.

demeaning handcuffing of persons in the dock. This was especially so in the courts identified above that had obvious physical security inadequacies. A new discrete restraint known as an ‘ankle ribband’ has been developed but is yet to be formally approved for use under the CSCS regulations.

- 3.29 Another possible solution to this issue would be for the Department to increase its support for the use of video conferencing court appearances. If the facilities were available at all prison locations, and if courts were supportive and prisoners were consenting, certain court appearances could be facilitated by video, alleviating court custody and security issues. In addition, the use of video conferencing could ease many of the stresses experienced by persons in custody due to the conditions in many centres<sup>112</sup> and staffing pressures would be reduced.
- 3.30 Video conferencing for court appearances had been used by 60 per cent of the respondents to the survey of persons in custody and was viewed positively by the majority. Furthermore, video conferencing – at least in some circumstances – was preferred by 84 per cent of respondents, and 43 per cent preferred them in any circumstances. Most of the reasons provided for preferring video conferencing provided by respondents related to the conditions experienced at custody centres, including unsatisfactory cell conditions. At present approximately 40 per cent of prisoners appear for court by video; however, the Department advised it would like to achieve a proportion of 60 to 70 per cent.<sup>113</sup>
- 3.31 While it appears that the Department and those being held in custody are like-minded in the desire to increase the use of video conferencing, the Department should take notice of the reasons why prisoners indicated they preferred not to appear in person. It is the poor conditions that appear to be influencing the position of prisoners, while the Department is more concerned about resources and security issues. It is not at all appropriate for prisoners to be effectively denied the opportunity to appear in person before the court because of the conditions and associated difficulties currently being experienced by them at many custody centres. If video conferencing is to be a positive addition to the legal system, those who utilise it must do so in the context where the alternative of appearing in person has not simply been untenable because of the conditions and circumstances associated with court custody centres.<sup>114</sup>

### Radios

- 3.32 As detailed in Chapter two, the staffing levels at most custody centres dictate that each staff member must take on a number of duties to ensure that all services are delivered. This often necessitates certain security-related tasks being undertaken alone and out of the observation of other staff members, either in person or by cameras. The ability for all staff to be able to communicate with each other instantaneously is very important for the security and safety of

112 See para 2.60–2.86.

113 Briefing provided by the Department of Justice to the Office of the Inspector of Custodial Services, 23 November 2004.

114 Issues related to due process also complicate the increased use of video conferencing: see Report No.25, op.cit., para 1.40–1.44.



AIMS staff, other court staff and members of the public attending court precincts, so they are able to call for assistance or backup should a situation arise when they are going about their duties alone. With the exception of the CLC, each court complex inspected was provided with insufficient radios to ensure that all staff members rostered on shift had access to a radio. Staff interviewed during the Inspection reported that this made them feel extremely vulnerable.

- 3.33 At many centres perimeter security guards could not be issued with radios. They patrol alone and are otherwise generally not monitored by camera and are not visible to any other staff. This is a serious safety issue and must be resolved as a matter of priority by ensuring that enough radios are available for all staff on duty.
- 3.34 The availability of radios would also assist in more timely movement of persons in custody from the custody centre to court in light of the delays being experienced following the introduction of the new key protocols. While standard radios would be a disruption to court proceedings, staff members providing services in courtrooms could be issued with discrete earpieces to enable the court orderly to inform the custody centre when the case currently being heard by the court was nearing completion so they could begin to prepare to move the next person required into court.<sup>115</sup>

### **Record Keeping and Documentation**

- 3.35 The importance of ensuring individuals are lawfully being held in custody by AIMS was highlighted in the discussion surrounding variations to the Contract. Individuals should only have their freedom restrained and rights impacted through the often invasive regimes associated with custody if there has been due process. At the same time officers undertaking the functions of detention are entitled to have confidence that they are exercising the powers granted to them in a lawful way. Documentation associated with the custodial process should therefore be in accordance with the law and provide an audit trail to provide accountability to protect the rights of individuals in custody and the integrity of staff.
- 3.36 The transfer of persons from police custody to AIMS custody at custody centres was an area examined during the Inspection that caused particular concern. While the transfer of custody clearly falls within the Contract terms, the Act also details the process by which this kind of transfer of custody is to occur in ss 71, 72, 74, 76, 78, 80, 81 and 83.<sup>116</sup> It appears that police and AIMS officers were, on a number of instances, not aware of the requisite form that must be completed to legally effect a transfer and that must accompany the individual upon the transfer of custody should no court order (warrant) be available. The absence of such a form also raises questions about the capacity of AIMS to assume lawful custody of such persons and AIMS and police need to ensure all staff are aware of the approved form and its significance to ensuring an individual is, in fact, being held lawfully.

115 AIMS has informed the Inspector that it has reviewed the allocation of radios per site and has completed a replenishment program; AIMS Corporation, AIMS Response to a Draft Report of an Announced Inspection of Metropolitan Court Custody Centres, September 2005, p. 6.

116 Sections 72 and 80 only apply to the movement of persons in custody who have been dealt with by the courts because of the exclusion of services outlined in the Contract definition of 'Services', 1.1(c)(i).

- 3.37 In other instances AIMS staff stated that they were aware of the legal requirement for the form to be completed and accompany persons being transferred into their custody, but had difficulties in obtaining the completed form from police. On the one hand the (generally) very positive relationships found between AIMS staff and police is beneficial to the better delivery of custody services, however, it seems that in part it is this good relationship that resulted in AIMS staff being unable or unwilling to obtain the requisite transfer documents. It may be that if both AIMS staff and police were more aware of the possible legal implications of this paperwork not being completed there would be greater compliance. However, one reason reportedly given by police to AIMS for not completing the form relates to the requirement that the officer declare that he or she has 'searched the relevant data bases and this person does not have bail restrictions under section 16 of the *Bail Act 1982*'. Often a police officer may only become aware of the form upon arrival at the custody centre and if he or she has not searched the relevant database, he or she would quite properly not wish to make such a declaration. It appears that either police awareness of this form needs to be increased or that its contents should be reviewed. This is in any case a matter for the Department to resolve.
- 3.38 At most centres confidential files relating to persons held in custody and other records were stored either in the control room or the site supervisor's office in locked cabinets. The exception to this was in Mandurah, where documents were stored in cabinets in the open custody area.<sup>117</sup> Most centres also used whiteboards to record information about who was located in each cell in the custody centre and some other basic information about the person to assist staff in managing those being held in custody. At some centres these boards were visible from the cells, leading to confidentiality concerns in some circumstances. It should be ensured that persons being held in cells are not privy to information about others in custody. At the CLC some information about persons currently in custody is under the control of a staff member at the main control station. The security of these documents relies primarily on the vigilance of the staff member on duty at the station and some thought could perhaps be put into better securing those documents while making them available for staff reference.
- 3.39 As mentioned above, the court custody centre of most concern with regard to record management is at Mandurah. This concern mostly stems from inadequate facilities, especially the lack of appropriate type and amount of secure storage. All records are filed by date rather than by subject matter or type of document so there is no one record for restraints, incidents, use of force, at-risk assessment, and so on. This makes it very difficult to account for all incidents that occur in the centre without going through the records of every individual day. All records are stored in the main work areas or in locked filing cabinets in the sally port as there is no secure control room or supervisor's office for storage. These issues need to be rectified as a matter of priority.

