

# Inspector's Overview

COURT CUSTODY CONTRACTORS ARE PROVIDING A GOOD SERVICE BUT THE CONTRACTS NEED STRONGER MONITORING

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## COURT CUSTODY SERVICES HAVE BEEN OUTSOURCED BUT THE STATE RETAINS THE RISK

This report examines the infrastructure, operations and management of Western Australia's court custody centres and the secure unit at Fiona Stanley Hospital ('FSH'). These are all 'day-stay' facilities where people are held in custody for the purposes of court proceedings or health services.

Although court custody centres and the FSH secure unit are not places of long-term custody, it is important not to under-estimate the risks and challenges. Many people in court custody centres have been recently charged by the police, and are awaiting a bail hearing. Others have been serving time in prison or in a youth detention centre, either on remand or after being convicted of an offence. Most will be anxious about their upcoming cases and concerned about family members, and some will be under the influence of drugs or alcohol. This can be a volatile mix.

The services discussed in this report have been outsourced. However, the state retains the paramount duty of care to people in custody and ultimate responsibility for service delivery. Simply put, it has *bought in* a service but cannot contract *out* of its responsibilities.

It follows that the relevant government agencies (the Department of Corrective Services (DCS) and the Department of the Attorney General (DotAG)) must monitor and manage the contracts effectively.

## TWO CONTRACTS AND A NEW CONTRACTOR

Services at the District Court Building ('DCB') and the Central Law Courts are governed by the 'DCB Contract'. The contractor is Western Liberty Group ('WLG'), but it has sub-contracted court security and custodial services to G4S Custodial Services ('G4S'). The DCB Contract runs for 25 years, from 2008 to 2033.

Services at the state's other 20 court custody centres and the FSH secure unit are governed by the Court Security and Custodial Services Contract ('CSCS Contract'). The CSCS contract also governs prisoner transport services.

The CSCS and DCB Contracts were both entered under the authority of the *Court Security and Custodial Services Act 1999*. The DCS Commissioner, as the responsible CEO for that Act, is the principal to both contracts.

The CSCS contract runs for five years at a time, with the prospect of renewals. Serco has been the contractor since 2011, when it took over from G4S. However, after a process of competitive re-tendering, a new contractor, Broadspectrum, will take over in 2017. The change of contractor adds extra significance to our findings and recommendations.

## OUR KEY FINDINGS

We found that:

- G4S has delivered a high quality service at the District Court and Central Law Courts
- Serco has delivered a high quality of service at other court custody centres

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- Serco has delivered a high quality of service at the FSH secure unit
- DotAG and DCS are not providing adequate on-site monitoring of the DCB Contract
- DCS is not providing adequate on-site monitoring of the CSCS Contract
- the Northbridge Magistrates Court is not being used as intended.

### G4S HAS DELIVERED A HIGH QUALITY SERVICE UNDER THE DCB CONTRACT

There is no doubt that the long term nature of the DCB Contract has given stability and a capacity for the contractor to build, consolidate and improve its services. We found the District Court and CLC court custody centres were operating effectively. There was a high level of satisfaction with G4S services, G4S officers were managing people in custody well, and the company's relationships with stakeholders had been strengthened.

### SERCO IS LEAVING THE CSCS CONTRACT IN GOOD SHAPE

Serco was delivering a high quality service at court custody centres. It had embedded good practices at all new facilities, including the courts in Kalgoorlie, Kununurra and Carnarvon, and the FSH secure unit, and had responded well to previous recommendations.

Serco also deserve credit and appreciation for taking on new roles. In 2013, Banksia Hill Detention Centre was in crisis. At short notice, Serco took over juvenile transport and court custody services at Perth Children's Court from DCS. It managed this smoothly, professionally and effectively.

In late 2015 and early 2016, when we formally inspected the court custody centres, staff culture and morale was good. Staff were positive, professional, and engaged with their jobs. However, in recent months, they have become anxious about their prospects of employment, and the likely conditions of employment, when Broadspectrum take over.

As Serco are about to exit the CSCS contract, it is also appropriate to make some more general observations, based both on the fieldwork for this report and our other activities. First and foremost, it has implemented significant improvements across the Contract, especially in relation to duty of care to people in custody, staff professionalism, and improved procedures. Serco has also met some challenging service delivery targets, including 24 hour police lockup clearances in regional WA.

Serco suffered a number of escapes in 2013–2014 but has paid a high price for these, financially and reputationally. Obviously, escapes are not acceptable. But the simple fact is that they will occur from time to time, from public as well as private providers. In the last couple of months, there have been escapes from police at Fremantle Police Station and from DCS staff at FSH. And some of the escapes from Serco reflected system-wide weaknesses not just contractor failings. The key point is that Serco responded proactively and positively, and worked well with DCS. The result is that the risks of escape have been reduced.

