

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

**INQUIRY INTO THE TRANSPORT OF PERSONS IN CUSTODY  
IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 15 JUNE 2015**

**SESSION TWO**

**Members**

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

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**Hearing commenced at 10.13 am****Professor NEIL MORGAN****Inspector of Custodial Services, sworn and examined:****Mr JAMES BRYDEN****Inspections and Research Officer, Office of the Inspector of Custodial Services, sworn and examined:****Mr CLIFFORD HOLDOM****Inspections and Research Officer, Office of the Inspector of Custodial Services, sworn and examined:**

**The CHAIRMAN:** Welcome to those people who are in the public gallery as well. This is a public hearing of the Standing Committee on Public Administration and you are very welcome here today. I must ask that during the course of proceedings though that you do not make any undue noise to distract from the recording of the proceedings for Hansard, and obviously no commentary from the gallery. Professor Morgan, on behalf of the committee I would like to welcome you to the meeting. Before we begin, I must ask all of you to either take the oath or the affirmation.

[Witnesses took the affirmation.]

Gentlemen, you will have all signed a document entitled “Information for Witnesses”. Have you read and understood that document?

**The Witnesses:** Yes.

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

Formalities over and done with, out of the way, we do have a series of questions here that we would like to ask you to speak to from the submission that you gave to the inquiry. It was quite a detailed submission so I think that we can dispense with opening statements and just go into questioning, if you are happy with that, Professor Morgan?

**Prof. Morgan:** Provided, perhaps, if at the end I can say if there is anything else that I feel needs to be placed on the record.

**The CHAIRMAN:** Of course—that we have not covered. Absolutely, okay, we will do that. I forgot, especially for members of the public gallery, to introduce the committee to you. My apologies for that. As you know, I am Liz Behjat, the chairman of the committee from the north

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metro region. Starting from my left, Hon Amber-Jade Sanderson from East Metropolitan Region; Hon Darren West, the deputy chair of this committee from Agricultural Region; our advisory officer, Dr Julia Lawrinson; Hon Nigel Hallett from South West Region; and Hon Jacqui Boydell from Mining and Pastoral; and our committee clerk, Tracey Sharpe. So everyone knows who is who in this zoo.

In your submission you note that you used to be invited to multi-agency CS&CS stakeholder meetings. It appears that this is no longer the case. What is your view on the appropriateness of your attendance at those meetings?

**Prof. Morgan:** I personally did not attend those meetings, but Jim on my left and I think Cliff on my right—Jim certainly did on occasions. Our attendance, I think, was very useful. We have to be, I think, informed, but we are always to some degree outside the tent. In other words, we are not parties to the contract, but it is obviously very helpful for us to know what is going on and what the concerns and issues are from a contract management perspective, relating either to the scope of the contract, or the management of particular issues or performance issues. So, yes, we were disappointed when a while back the department decided that our presence was no longer required or invited at those meetings.

**The CHAIRMAN:** How did that come about?

**Prof. Morgan:** I am not sure how or why that came about. I do not know whether Jim has any —

**Mr Bryden:** I am not sure why it came about but there was a change of positions in that area, and it just seemed that just after that the invites stopped.

**The CHAIRMAN:** So, they did not formally advise you that you were no longer to be invited, they just stopped inviting you?

**Mr Bryden:** I am not 100 per cent sure on that, because another person in the office took over my position, but she did come to me and say that they were no longer attending the meetings and I asked why, and she said that they were told that they were not invited anymore.

**The CHAIRMAN:** So, how did you become aware the meetings were taking place? Without you being advised?

**Mr Bryden:** Oh no, we used to get, in the email, a meeting set up. I still was receiving those, but when the other lady in the office attended, she was told that after this one, that that would be it.