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117 See 3.39 for further discussion regarding record keeping and storage at Mandurah Custody Centre.

- 3.40 The quality of information logs and registers across the sites were, in general, adequate; however, there was some lack of uniformity between centres as to what logs were kept and how information was recorded. Standardisation of forms and procedures should be established across sites and training for supervisors provided to ensure proper implementation. It is these logs that will provide accountability in the case of complaints about the use of force, restraints, searches, self-harm, etc. The Inspection also resulted in some concern that not all critical and reportable incidents (as defined in the Contract) are being reported as required by the Contract. Interviews with staff confirmed that this is sometimes the case. The problem seems to be one of staffing resources, in that it is a task lost in the competing responsibilities of staff. Another cause is possibly the broadness of some of the areas identified as needing to be reported and how the staff interpret these.
- 3.41 Finally, all centres reported an improved sharing of information by the Department about those coming into AIMS custody from prisons. This assists AIMS staff in the appropriate management of persons in its custody. AIMS supervisors are now being provided with summaries of incidents that have occurred recently at prisons involving those coming into its custody, and are also made aware of any concerns regarding the risk of individual self-harming. While the centres are receiving information that an individual may have been assessed as 'at risk', the nature of that risk, how recent that assessment was made and the degree of risk are not always made available to AIMS. Many supervisors stated that this information would better allow them to ensure the appropriate monitoring and ongoing safety of those in custody and AIMS staff. The problem of receiving relevant information from police when AIMS receive a person into custody from arrest remains an issue at most centres and some agreement needs to be reached about standard information that should be shared to ensure persons are held safely following the transfer of custody.

### Conclusions

- 3.42 While it essential that security at custody centres be appropriate, there is some concern that as a result of the escapes it has become the focus of resources above other, equally important considerations of custody centre operations, including the welfare and wellbeing of those being held in custody and the staff's own conditions of work. Staff at custody centres repeatedly stated their frustration at resources being made available immediately following the escapes for security-related needs, while long-identified welfare and staff-related needs remain unaddressed. An example of this was the need for CCTVs in cells to enhance the safety of persons in custody and also staff. It is essential that now that identified security issues have been addressed across metropolitan court custody sites the Department display equal commitment to the improvement of centres to meet the welfare and safety needs of persons in custody and staff.
- 3.43 In addition, the measures put in place in reaction to the escapes have resulted in some inconsistencies and impracticalities in the new security arrangements. The issues identified in

relation to the security key protocols, dock security arrangements, radio communications for staff and record keeping must be addressed.

### PERSONS IN CUSTODY

- 3.44 As discussed in Chapter two, the conditions of those being held in custody can impact significantly on their ability to properly represent themselves in court. And it is not only one aspect of the conditions in which they are held that affects that ability, but the compounding nature of many factors in the custodial environment. The path of individuals finding themselves held in court custody centres varies – some arrive having been transported from prison or juvenile detention centre, others from a police lockup after being arrested and others directly from court having been remanded by the court from freedom.
- 3.45 The following sections seek to examine the various factors that can impact on the individuals held in court custody centres and how the poor level of service in regards to some of these can aggravate the stress and disruption to those individuals already experiencing the stress of appearing in court.

### Transport

- 3.46 Complaints about delays in transport services to and from the court custody centres were one of the most frequent from both staff and persons in custody at the AIMS operated centres. From the perspective of persons in custody being transported from prisons, they are sometimes required to be ready to leave prison before they have eaten breakfast and are not provided a meal until lunch. Transport from prisons in the outer metropolitan area will often stop at other facilities on the way to court to pick up and drop off other prisoners, lengthening the time being spent in small cramped ‘pods’ in the rear of transport vehicles.<sup>118</sup>
- 3.47 While the timeliness of arrivals of transport vehicles from prisons had improved since the last inspection, both AIMS staff and court staff at many centres were critical of the clearances of prisoners back to prison. Sometimes prisoners would arrive at the custody centre by 9.00 am, have finished their appearance by 11.00 am but then sit in a desolate cell until 3.00 pm or 4.00 pm and wait to be taken back to prison. This is inadequate management of transport arrangements. This situation occurred more often in the outer-lying centres than those closer to the central business district. At the CLC clearances are scheduled for a set number of times per day, plus occasional extra journeys depending on vehicle availability, although even then long delays were not infrequent. Court custody cells are not designed to hold prisoners for extended periods of time and a better system of clearances must be developed.

118 For a detailed discussion of the often oppressive conditions in transport vehicles see Report No. 3, *Report of an Announced Inspection of Adult Prisoner Transport Services* (Office of the Inspector of Custodial Services, Perth, 2001).

- 3.48 Contrasting the transportation experience of adults in the system is that of juvenile detainees being transported to court from juvenile detention centres. In September 2004 the Department reclaimed responsibility for the transportation of juveniles back from AIMS. Transport vehicle and coordination are based at the Perth Children's Court allowing the service provided to be tailored to transport needs on a daily basis. The court centre can prioritise movements and ensure young people are cleared from the custody centre in a timely way.

### Searches

- 3.49 Those being held in custody centres have usually been the subject of multiple strip and/or pat down searches, causing many of those detained to state they feel degraded by the process. Prisoners leaving prison will generally be strip searched by prison staff and then pat searched by AIMS staff before entering the transport vehicle. Upon arrival at the court centre the prisoners will be searched again. The reverse will occur when leaving the custody centre at the end of the day to return to prison. Those arriving from police custody will also have been searched by police and again by AIMS staff. Sometimes these individuals will be affected by drugs or alcohol and may be uncooperative or volatile.
- 3.50 The pat down search involves the individual removing shoes, socks, coats, jumpers, belts and any hair bands. Hands are visually examined and the individuals are then asked to face the wall with legs apart and lean with palms spread against the wall above head height. This keeps individuals off balance. The officer will then manually pat down the person on their whole body, other than their genital area. They will then be instructed to lift each foot for examination. They are then asked to turn around, open their mouth and lift their tongue for visual inspection and then run their fingers through their hair. It is not unusual for individuals to look dishevelled after this process.
- 3.51 There have been a number of reported incidents where persons in custody have reacted adversely to the need to be searched at the custody centre. Moreover, the accounts of AIMS staff and persons in custody, as well as observations made during the Inspection support the conclusion that these processes are often seen as unnecessarily repetitive and can be extremely distressing and invasive. Persons are being subjected to multiple searches due to the repeated transfer of custody responsibility, and it would be beneficial for the Department and AIMS to develop a protocol that would eliminate the need for repetition and rationalise the responsibility for risk, as even with multiple searches there is a lack of consistency in what items some persons are permitted to have in custody and a joint protocol would address this.

### Cells<sup>119</sup>

- 3.52 *'The cells are dirty and disgusting and unhygienic...not fit for a dog to do time in.'* This was typical of the response from persons in custody when asked about the conditions experienced in some court custody centres. Significantly, however, those in custody were equally as likely to point out which centres provided satisfactory cell conditions therefore highlighting how poor some

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119 See also para 2.60–2.86 with regard to progress against previous recommendations specifically related to the quality of court custody centre facilities.

conditions actually are. Those drawing the most positive comments were Armadale, Fremantle, Rockingham and Joondalup. The Inspection also found a strong correlation between cell amenity and relations with staff; where facilities were better, persons in custody reported more positive interaction with staff.