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**THE NORTHBRIDGE MAGISTRATES COURT IS NOT BEING OPERATED AS INTENDED**

The new Perth Police Complex in Northbridge was commissioned at the end of May 2013. It contains a very well-appointed Magistrates Court that was funded and designed on the basis that it would be used seven days a week to process overnight arrests. The aim was to minimise the costs and risks of transferring people to other courts.

However, it has never operated as intended. Initially it operated only on Saturdays. Now it operates on Saturdays and Sundays. The reasons given to us were financial and logistical. However, no actual costings or data were provided.

We agree with the Public Administration Committee that 'it is inefficient to have the Magistrate's Court at the Northbridge Police Complex functional but not operating seven days per week' (Standing Committee on Public Administration 2016, 62–63). There are also significant risks in conducting additional transfers of people from the Perth Police Complex to other courts.

**STATE AGENCIES DO NOT ALWAYS AGREE ON WHO IS RESPONSIBLE FOR WHAT**

The contractual and oversight arrangements are not straightforward:

- the DCS Commissioner is the principal to both the DCB and CSCS contracts
- DotAG is the key beneficiary of court custody services under both contracts
- WA Police ('WAPOL') are also primary beneficiaries, especially of prisoner transport and court custody components of the CSCS contract
- DCS is responsible for managing and monitoring court custody services that fall under the CSCS Contract
- although DCS is principal to the DCB contract, it has delegated contract management to DotAG.

It is obviously important for all the parties to agree on who is responsible for what. In 2013 I called for some uncertainties with respect to 'responsibilities, governance and accountability' (OICS 2013, viii) to be resolved, but unfortunately, problems still remain. These include:

- DCS and DotAG agree that DCB contract monitoring needs to be improved but disagree on who should do it (see below)
- we have recommended that arrangements for supervising people in the dock at the Northbridge Magistrates Court should be reviewed. DCS says this is a matter for WAPOL and Serco. But WAPOL consider it is a matter for them to work out with DCS, not the contractor.

It is not for us to resolve these differences but the parties need to address the issues and our recommendations.

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### CONTRACT MONITORING IS INADEQUATE

If the state is to uphold its duty of care, cover its risks, and ensure that standards are maintained, it must adequately monitor its contractors' performance. We concluded that monitoring was inadequate in both contracts.

#### The CSCS Contract

DCS had cut its contract monitoring team by more than half since 2012–2013. In addition, the scope of the monitors' work had expanded. Previously, they only had responsibility for overseeing services delivered by private contractors (Acacia Prison, Wandoo Reintegration Facility, and CSCS). Since late 2015, they have also been expected to monitor all 15 publicly-operated custodial facilities.

The inevitable result was that on-site monitoring had dropped off, especially at regional sites. Most regional sites reported that it had been 12 months or more since they had last been visited by a monitoring officer. That is not adequate.

DCS agreed that on-site monitoring should be improved (recommendation 1) and said it had already actioned this. However, records of monitoring visits conducted in 2016 and of the 2017 schedule suggest that regional courts can still only expect a visit every 18 months.

The advent of any new contractor, however good, will bring additional risk. I therefore urge DCS to add extra visits over the first two years of the new contract.

#### DCB Contract

DCS is principal to the DCB Contract but has delegated contract management to DotAG. The arrangement was not working well:

- DCS monitors no longer had a regular presence
- DotAG provided virtually no on-site monitoring of contractor performance and relied on G4S to self-report on contractual compliance and performance and on 'internal networks' to alert them to any risks.

DCS and DotAG have both accepted that monitoring needs to be improved but neither has accepted responsibility. DotAG say it is for DCS, but DCS say it is for DotAG.

I don't mind who does it but I do mind that it is not being done. DotAG and DCS both face budget constraints, but they must agree on a division of labour. The state must also make sure it has provided sufficient funding. It saves money by outsourcing but must invest some of these savings in contract oversight.

### TRANSITIONING TO A NEW CSCS CONTRACTOR

On 16 June 2015, the Minister for Corrective Services announced that the Government would re-tender the CSCS Contract. On 31 August 2016, Broadspectrum Australia was named as the preferred respondent. Transition is scheduled for the end of March 2017.

The change of contractor was not unexpected given the negative publicity surrounding the escapes and concerns about contract costs. The new contract is expected to deliver both cost savings and additional services.

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It seems very likely that Broadspectrum, a subsidiary of Ferrovial, will sub-contract aspects of the contract and will leverage off the experience of Amey, another Ferrovial subsidiary. Amey currently deliver prisoner transport in the UK in partnership with a separate company called GEO (under the badge 'GEOAmey').

The CSCS Contract is high risk as well as high value. It is therefore essential to ensure:

- a paramount focus on duty of care to people in custody as well as safety, security and efficiency
- a smooth transition from now until March 2017. This will require strong communication between DCS, Serco and Broadspectrum, including accurate and timely advice to existing staff about their employment status, terms and conditions under the new contract
- robust contract management and regular monitoring, especially during transition and the first two years of the contract.

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1 December 2016