**The CHAIRMAN:** She was told at a meeting that no need for you to no longer —

**Mr Bryden:** As far as I know. Yes.

[10.20 am]

**The CHAIRMAN:** Again, these few questions are obviously on the oversight. In your submission, you note that there needs to be adequate resourcing of contract management, as well as experience and expertise in contract managers themselves. You also suggest that there has been some unevenness in relation to this in the Department of Corrective Services over the years and that this represents risks. In broad terms, could you elaborate on that part of your submission and your observations in this area?

**Prof. Morgan:** I think anybody who takes a look at either the CS&CS contract, or indeed something like the Acacia Prison contract would be aware it is actually a very complex document. I am a lawyer by trade, so I suppose I have a vested interest in saying that perhaps people with legal skills and a good background in contracts would be reasonably well equipped to manage those contracts, but you also need people with operational experience. Now, I certainly do not want to go into time frames or individuals, but certainly my observation over time has been that the combination of those skills in the department has fluctuated. That is partly an inevitable fact, when people move on and move between different jobs, but clearly it is a contract between the state, in

the name of the Department of Corrective Services and Serco, and these are contracts that the state needs to manage effectively. Serco certainly is itself well equipped, in terms of understanding and managing contracts; it is what they do. I would say that in my view—I do not want this to be too much of a criticism of the department, because I suspect this is actually an area in which most government departments will struggle, because getting that correct balance of expertise, in terms of the subject matter and the legal niceties, is always going to be a difficult balance to strike. When I say that it generates risk, well it generates risk in a number of ways. If you are not confident that the contract is being monitored properly, then you cannot be sure that the safety of people in custody is actually being assured. You also cannot be confident that the state is actually getting its value for money in other than perhaps a desk-based sense. To give a little example of that, we do tend to travel ourselves to regions, and when we go to regions, for example if we go to the Kimberley and visit the west Kimberley or Broome prison, we usually do those together, but we will commonly also go and have a look at the court custody arrangements and take a look at transport arrangements. We have been informed by a number of people that we seem to have a more visible presence than the department itself. Now, I would think that is an area where it is really a question for the department to consider whether adequate resources are being put into this both centrally, in terms of the expertise I talked about, and also in terms of on-the-ground observation. Does that largely answer your question?

**The CHAIRMAN:** Your 2013 report into court custody centres made some comments about the monitoring of the contract. In particular, you recommended that the CS&CS contract should be monitored according to the KPIs in the contract, rather than Serco's operating instructions, as had been happening. It appears there was some dispute as to whether this had been happening. Are you aware of what the current situation is?

**Prof. Morgan:** I would have to take that question on notice.

**The CHAIRMAN:** Could you take that on notice for us?

**Prof. Morgan:** I certainly will take that.

**The CHAIRMAN:** For the record, that is question A1.

I would like to move to the area of service demand. You suggest that while Serco in your view is meeting most contracted services, coverage for unpredictable ad hoc transports have been problematic, especially in regional areas and in relation to the hospital sit coverage, which is impacted by the baseline volume banding system. You suggest that the contract requires more flexibility and a revision of the volume banding system and costs for additional escorts. In your view, would it be more practical for this negotiation to take place or for DSC to resource these requirements itself?

**Prof. Morgan:** I think there is probably a double answer to that, and it is probably a bit of both. I think first of all we need to really understand what services are required overall. That was partly the purpose of our submission; that is, to point out that while many of the specific terms of reference relate to the CS&CS contract, a lot of other activity is going on where either DSC or WAPOL will be delivering the service. First of all we must understand what it is that we want. The state needs to really understand that and really get that right. Then it seems to me, as we try to portray in the submission, that you have two options: you either get a contractor to do it, or you do it yourself. It is not unlike me lopping trees in my back garden. I needed three trees chopped down and the tree lopper came and gave me a quote and he did the three trees. I asked if he could take down a fourth tree for me and he said that it would cost me another \$1 000. Okay, that is the marketplace. You either do it yourself or you pay for somebody else to do it. I think we need to understand what services we want, what we want to buy in, but always acknowledge that you may buy in services in a certain area, but still as the state be entitled to what I call topping up those services. For example, if you are looking at something like transport to funerals from regional prisons, the West Kimberley Regional Prison is, as you know, located in Derby. The courts and the