- 3.53 Seventy-five per cent of persons in custody surveyed described cell conditions as ‘poor’, and more than one in two of the respondents cited the conditions of the cells as an area for improvement. In the staff survey 58 per cent of respondents held the same view. Of particular concern was the lack of any activity available for persons in custody to alleviate boredom, whether this is reading material, television access or games.
- 3.54 The level of basic amenities available is unacceptable at many centres; the primary concern being the lack of in-cell toilets and drinking water. At centres where these amenities are available, toilets are often visible from the corridors, basins are used for both hygiene and drinking purposes, and soap is not available in cells. Issues of hygiene and lack of privacy are especially distressing for females in custody.

#### **Other Issues Affecting Wellbeing**

- 3.55 Persons coming into court custody centres from police custody will sometimes be in a dirty, partially dressed or dishevelled state. One person observed by the Inspection Team came into the custody centre wearing shorts, but no shirt or shoes, and appeared before the court in this state. The judiciary have corresponded with AIMS about persons from custody appearing shirtless, stating: ‘We should not have to tell you that a shirt should be provided to someone before they are brought to court.’<sup>120</sup> Welfare clothing should be available at all court custody centres for persons who find themselves in this position and this requirement should specifically be included in the new Contract. Departmental plans to upgrade facilities at custody centres should also make provision for showering facilities for persons in custody. AIMS should also ensure all staff are aware that while belts and shoes may be removed from persons while they are held in cells, they should be permitted to wear these items into court.
- 3.56 Access to adequate quantity and quality of food is also an issue at all court custody centres, with the exception of the Perth Children’s Court (PCC) and the CLC. The lunch available at most custody centres is one pie for each person in custody, colloquially known as the ‘one PIC, one pie policy’.<sup>121</sup> The PCC and CLC tend to have a better quality and quantity of food, with lunches being provided from East Perth lockup consisting of two rounds of sandwiches, a piece of fruit and a carton of fruit juice. Sixty-one per cent of respondents to the survey of persons in custody rated the food as ‘poor’ and it was the second highest area identified as needing improvement at 44 per cent.

120 Correspondence dated 11 January 2005.

121 It should be noted that there is some accommodation of special diets required for religious or other special dietary requirements.

- 3.57 While some centres are flexible as to what time they will serve lunch, AIMS is limited by a general Departmental policy to only provide one meal per person in custody. As a result, persons in custody may be denied anything other than one pie over the extended hours they are detained at a custody centre. Also, those coming from prison tend to be highly institutionalised in their eating habits and deviating from meal times can cause much distress. While it does not appear that the Department monitors the allocation of pies as closely as many AIMS staff believe, there is a limit upon AIMS' capacity to be flexible about how much food it provides.<sup>122</sup>

### Re-entry

- 3.58 At present there is very little available at the metropolitan court custody centres by way of assistance with 're-entry' for persons who are released from custody following their court appearance. Some centres appear to have access to a bus day pass, apparently provided by a welfare agency. As one AIMS' officer commented, this is hardly of any assistance to an individual who has just been made the subject of a violence restraining order that disallows him or her from returning to their home. Worse still, in other centres there is nothing available to assist people to make the transition from custody to community.
- 3.59 As indicated above, for some individuals the lack of services can cause significant hardship. Prisoners in particular are adversely affected at these times. Prisoners are transported to custody centres for their court appearances without their property, which remains at the prison. Nor are their personal accounts paid out to them prior to leaving so they have no money in their possession while at the courts. In many cases this will not be a problem, but on occasions when prisoners are released and do not have family or friends present, they can be left without funds and with no ready means to return to the prison to collect their belongings. It is also a particular problem for those who are taken into police custody in regional areas and transported to Perth for their court appearance. As indicated above, some may be brought into custody without adequate clothing, let alone access to the means to return home.
- 3.60 The absence of assistance at release runs contrary to the Department's current commitment to re-entry.<sup>123</sup> The obligations on the Department to assist persons released from custody after their enforced detention is also recognised to some extent under the Prisons Act where provision is made for limited assistance to prisoners being released from prison:

*Upon the release of a prisoner from prison, the chief executive officer may, out of the moneys available to him for the purpose, provide him with the means of returning to his home or his usual place of residence within the State or the place of his arrest within the State by causing his fare to be paid or by providing other means of transport.*

122 The Department monitors the average daily cost of feeding persons detained in custody centres and would note any general departure from the so-called 'one PIC, one pie' policy.

123 The community re-entry program was designed to cut crime by helping offenders re-establish themselves in the community after leaving prison. A number of community agencies throughout the State were allocated funds to develop a range of programs to assist with prisoner re-entry.

- 3.61 Community Justice Services also provides limited assistance for persons leaving custody at some of the court custody locations, such as bus passes for local transport, phone calls and assistance for people needing to return to regional areas. While this is a very positive initiative, it appears to have been a reaction to the extreme need of such people rather than a coherent and fully costed service which is available at all court custody locations.
- 3.62 It is difficult to reconcile the Department's espoused commitment to assisting people to avoid offending behaviour with a gap in services that can result in people being released to the streets without access to money, transport, accommodation or food. Arrangements should be made as a priority to ensure that all persons exiting custody are, at the very least, able to access assistance on being released from the courts.



# Chapter 4

## CONCLUSIONS AND FINDINGS

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- 4.1 What emerged clearly from this Inspection is that no matter which court custody centre a person may be held in, the experience of those individuals is often difficult – both because of the general stresses of appearing to defend themselves and because of the conditions that they experience at the custody centre. While the physical facilities at many centres are acceptable (Joondalup, Rockingham, Fremantle, Armadale and Perth Children’s Court) those held in custody are still subject to policies and procedures that are a detriment to their welfare: inadequate quality and quantity of food, transport delays, repetitive searches and lack of activity. At other centres, in addition to these stresses the facilities are also below an acceptable standard (Midland, Mandurah and CLC) and the Department must plan to rectify this as a matter of priority. The extremely poor infrastructure exacerbates the impact of the other pressures placed on persons in custody discussed in Chapter three.
- 4.2 Without a doubt the Perth Children’s Court was the best of the court custody centres inspected. The facilities, staffing levels, access to appropriate food, timely transport to and from the Centre and the general ethos of assisting juveniles while being held were unmatched by any other facility. What was also very evident to the Inspection Team, however, was that AIMS were not given a level playing field by the Department during the time it provided custodial services at the Centre. When AIMS requested that six officers be permanently available to provide services at the PCC in 2001, the Department’s view was that this could not be justified<sup>124</sup> and five AIMS officers provided services to all juveniles and adults in custody. At the time of the Inspection 11 full-time Departmental staff provided services to only juveniles held in custody.<sup>125</sup> Despite this, and the generally different philosophy applied to managing juveniles in custody, it would serve the Department well to apply some of the practices of the PCC custody centre to other centres, in particular provision of reading material and televisions, quality food, clean and well-maintained cells and adequate staff.
- 4.3 At the other end of the scale, the Mandurah centre – subject to its first inspection – is in need of immediate attention. As highlighted in Chapters one and two, the facilities themselves are a major barrier to appropriate management of persons in custody and must be addressed as a matter of urgency. As one of the fastest growing regions in the metropolitan area, the number of cases being heard at the court complex<sup>126</sup> and number of persons being held in custody is only going to increase into the future and compound the problems of inadequate facilities and staffing levels.
- 4.4 In general terms there was a high level of approval of the service being provided by AIMS, especially in comparison with that of previous providers (the police and the Department). This view was commonly expressed by persons being held in custody, persons attending the centre and ancillary staff such as lawyers. Persons in custody generally see AIMS as less confrontational and many don’t have negative histories with AIMS staff as they might have with police.