other prison and contractors are located in Broome. As soon as you start to think about doing escorts out of West Kimberley, you will immediately build in some costs for the contractors to move from Broome to Derby to undertake the transport. Certainly, when you look at West Kimberley Regional Prison—we visited there together some years ago—you will see that the airstrip is adjacent to the prison. There is a very strong argument for saying that it might be more rational, more flexible and more sensible to let the prison deliver some of those escorts themselves. So they are after flexibility and topping up; that is really what I am driving at. If you buy in a service, it does not stop you from doing some of the additional work yourself. Indeed, it would not stop you actually looking at alternative contract arrangements. If there was somebody else local, you might use them; for instance, you might use prison staff but you might want to contract in the services of a local man with his aeroplane. I think it is a case of probably sitting back. I should place it on the table, of course, and you would be aware of this, that the contract runs out at the end of June 2016 and under the terms of that contract the department is required to give notice of 12 months to the contractor Serco if it does not intend to renew the contract for any period of time. The date 30 June 2015 is looming and so I would imagine that there may well be some indication fairly soon as to how the department intends to go. In my view it really does need to look very hard as to what services are needed. The other issue of course is not about the department but a whole-of-government issue; it is about WAPOL, DOTAG and also about DCS.

**Mr Holdom:** Regional prisons are usually mixed. They usually have a maximum-security section and a medium-security section, and some also have a minimum-security section. The problem with having a one-size-fits-all service is that all of the prisons will be treated by the contractors as though they were maximum security. So even a minimum-security prisoner who goes out for day work in the community, when they have to go to the hospital or even a funeral, they will be treated by the contractor as though they were a maximum-security prisoner. That is just one area —

**The CHAIRMAN:** And how will that differ between, say, a minimum and a maximum-security prisoner?

**Mr Holdom:** We did advise in our discussions with the department before that when the present contract was set up that they should look at the regional prisons having their own capacity to do escorts and for that to be mixed with the capacity that the contractor would provide; things like the clearances from police to and from court and things you would want the contractor to do. And if they have capacity they might well be able to assist with other escorts in that area. But the notion that you cannot do a hospital sit in Broome simply because there is already a hospital sit in Bunbury, even though the contractor may well have spare capacity to do a hospital sit in Broome is, frankly, ludicrous and is simply poor contract design, unfortunately.

[10.30 am]

**Hon AMBER-JADE SANDERSON:** Is it the case that under the current contract where prisons do need to require other services that the contract does not cover, they are prohibited from using any other outside contractors?

**Prof. Morgan:** I believe they would be prohibited from using—the prisons themselves would not be able to enter a contract, I believe, but —

**Hon AMBER-JADE SANDERSON:** So even though Serco will not provide it, because it is not in the contract, they cannot go outside of that and find another way to provide it?

**Mr Bryden:** The prison itself can supply but they cannot get an outside contractor, no, other than for a flight.

**The CHAIRMAN:** Sorry, Cliff, I just want to go back to that question on the difference between the transport between minimum and maximum security. What is the practical issue? You are saying that a minimum-security prisoner is transported and has to be manacled as well because they are treated as a maximum-security prisoner; is that what you are saying?

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**Mr Holdom:** Correct.

**The CHAIRMAN:** So normally if it was a minimum-security prisoner being transported on their own, they would not necessarily wear leg manacles?

**Mr Holdom:** I have to admit there has been a slightly mixed picture over the past 12 months where even minimum-security prisoners moving from minimum-security prisons by the department itself have been subjected to a higher level of restraint than was previously the case. Right now we have a mixed picture where some facilities are allowed to do those movements without those restraints, and in others minimum-security prisoners are still subject to those restraints.

**The CHAIRMAN:** How is that administered? Are there guidelines or are there set rules as to how it happens, that some follow them and some do not?