124 Department of Justice, ‘Two Year Schedule Only Yr 3 TBA’ (undated), p. 5.

125 It should be noted that these officers also provide transport services for juveniles, whereas AIMS officers were not required to do so.

126 The Clerk of Court reported that in the past two years charges being heard had increased from 2,900 to 4,800.

## CONCLUSIONS AND FINDINGS

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- 4.5 Staffing levels and training remain a major issue and is putting the welfare of persons in custody, court staff and AIMS staff at risk. The functions that AIMS provide at all centres must be reassessed, as many functions currently being undertaken are not being considered when approved staffing is being calculated. Based on this reassessment, new approved staffing levels need to be developed for all centres to ensure that the custody centre is always appropriately staffed (by at least two officers at all times while persons are in custody) and that all court and security related functions can also be undertaken in unison. The situation where custody centres are sometimes only staffed by one officer, or worse no officers, must cease immediately. The inadequacy of staffing at AIMS-run custody centres was only emphasised by the new staffing levels put in place at PCC and the Supreme Court when the Department resumed court custody functions.
- 4.6 The initial training for AIMS court security and custodial services staff seems adequate, but there is a deficiency in ongoing training. The needs of staff must be addressed. The ambivalent relationship that many staff stated they had with AIMS head office could reasonably be partly attributed to the perceived lack of support from head office for both increased staffing levels and lack of ongoing training and support for staff career development.
- 4.7 Finally, as the Contract enters its first renewal period, the Department must adhere to its legislative responsibility to table all amendments to the Contract to ensure full public scrutiny and accountability can occur as intended by Parliament. The Department has neglected its responsibility and exposed itself to potentially high risks by failing to place all variations in writing and tabling them as required. Any future dereliction of this duty should be dealt with seriously.

## RECOMMENDATIONS

1. That the Department undertake a review of services actually being provided by AIMS at each custody centre, and in light of this reassess approved staffing levels accordingly. Staffing must be such that court custody centres are continuously staffed by at least two staff members whenever persons in custody are present.
2. That AIMS provide a better quantity and quality of ongoing professional development training for its staff.
3. All amendments and variations to the Contract that have already been agreed between the Department and AIMS must be put into writing and tabled in Parliament in accordance with the Act as a matter of urgency. The Department must comply with its legislative obligations in the future in all instances to ensure public accountability and the protection of the rights of those held in custody.
4. The Department must clarify its own obligations, and those of AIMS, with regard to bail surrenders and those required to complete paperwork before release on bail. If the Department intends AIMS to have responsibility for the custody of these individuals then:

## CONCLUSIONS AND FINDINGS

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- a) approved staffing levels must be increased to allow AIMS to undertake these duties in a manner that is safe for staff and allows for the appropriate tending to the safety and welfare needs of those in custody; and
  - b) consideration should be given to the widening of the use of bail lounges in metropolitan court custody centres, with the provision of appropriate facilities and the development of guidelines for its use.
5. In relation to the security at metropolitan court custody centres:
- a) The Department must produce clear policies and procedures as to the practical implementation of a secure key policy developed individually for each court custody centre, in particular with reference to how it should be used in that particular operational environment. This process should include a full analysis of staff and infrastructure needs to properly implement the key protocol and resources appropriately applied.
  - b) The Department must assess the dock infrastructure in place in each courtroom at each court complex and plan for the rectification of identified deficiencies. In the interim, alternative arrangements to improve the security in courts where deficiencies have been identified must be put in place.
  - c) AIMS (and where relevant, the Department) must provide sufficient radios at all court custody centres to ensure each staff member rostered to a security position on any given day can access a radio.
  - d) AIMS and the Department must reassess the documentation required to be completed at each court custody centre to ensure consistency across centres.
  - e) The Department must reassess the contents of the transfer of custody form to be completed by police when transferring custody of an individual to AIMS, and AIMS (and where appropriate the Department) must ensure that all such forms are provided and completed before accepting any individual into its custody.
6. That the Department and AIMS act together to improve the services provided to persons in custody to best serve the welfare and safety of those individuals, and in particular:
- a) That AIMS better coordinate transport services so that persons in custody are transported to prison within a reasonable time after completion of their court appearance.
  - b) That AIMS and the Department improve the quantity and quality of food available to persons held in court custody centres.
  - c) That the Department and AIMS together develop policies and procedures with regard to searches to prevent the repeated searching of individuals being transported from prison to custody centres.

## CONCLUSIONS AND FINDINGS

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- d) That the basic amenities in court custody cells at Midland, CLC and Mandurah be improved, including the provision of appropriate in-cell toilet facilities, fresh drinking water and in-cell activities.
- e) That arrangements be made as a priority to ensure that all persons exiting custody are able to access assistance on being released from court custody centres in line with the Department's commitment to re-entry.
- f) That appropriate numbers of interview rooms are provided at each court custody centre with particular consideration to client legal counsel confidential and adequate communication capability.

# Appendix 1

## DEPARTMENT OF JUSTICE RESPONSE TO THE 2005 RECOMMENDATIONS

Recommendations	DOJ Response/Risk Rating
1 That the Department undertake a review of services actually being provided by AIMS at each custody centre, and in light of this reassess approved staffing levels accordingly. Staffing must be such that court custody centres are continuously staffed by at least two staff members whenever persons in custody are present.	<p data-bbox="845 510 1125 548"><b>Agreed in Part/High</b></p> <p data-bbox="810 571 1369 1108">a. Review of Service - The Department will review services being provided at each location as part of its Operational Review framework. The operational review includes assessments of security risks and care and wellbeing of persons in custody.</p> <p data-bbox="810 817 1369 1108">b. Reassess approved staff levels - Approved staff hours are agreed as part of budget setting process laid out in the contract. With the introduction of the CSCS portal, day-to-day AIMS resourcing is regularly assessed by court managers against the demand model and resource adequacy is a factor in the budget review process.</p> <p data-bbox="845 1131 1369 1344">Two staff present in custody centre at all times – The Department agrees that there should be two AIMS staff in custody centres when PIC are in cells. How the AIMS staff at each site integrate their duties to ensure this occurs is a matter for local supervision.</p>

### AIMS Response

#### Agreed in Part

AIMS – AIMS Corporation is now in a position where sufficient staff are available to cover normal demand and provide courts with required staff. Two Officers in custody whenever persons in custody are present is a minimum requirement of AIMS and will be enforced.