**Prof. Morgan:** Inevitably when the escapes have occurred, something had to happen. It was simply unacceptable that escapes continued. I want to emphasise that whilst a large number of those escaped from Serco, they were not alone; we had escapes from Department of Corrective Services custody, from both prisons and transport, and although it tends not to feature in Department of Corrective Services or OICS reports so frequently, there have also been escapes from police custody. These things happen; it is a high-risk activity. When that happened, the department certainly tightened its criteria for the escorts it would do and for the security it would impose. If we take the sort of example Cliff was alluding to, in the prisons at the moment are some prisoners who go out on what is called PEP, the prisoner employment program. This is pretty much the highest level of trust you can get yourself into in a prison context because you go out during the day and you are either seeking employment or on occasion you are working in paid employment and contributing that back to the system. We have prisoners who are going out on PEP on a daily basis who, if they are taken ill at night and require a hospital escort, are required now to be escorted by two officers. Although, as Cliff said, practice seems to be changing a little, in recent months they have largely been handcuffed as well. This is probably understandable, given what happened at one level, but it seems to us that it is probably an unnecessarily expensive and cumbersome way to transport people who are not regarded as a significant risk in the sense that they are allowed to go out of the prison on a daily basis.

**The CHAIRMAN:** So they would not attempt to escape while they were going to work. They might attempt to escape when they are ill and going to hospital.

**Prof. Morgan:** You would have to ask other people that one. It seems to me that if I was cycling from the Bunbury pre-release unit into Bunbury each day to go to work, if I wanted to escape I would probably carry on riding.

**The CHAIRMAN:** Or walking your dog in the football field, as was the case.

**Mr Bryden:** It even goes further than that. You have people who go to home leave for anything up to three days—72 hours—and then come back to the prison and undergo exactly the same conditions.

**The CHAIRMAN:** So there needs to be some consistency. Video link and the use of it—what is your view on the increasing use of the video link from a prison justice perspective?

**Prof. Morgan:** I think that is the question that is probably well directed to members of the legal profession particularly, who obviously have their clients appearing by video link from the prisons. My feeling is, I suppose, twofold. First of all, the more we can reduce transports the better. Provided the technology is reliable and efficient, that is very good. One of the things I have concerns about though is that some of the prisons, which are now holding more remand prisoners, have not really been resourced for that function. Hakea Prison, which is the main male remand centre, is probably the best resourced in the state. The people who work in the Hakea video links area do an amazing job with limited resources. They are very efficient, they get the prisoners up and they are timely. A number of other prisons, including Bandyup Women's Prison, have a much less

good record in this regard, and it certainly seems to struggle sometimes to meet the requirements of court video link. The other area that I suppose I would be concerned about, but it is really more a question for the legal profession, is whether they believe that their clients are getting a fair hearing when it is done through video link. My experience on the parole board some years ago where we used to give prisoners the right to appeal by video link was that if they got an adverse decision—I think that is something that no longer applies in the parole board but in those days we did that—most of the prisoners were actually well able to present by video link, but there were certainly some I felt it would have been much better to have had the opportunity for a face-to-face conversation. The other area, of course, with video usage, which is a little outside your terms of reference, is that areas like Skype and other types of technology need to be actively explored. I do not think anybody actually uses video recorders anymore. Skype is the way to go.

**The CHAIRMAN:** Just remind me, does Derby have video link? I cannot recall from our visit there.

**Mr Bryden:** Yes, they do.

**The CHAIRMAN:** And do they use it —

**Mr Bryden:** For a while they never had any video link and they did a few phone connections, but they have definitely got video link now.

**The CHAIRMAN:** And they use that?

**Mr Bryden:** I think it also relies a little bit on the magistrate at the time. Some magistrates like it and some do not.

**Hon NIGEL HALLETT:** Jim, has there been a cut in costs having that video link there or are they still flying back to Broome?

**Mr Bryden:** It is hard over the last 12 or 18 months because they have had that period where they never had any video link hooked up for a while, so there was a lot of expense there. Where they could they saved money by using the phone when it was allowable. It would be really hard to say whether there has been a savings there particularly with West Kimberley. I imagine that throughout the state there would be a saving if it was used regularly.

**Hon NIGEL HALLETT:** That is something that could be improved quite dramatically?

**Mr Bryden:** Yes.

**Hon JACQUI BOYDELL:** Neil, I just had one question on the use of video link and certainly the impact it has on the amount of transportation that needs to occur. Do you have any comment to make on the facilities that are available for custodial services in places like Hakea Prison and how they have to deal with those services with the increased amount of videoconferencing being used by the courts?

**Prof. Morgan:** I think my comment would be probably just to clarify what I said earlier. In a nutshell, the Hakea video links area is an amazing site, and, if you have not seen it, you should probably go and have a look.

**The CHAIRMAN:** We have; we saw it about two or three weeks ago.

**Prof. Morgan:** I am not sure what your view was but I find the facilities inadequate in terms of their built structure. But I find the quality of service provided by the staff to be very good in difficult circumstances. I am most impressed. People say that men cannot do more than one thing at a time but there are a bunch of male officers down there who were doing multiple tasks when I was there, and I really feel that they are making the best of what they have got. Other prisons like Casuarina, which now holds something like 230 remand prisoners at the last count—I would have to follow up to provide a definitive answer on this but I do not believe that Casuarina has been provided with the additional video link resources that automatically follow that sort of change in

their profile. Casuarina Prison has changed from being a sentenced prisoner prison to a prison that is now around a quarter to a third remand, and it changes the dynamics and changes the profile.

**The CHAIRMAN:** Perhaps the improvement at Hakea is due to the two women who are now the deputies out at Hakea.

**Prof. Morgan:** Undoubtedly so; I would concede that. Yes.

[10.40 am]

**Hon AMBER-JADE SANDERSON:** You identified in your submission up-front that duty of care needs to be front and foremost in the contract. Are there any areas in the contract that you identify where there are potential gaps or dangers in that duty of care?

**Prof. Morgan:** I would not say there are gaps in the contract. I suppose historically we all know what went wrong when duty of care was not given the priority that it deserved in the terrible case of Mr Ward, and that was a jolt to the system undoubtedly. So we moved from having a decrepit fleet, which was posing high risks, to having a very good fleet for transport and service that was much more attuned to duty of care. I would say that where I am concerned would be if we moved to a situation where the drive to save costs and money starts to dilute that focus on duty of care. Obviously, the contract, as I said, is coming up for renewal next year. It may well be that there is a decision to test the market or whatever it may be, but that must factor in the priority that is given to duty of care. We are not talking about moving boxes around the state. We are not talking even about moving willing people around the state and well people. We are often talking about moving people who are unwell, unsettled or do not really want to move. It really has to be something that is nuanced and I would say that the key is value for money and that value for money is not just about dollar cost; it is about quality of service and it is about attention to duty of care. I believe that the death of Mr Ward, as I say, was that jolt that was needed unfortunately. I also believe that the current contractor has given a high priority to duty of care issues in their conduct of that contract.

**The CHAIRMAN:** Just touching on that, with the regional transportation side of things, your submission seemed to support a single provider in regional areas for court transport and court security. Are we reading that the right way?

**Prof. Morgan:** I am not sure whether I was supporting a single contractor. I guess one of the issues is—when the contract comes up for discussion, I am not privy to the reviews that the department has conducted of these. I am not being consulted on them.