Recommendations	DOJ Response/Risk Rating
<p>2 That AIMS provide a better quantity and quality of ongoing professional development training for its staff.</p>	<p><b>Agreed/High</b></p> <p>a. Extra funds were provided during the 04/05 operational year to conduct extra recruitment schools. This has had the desired effect of increasing the staff numbers and providing some resilience in the service. AIMS have also changed their training regime providing greater emphasis on ongoing training and monitoring.</p> <p>b. The adequacy of AIMS professional development is a factor considered during regular Operational Review inspections.</p>

**AIMS Response**

**Agreed**

AIMS – Both the quality and quantity of training for AIMS staff has improved in the last 12 months and will remain a focus.

Recommendations	DOJ Response/Risk Rating
<p>3 All amendments and variations to the Contract that have already been agreed between the Department and AIMS must be put into writing and tabled in Parliament in accordance with the Act as a matter of urgency. The Department must comply with its legislative obligations in the future in all instances to ensure public accountability and the protection of the rights of those held in custody.</p>	<p><b>Agreed/High</b></p> <p>Arrangements have been entered into by both parties of the contract to better facilitate the changing nature of service demand. A deed of variation had not been completed awaiting formalisation of the Department's position on the future of the contract. The Department will include, as part of its annual reporting to Parliament, a summary of variations undertaken to date. This report will be tabled in Parliament early in October 2005. A deed of variation will be formulated to incorporate these changes and then tabled in Parliament following its execution.</p>

Recommendations	DOJ Response/Risk Rating
<p>4 The Department must clarify AIMS’ and where appropriate for the Department itself obligations with regards to bail surrenders and those required to complete paperwork before release on bail. If the Department intends AIMS to have responsibility for the custody of these individuals, then:</p> <p>a.) Approved staffing levels must be increased to allow AIMS to undertake these duties in a manner that is safe for staff and allows for the appropriate tending to the safety and welfare needs of those in custody; and</p> <p>b.) Consideration should be given to the widening of the use of bail lounges in metropolitan court custody centres, with the provision of appropriate facilities and the development of guidelines for its use.</p>	<p><b>Agreed in Part/Low</b></p> <p>a. Service hours issues are dealt with in the actions related to Recommendation 1.</p> <p><b>Agreed in Part/Low</b></p> <p>b. CLC custody centre has a bail lounge and the new Supreme Court and District Court custody centres include bail lounges. Bail lounges are considered an appropriate facility improvement to some custody centres and will be included as part of the standard design brief for those courts. Procedures for the operation of bail lounges will be developed as part of the individual court’s security risk management plan.</p>
	<p><b>AIMS Response</b></p> <p><b>Agreed in Part</b></p> <p>a. AIMS – There is a detailed Operational Policy and Procedure with DoJ awaiting approval that clarifies these issues.</p> <p><b>Agreed in Part</b></p> <p>b. AIMS – AIMS supports the recommendation while reiterating it has no control over or responsibility for facility design or upgrade.</p>

Recommendations	DOJ Response/Risk Rating
<p>5 In relation to the security at metropolitan court custody centres:</p>	
<p>a.) The Department produce clear policies and procedures as to the practical implementation of a secure key policy that are developed individually for each court custody centre, in particular with reference to how it should be used in that particular operational environment. This process should include a full analysis of staff and infrastructure needs to properly implement the key protocol and resources appropriately applied.</p>	<p><b>Agreed/High</b></p> <p>a. Key procedures are included in the Courts Security Manual and AIMS procedural manuals. Compliance will be reviewed during security inspections and operational review activities.</p>
<p>b.) The Department must assess the dock infrastructure in place in each courtroom at each court complex and plan for the rectification of identified deficiencies. In the interim, alternative arrangements to improve the security in courts where deficiencies have been identified must be put in place.</p>	<p><b>Agreed/Moderate</b></p> <p>b. The Department will review dock infrastructure in each court as part of Operational Review inspections. Risks associated with dock design will be met through changes to infrastructure and procedures, including the fitting of door delays and ankle restraints.</p>
<p>c.) That AIMS (and where relevant, the Department) provide sufficient radios at all court custody centres to ensure each staff member rostered to a security position on any given day can access a radio.</p>	<p><b>Agreed/Moderate</b></p> <p>c. Provided appropriate budget discussions occur with the contract manager there is no limitation placed on AIMS for the purchase of radio equipment</p>
<p>d.) That AIMS and the Department reassess the documentation required to be completed at each court custody centre to ensure consistency across centres.</p>	<p><b>Agreed/Moderate</b></p> <p>d. The Courts Security Operational Review regime will ensure a standardised approach to custody documentation within the custody centres.</p>



Recommendations	DOJ Response/Risk Rating
<p>e.) That the Department reassess the contents of the transfer of custody form to be completed by Police when transferring custody of an individual to AIMS, and that AIMS and where appropriate the Department ensure that all such forms are provided and completed before accepting any individual into its custody.</p>	<p><b>Agreed/High</b></p> <p>e. The Department has initiated the development of a system that will integrate the data flow from various areas including Justice and Police. The system is called <i>Court Services Support System</i> and will include interfaces between prisons, courts, police lockups and freedom. A business case has been submitted and project is currently in its specification phase. The current time lines indicate that the preparation and pilot stage will be completed in October 2005, followed by the development phase for completion in December 2006 and implementation in 2007. However, "quick wins" are being identified and implemented immediately. This matter is related to recommendations by the Coroner following the Coronial Inquest into a death in custody at CLC in 2003.</p>

**AIMS Response**

**Agreed**

- a. AIMS – AIMS Security section to undertake a full audit of the implementation, compliance and effectiveness of the key policy at each Metropolitan site.

**Agreed**

- b. AIMS – AIMS response to this security deficiency is additional staff or request to have persons in custody restrained based on risk assessment.

DEPARTMENT OF JUSTICE RESPONSE TO THE 2005 RECOMMENDATIONS

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Recommendations	AIMS Response
	<p><b>Agreed</b></p> <p>c. AIMS – All sites have sufficient radios for normal operations.</p>
	<p><b>Agreed</b></p> <p>d. AIMS – AIMS quality assurance programme will review and address.</p>
	<p><b>Agreed</b></p> <p>e. AIMS – Persons in custody transferred from Police custody who are at risk are indicated by a large fluorescent tag attached to the documentation</p>

DEPARTMENT OF JUSTICE RESPONSE TO THE 2005 RECOMMENDATIONS

Recommendations	DOJ Response/Risk Rating
<p>6) That the Department and AIMS act together to improve the services provided to persons in custody to best serve the welfare and safety of those individuals, and in particular:</p>	
<p>a.) That AIMS better coordinate transport services so that persons in custody are transported to prison within a reasonable time after completion of their court appearance;</p>	<p><b>Agreed/Moderate</b> a. Courts staff will monitor time waiting for vehicles as part of major operational reviews of courts.</p>
<p>b.) That AIMS and the Department improve the quantity and quality of food available to persons held in court custody centres;</p>	<p><b>Agreed/Low</b> b. Operational review processes will continue to monitor the care and well being factors of custody, including the quality and quantity of meals.</p>
<p>c.) That the Department and AIMS together develop policies and procedures with regards to searches to prevent the repeated searching of individuals being transported from prison to custody centres;</p>	<p><b>Agreed in Part/Low</b> c. Procedural manuals and practice will be reviewed, and if required improved detail will be included in the Courts Security Manual to reduce the incidence of multiple searching where it is not an operational necessity.</p>
<p>d.) That the basic amenities in court custody cells at Midland, CLC and Mandurah be improved, including the provision of appropriate in-cell toilet facilities, fresh drinking water and in-cell activities.</p>	<p><b>Agreed/Low</b> d. The custody centres of courts identified in the report are scheduled for upgrade as part of the Department’s capital works program. The courts standard design brief will ensure future custody centres will include the amenities indicated.</p>
<p>e.) Arrangements should be made as a priority to ensure that all persons exiting custody are able to access assistance on being released from court custody centres in line with the Department’s commitment to re-entry; and</p>	<p><b>Agreed in Part/Low</b> e. The Department will review services currently provided to persons released from custody at courts.</p>
<p>f.) Appropriate numbers of interview rooms are provided at each court custody centre with particular consideration to client legal counsel confidential and adequate communication capability.</p>	<p><b>Agreed/Low</b> f. The custody centres of courts identified in the report are scheduled for upgrade as part of the Department’s capital works program. The courts standard design brief will ensure future custody centres include the facilities indicated.</p>

DEPARTMENT OF JUSTICE RESPONSE TO THE 2005 RECOMMENDATIONS

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Recommendations	AIMS Response
	<p><b>Agreed</b></p> <p>a. AIMS – As discussed in our detailed response.</p>
	<p><b>Agreed</b></p> <p>b. AIMS – AIMS provides meals prepared by/provided by WAPS and DoJ.</p>
	<p><b>Agreed in Part</b></p> <p>c. AIMS – AIMS is happy to discuss options for effective searching of persons in custody that does not compromise security or duty of care to staff, other persons in custody, public and judiciary.</p>
	<p><b>Agreed</b></p> <p>d. AIMS – AIMS supports the recommendation while reiterating it has no control over or responsibility for facility design or upgrade.</p>
	<p><b>Agreed in Part</b></p> <p>e. AIMS – Under direction from the Contract Manager AIMS will provide whatever support is practical in the re-entry process.</p>
	<p><b>Agreed</b></p> <p>f. AIMS – As per point (d).</p>

## Appendix 2

### SCORE CARD

	<i>Report No. 7 Recommendation: Report of an Announced Inspection of Metropolitan Court Custody Centres - November 2001</i>	<i>Type of Recommendation</i>	<i>Assessment of the DOJ and/or AIMS Implementation</i>		
			<i>Acceptable</i>	<i>Less than Acceptable</i>	<i>Fail</i>
1	The Contractor (AIMS) and the Department should review staffing and rostering policies and procedures so as better to provide the required services at court custody centres. In particular, the Contractor should:	Staffing Issues		•	
	a) Reassess the allocation of staff hours at each site consistent with operational experience acquired over the last year to ensure the safe and proper delivery of court custody services;			•	
	b) Ensure supervisors are rostered to perform only their substantive roles on arrest days; and			•	
	c) Reassess the use of casual staff, so as to balance its own need for an effective and efficient means of attaining flexibility in the workforce with the service delivery requirements of the Contract.		•		
2	AIMS should provide training that will fully prepare staff to fulfil contract service requirements in a safe manner. Training should be of an ongoing nature to ensure the maintenance of necessary primary response qualifications and to promote professional development.	Staffing Issues		•	
3	AIMS senior management should develop and implement active management strategies with regards to on-site court custody centre support, service delivery, compliance assessments and contract performance.	Administration & accountability of the service provider	•		
4	As a matter of urgency, the Department should cease the practice of placing high security escort prisoners into the custody of Contract staff. Prisoners who have been assessed as posing a high risk should remain in the custody of specialised officers at all times.	Custody & Service		•	
5	The Department should encourage the development and establishment of an appropriate service culture through the implementation of field-based monitoring of service delivery under the Contract. This should include:	Administration & accountability			
	a) Compliance checks;		•		
	b) Interviews with and/or surveys of persons in custody and court custody centre staff;		•		
	c) A formal process to investigate critical incidents and incidents of use of force; and		•		
	d) A formal grievance process for persons in custody.			•	

SCORE CARD

<i>Report No. 7 Recommendation: Report of an Announced Inspection of Metropolitan Court Custody Centres - November 2001</i>	<i>Type of Recommendation</i>	<i>Assessment of the DOJ and/or AIMS Implementation</i>		
		<i>Acceptable</i>	<i>Less than Acceptable</i>	<i>Fail</i>
6 The Department should assess the suitability of the physical facilities of all metropolitan court custody centres for the safe delivery of service to persons in custody, and make provision for capital and minor works appropriations. As a matter of priority, the Department must take steps to remedy the facilities with regards to:	Custody & Security		•	
a) The cell capacity at Armadale Court Custody Centre;		•		
b) The arrangements for the safe escort of prisoners from the detention cells at the Central Law Courts to the courtrooms in the May Holman Centre; and				•
c) The development of a master plan for the management of people in custody and vehicles at the Supreme Court complex, including secure arrangements for the vehicle sally port.		•		

## Appendix 3

### FINAL REPORT TO THE MINISTER FOR JUSTICE ON THE EVALUATION OF THE FREMANTLE AND ROCKINGHAM COURT CUSTODY CENTRES AND SECURITY ARRANGEMENTS

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#### 1. THE BACKGROUND AND CONCLUSIONS

On 2nd November 2004 you directed me, pursuant to Section 17(2) of the *Inspector of Custodial Services Act 2003*, to inspect the Fremantle and Rockingham Court Custody areas to ensure that both facilities were capable of meeting the security requirements for Supreme Court trials. This issue had arisen because of the need to shift a considerable proportion of Supreme Court criminal trial work to these venues during the period that construction work is being carried out at the Supreme Court site in the first half of 2005.

On 15th December 2004 I lodged with Parliament my Report No. 25 relating to the 'Inspection of the Interim Arrangements at the Supreme Court following the Escape of Nine Prisoners from the Custody Area on 10th June 2004'....

The Report reviewed the four stages of response to the escape, ranging from the period immediately after the escape, to the consolidation of some security arrangements, to the temporary arrangements to enable structural changes to be implemented and finally to the long-term situation. The report has a direct bearing upon your direction for the Fremantle and Rockingham Justice Centres. Specifically, paragraph 1.32 and Recommendation 2 are relevant to activities at these courts and, more generally, the whole thrust of a Report that is concerned to optimise court security in a balanced way is relevant to the particular issues at Fremantle and Rockingham.

I have sent you previous Progress Reports about this matter, dated 15th November, 30th November and 15th December 2004. The most recent of these indicated that the Department of Justice still had some way to go to bring security up to an acceptable standard. Attached to that report was our expert consultant's detailed analysis of both sites. That analysis was also sent to the Department the same day.

This is my final report setting out the identified items that, in my opinion, require action from the Department of Justice. Although the time remaining to undertake the physical and procedural changes is very limited, I am now confident that the Department has the means and the will to achieve the desired outcomes. The Department has positively responded to the expert consultant's report.

We have been unambiguously advised that the Department is able to address all matters raised, and where specific proposals cannot be met in the remaining timeframe or a different approach to achieve the agreed objective is considered preferable, an alternative appropriate arrangement will be put into place. The Project Manager ... will be giving a Final Report to the Director-General on 10th January 2005, and one of my recommendations is that a full Briefing Note should simultaneously be sent to your own Office.