I have not been asked for an opinion on any of this but my own view is not so much that you could not have more than one contractor, but I think you would have to build in the reality, which is the fact that court custody and court security is done alongside prisoner transport and does allow some economies because you can actually have staff who work across both areas. If you were to split it, then you would have to look at, first of all, the economic consequences of that, whether it would actually build in more cost. This is a matter for other people to work on in detail. Secondly, you would have to make sure that you do not escalate the risk because one of the areas that is shown to be a weakness over time is where multiple parties are involved and they are not communicating well. If we look at the escape from the Supreme Court many years ago, the prisoners who escaped from the Supreme Court—which predated my time in the office—were high-security prisoners. My understanding is that they had been escorted by the Department of Corrective Services to the Supreme Court. They were handed over to AIMS, as they then were called—who of course then became “am I missing someone”. One of the findings of the Hooker inquiry and my predecessor’s work in that was that there probably was not enough communication about the level of risk that these people posed. We also looked at the transport of people who had undergone medical surgery, and there was some media around some of these cases, so we decided we would take a look. One of the issues we certainly identified there was the need for sufficient information to be transferred. If you split the contractor, it can work. The District Court building has a different contractor from



the transport and it works well, but these are the risks that would need to be factored into any contract discussions and negotiations.

**Hon DARREN WEST:** There was significant interest in the costs of transferring prisoners to things like funerals—to the lay person that is extraordinarily high. Touching on the point raised by Hon Amber-Jade Sanderson before about being unable to use alternative contractors—this is probably more of a question for the department but I am going to ask you anyway—do you have any views on how that situation may be changed in the future to provide a more realistic cost option for the taxpayer?

**Prof. Morgan:** I think it is a question for the department and possibly also a question for Serco as to how they cost some of those, which are costed under quite a complex formula. I think I will probably go back to simply what I said earlier, which is that it shows to me the need for flexibility and alternatives. It seems to me that if you put all your eggs in one basket then you are not necessarily going to get the best variety of service and the best price. Undoubtedly there are situations where, for example, the West Kimberley prison conducts escorts cheaper than it will cost to have them conducted by Serco staff coming out of Broome. It just seems to be a straightforward proposition. This is why I say—it almost comes back to that basic proposition: the system needs to work out what it wants, what the options are for delivery and then to work out what the optimal arrangements for that are and they are not all by contract. It was assumed or appeared to be assumed for a while that if services were being brought in by a contract in a particular area, there was no capacity to do it any other way. Well there is, and in fact, I understand now that West Kimberley is undertaking some of these additional transports itself. It is a good move.

**The CHAIRMAN:** Unless you have anything further then that has brought us to the end of the questions that we have for you.

**Prof. Morgan:** I think that has probably covered everything that really I was primarily concerned about. I would simply reiterate in terms of the role of the office that we are not the contractor monitors. We really have fairly limited resources internally within our office to undertake this type of work. Under our legislation, we are bound by statute to report to Parliament at least every three years on prisons, juvenile detention centres and court custody centres. Transport is optional, if you like, and it is one of those areas where under the terms of the legislation we can conduct what is called an “occasional review”. I think we have been active in that space and we have tried to make sure that we not only publish reports that are specifically about transport but that we cover it off in our prison reports and we also cover it off in specific thematic work that we do whether it is about funerals or escapes. Would I like to do more? Yes, I think I would, but it is the case at the moment of trying to balance some pretty high-risk situations. In the last three years in particular we have had to undertake additional work, particularly as we have talked around the women’s estate where we have undertaken a lot of the extra work, including formal reports to Parliament. The Banksia Hill riot and its aftermath has generated further requirements for us to conduct more reports and, in fact, as part of our role as the oversight rather than the monitoring agency we will be bringing forward an inspection of Acacia Prison, which was not scheduled until late 2016. We will be bringing that forward to later this year for the simple reason that we found some concerns in our last inspection and that the contract runs out for Acacia as well in the middle of 2016—so we brought that one forward. It is a case of trying to balance what we do. It is an interesting question, however, legally as to whether transport should really be part of that mandatory jurisdiction that we have; and, if so, whether anybody is prepared to give us any money.

**The CHAIRMAN:** Thank you very much for that. I assume someone is checking to make sure there is no access to power tools in our prisons as happened in New York.

**Prof. Morgan:** There is access but as long as we put them back—that is the key.

**The CHAIRMAN:** Someone has some questions to answer there. Thank you very much for coming in today, gentlemen. We appreciate it as always.

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**Hearing concluded at 10.50 am**

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