It must be understood that, in the final analysis, it is the Department of Justice itself that has the resources, funding and responsibility for implementing court security. *This advice is based upon the assumption that it will complete the tasks that, in the course of this review, it has undertaken to carry out.* It should also be added that at no stage has it been suggested to us that the funding to implement these improvements is unavailable or inadequate.

## 2. THE DETAILS

Site visits were conducted at Fremantle on 18th November 2004 and at Rockingham on 26th November 2004. On each occasion the Department of Justice and AIMS Corporation management were aware of our purpose and were appropriately represented. In other words, this Review ... has been an interactive process – the only way it can effectively be carried out.

The evaluation commenced with an assessment of the security arrangements at the point of entry of the custodial escort vehicle to observe the continuity of custody sequences. From here the movements of persons in custody (PICs) inside the court custody centres and to and from the courts were discussed with relevant staff, and observations made of the front of court and in-court arrangements. An expert consultant, Mr Lin Kilpatrick, was engaged to conduct and document an evaluation of the built environment. He accompanied us on the two aforementioned site visits and made supplementary visits of his own. As mentioned, his report was forwarded to the Department of Justice and to your own Office on 15th December 2004....

### (i) Arrival and Departure of Escort Vehicles

The first part of the driveway on to the Fremantle site is designated as ‘public right of way’ and cannot be easily controlled as part of the court precinct. Consequently, there is no control over public vehicles and pedestrians moving across this part of the site. Whilst controlled gates prevent general traffic from entering the next area immediately leading to the secure vehicle sally port, it would be relatively easy for a public vehicle to park alongside the driveway used by the custodial escort vehicles. This arrangement is not ideal, considering the potential threat to a stationary escort vehicle waiting to enter or leave the site. This area was not covered by CCTV facilities.

The driveway leading up to the vehicle sally port is easily overlooked from surrounding buildings, and there are publicly accessible spaces close to manoeuvring vehicles.

The sally port itself meets contemporary design standards for court buildings, enabling escort vehicles to drive through the facility without the need to reverse or traverse back to the entry driveway. However, there is only one CCTV camera and this is oriented towards the vehicle approach; therefore, the rear of the vehicle cannot be observed as it enters the open sally port.

At the Rockingham site, electronically operated gates control the vehicle entry. Identification of the vehicle is conducted by radio communication rather than by visual (direct or CCTV) recognition. Entry to the sally port is generally out of view from the surrounding public areas. Although the setting is thus superior to the Fremantle site, reliance on the co-located Police operations to operate the gate is less than ideal. Escort vehicles reverse to access the sally port through a single door. There is one CCTV camera providing coverage to the rear of a reversing vehicle.



CCTV coverage should be considered for the following areas at both sites:

- External vehicle driveways
- Areas beyond and behind site boundary walls
- Street frontages and public entry to the court buildings
- All spaces within the sally ports

It is recommended that the Department should conduct a thorough risk assessment for an approaching custodial vehicle to the sally port at Fremantle.

#### **(ii) Movements of PICs**

At the Fremantle site as there is no key access available to the door leading into the main custody zone. In the event that persons in custody need to be evacuated from courtrooms or interview cubicles back to the custody centre, a key override may need to be employed. Consequently, a person in custody could be inappropriately located in a common space that is being accessed by a Judicial Officer in certain circumstances.

The movement of PICs to and from courtrooms, particularly where this crosses over and potentially conflicts with that of Judicial Officers, needs further attention at both sites. There are complex arrangements to cater for fire emergencies that impact on the door locking arrangements. During a supplementary site inspection to Fremantle on 3rd December 2004, the interlocking doors that secure the crossover point were tested and made to fail.

It is recommended that the Department should review all doors that are electronically activated to ensure proper functionality for custody as well as emergency management safety.

The Department has implemented a complex key zone system that requires keys to be separately held by the operational staff. Staff need to be properly informed and trained and the system's operation to be properly supervised in order to prevent incidence of key compromise. The system is also causing delays in delivery of PICs to, and clearance from, courts.

It is recommended that the Department should monitor the extent of these delays with a view to improving the movement of PICs to and from courts.

At Fremantle, in the event that documentation is needed to be passed from one side of official interview rooms to the other, then staff attend from another area and open a passageway door. One side of this space has frequent movement of PICs to and from courts. Access for official visitors (lawyers etc) is on the other side.

It is recommended that the Department should arrange for the construction of a documentation hatch so as to minimise the operation of the security door.

All doors leading out of the custody centres and located on the effective perimeter which defines the court's holding zone should ideally open in towards the secure areas. This arrangement adds strength to the perimeter should a person in custody break free and attempt

to push through or launch an attack against a doorway. The arrangement of some of the doors at both locations varies from this principle.

It is recommended that the Department should review all doors leading out of the custody centres and located on the effective perimeter which defines the courts holding zones.

CCTV coverage should be considered for the following areas at both sites:

- Circulation space around interview cubicles
- Corridors and stairs landing from the custody centres to and from court rooms

It is recommended that hand-held radios, with duress alarm capability, should be issued to all staff supervising prisoner movement. (The Department has informed us that this will be done as from 14th January 2005.)

### **(iii) Custody Cells and Control Rooms**

There are five custody cells at each location. This is barely enough to manage the routine separation of persons in custody: male/female; juvenile/adult; and those requiring separation for protection or special security management. Should further separation be desirable, additional supervision by staff will be required.

There are improvements that could be made for the comfort of PICs relating to the temperature of these spaces, basic comforts and seating arrangements, and activities such as TV that would minimise boredom. Such matters tend to reduce personal stress and situational conflict with staff and facilitate their management. A broad discussion of such matters can be found in Report No. 25, paragraphs 1.35 – 1.38 and Recommendation 3.

At Fremantle, the staff amenities area is behind the control room and is accessed by walking through it. Where previously clear glass in the control room windows and the cells enabled some visual interaction between persons in custody and staff, the windows have recently been tinted so that PICs can no longer see the staff. Whilst we were present at the custody centre, staff tended to congregate in the control room rather than in the passageway adjoining the various cells, although it is true to say that there was frequent PIC movement that necessitated staff interaction. The high level of staff movement into and out of the control room is undesirable because the control line is constantly breached. Better supervision to maximise staff/PIC interaction should be required. This could be documented in new Post Orders currently being developed by the Department.

The reception officer was constantly distracted by background noise. We also noted that the only telephone available for PICs was mounted on a wall near where the reception officer sat and could be a safety hazard. It would be preferable for the phone to be relocated. At the same time, consideration could be given to the question of whether an electronic monitoring system should be installed for intelligence purposes.

At Rockingham, four of the cells are not easily visible from the control room. The cell that is utilised for 'at-risk' placements does not have CCTV coverage. At Fremantle, four of the cells are visible from the control room, but the cell used for 'at-risk' placement does have CCTV coverage. Where CCTV coverage is lacking, the responsibilities and workloads of staff are increased.

#### **(iv) Front-of-court Security**

We have been advised by the Department that public access to the court premises will continue to be managed by the standard patrols that are already in place. In addition to this arrangement it is now proposed that 'wandering teams', to facilitate electronic searches of persons intending to enter a court, will be deployed according to risk assessment when Supreme Court trials are listed at both Fremantle and Rockingham. The whole question of entry protocols to the Supreme Court itself and, by inference, locations where the Supreme Court is sitting was discussed in Report No. 25, paragraphs 1.48 – 1.49 and Recommendation 7, and the point was made that the legislative basis for this needs to be strengthened. However, for the time being this is certainly an improvement to previous practices. There will also be Gallery Guards present within the courts when Supreme Court matters are being tried.

The Department is in the process of conducting negotiations with co-located Police operations for priority response to duress alarms from within the courts to supplement the telephone monitoring system currently in place. This would be a real improvement.

#### **(v) In-court Security**

In-court security was a particular concern in Report No. 25: see paragraphs 1.15 – 1.21, 1.45 – 1.46 and Recommendation 5. This is because of the possibility of escape or assisted escape. Following that inspection, the Chief Justice has indicated that the Supreme Court would not oppose an appropriate and discreet system for restraining high-risk prisoners by some kind of ankle device.

This Office had tentatively considered that a fixed anchor point might be the optimum way of dealing with this issue. However, following an analysis of the last 14 escapes from courts, the Department of Justice has developed a prototype discreet leg restraint consisting of leg cuffs connected by a robust tape strap. This device is intended to replace the leg irons and/or the handcuffs that are currently used where a risk assessment has been made and accepted by the presiding Judge. Such restraints are, of course, more visible in a court. The purpose of this type of restraint is to disable a PIC from running from the dock. The Department is confident that the device will meet the court protocols and minimise escapes from docks. The exact design of the device is being negotiated with the nominated Justice of the Supreme Court.

The Department proposes that, if a Judicial Officer refuses to permit the application of such a device in particular circumstances, then additional staff will be deployed during Supreme Court trials. Any such refusal should henceforth be known well in advance, as the

Department will have in place processes for submitting such requests much earlier than has previously been the practice.

Also, a time delay switch has now been installed at the public gallery exit door at both locations to reduce the possibility of an assisted escape and to slow the egress of an escaping PIC.

#### **(vi) New Organisational Arrangements within the Department**

In a memorandum to you of 10th September 2004, I had expressed my concern at the Department's confused organisational arrangements for the management of court security and related custodial services. These arrangements increased risk. This concern was reiterated in Report No. 25, paragraphs 1.30 – 1.31 and Recommendation 1. We also noted in that Report that a consultant had been retained by the Department to advise upon these arrangements, and recorded our confidence as a result of our own discussions with that person that some unity and coherence would be brought into the new arrangements (footnote 17).

The Department has now advised that new organisational arrangements will be in place prior to the hearing of additional Supreme Court trials at Fremantle and Rockingham. We have seen the Organisational Chart and been briefed as to its intended operation, and it seems to be satisfactory. We understand that as of 21st December the Director-General has approved this structure in principle. The responsibility will now reside with a Director Court Security (L9), rather than being diffused through seven or eight different portfolios.<sup>127</sup>

Within this structure, several operational enhancements will be facilitated. These include: improved threat assessments of PICs attending from custodial locations; much earlier identification of cases that pose risks; enhanced coordination with the WAPS State Security Unit; a new incident command structure to support emergency responses; and on-site attendance by members of the Operations Review Branch during Supreme Court trials. The latter staff will be issued with CSCS permits, where appropriate, to enable them to have line authority over the operations.

In addition, when High Security Escort (HSE) prisoners attend Supreme Court trials, members of the Emergency Support Group (ESG) will escort the PICs and hand them over to (AIMS) Security Support Group (SSG) personnel at the court custody centres. It is also proposed that the ESG personnel will remain on site until the conclusion of the court attendance and remove the PICs rather than leaving them for collection at a later time, though that matter is still being negotiated.

<sup>127</sup> The protocols for creating and filling a new L9 position substantively may take up to two or three months. We have been assured that an acting appointment will be made prior to the hearing of Supreme Court cases at Fremantle and Rockingham. Should this arrangement not be implemented, there would be a continuing serious risk to court security arrangements across the whole system, including Fremantle and Rockingham.

FINAL REPORT TO THE MINISTER FOR JUSTICE ON THE EVALUATION  
OF THE FREMANTLE AND ROCKINGHAM COURT CUSTODY CENTRES  
AND SECURITY ARRANGEMENTS

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It is recommended that Department of Justice personnel should establish and maintain a strong on-site presence at both courts in the ways identified above whilst Supreme Court trials are being held there.

**(vii) Summary**

The Department has now responded positively to our own inspection and, in particular, to our expert consultant's report. We note that new Post Orders are under development to guide the performance of custody centre staff at the two locations. This is a departure from the more complex Operational Procedures Manual, which is more training-intensive.

The proposed arrangements are dependent upon high quality staff supervision, both by AIMS and by the Department itself. The new court security structure will establish a dedicated group with responsibility for court security. Importantly, it is apparent that the Department now understands that ultimately it bears the responsibility for the security situation and that the contractual arrangement whereby AIMS is the primary service provider does not mean that this responsibility is obviated. As a consequence, the coordination between the Department and AIMS is improving markedly.

The Department has agreed to provide a comprehensive Briefing Note to your office once the physical works have been completed and tested and details on the discrete restraint and new organisational arrangements have been finalised. It is anticipated that this will occur in the week prior to the commencement of Supreme Court trials at the two locations, i.e. the week commencing 10th January 2005.

### 3. RECOMMENDATIONS

It is recommended that:

1. The Department conduct a threat assessment of the areas surrounding the court complex precincts and install CCTV or patrol the areas to supervise the arrival and departure of escort vehicles.
2. All electronically activated doors should be reviewed to ensure proper functionality for custodial as well as emergency management safety.
3. The operation of the new key protocol should be closely monitored and any delay to court operations minimised.
4. A documentation hatch should be installed in the official interview area at the Fremantle Court custodial area to minimise the operation of the security door. This should be a standard feature of court custody areas.
5. All doors leading out of the custody centres and located on the effective perimeter that defines the courts' holding zones should be reviewed.
6. Hand-held radios, with duress alarm capability, should be issued to all staff supervising the movement of PICs.
7. Department of Justice personnel should establish and maintain a strong on-site presence at both courts whilst Supreme Court trials are in progress.
8. The various undertakings that have been made to the Inspector and that are described in the above review must be implemented in time for the commencement of Supreme Court trials at Fremantle and Rockingham courts.
9. The Department of Justice should give your Office a comprehensive Briefing Note, addressing inter alia the matters identified in this Report, before the commencement of Supreme Court trials at Fremantle or Rockingham courts

Professor Richard Harding  
INSPECTOR OF CUSTODIAL SERVICES

22nd December 2004.

# Appendix 4

## INSPECTION TEAM

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Robert Stacey	Deputy Inspector of Custodial Services
Dace Tomsons	Acting Manager Research and Inspections
Jeannine Purdy	Inspections and Research Officer
Natalie Gibson	Inspections and Research Officer
Stephen Reddy	Inspections and Research Officer (seconded from the Department of Justice)



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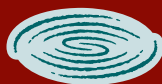
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