

**ACT AUDITOR-GENERAL'S REPORT**  
**COURT TRANSPORT UNIT VEHICLE – ROMEO 5**  
REPORT NO. 3 / 2021

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PA 20/10

The Speaker  
ACT Legislative Assembly  
Civic Square, London Circuit  
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'Court Transport Unit vehicle – Romeo 5' for tabling in the Legislative Assembly pursuant to Subsection 17(4) of the *Auditor-General Act 1996*.

The audit has been conducted in accordance with the requirements of the *Auditor-General Act 1996* and relevant professional standards including *ASAE 3500 – Performance Engagements*.

Yours sincerely



Michael Harris  
Auditor-General  
30 March 2021

*The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and pays respect to the elders; past, present and future. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.*



# CONTENTS

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<b>Summary .....</b>	<b>1</b>
Conclusions.....	1
Key findings .....	2
Recommendations.....	8
Response from entities.....	8
<b>1   Introduction .....</b>	<b>9</b>
Background.....	9
Audit objective and scope .....	11
Audit criteria, approach and method .....	12
<b>2   Procurement of Romeo 5 .....</b>	<b>15</b>
Summary.....	15
Fleet procurement in the ACT .....	20
Initial procurement (2015) .....	22
Second procurement (2017).....	37
<b>3   Management of Romeo 5.....</b>	<b>45</b>
Use of Romeo 5 .....	46
Compliance with the WorkSafe ACT prohibition notice.....	51
<b>Appendix A:   Chronology of events for the procurement of Romeo 5.....</b>	<b>55</b>
<b>Appendix B:   Glossary.....</b>	<b>59</b>



# SUMMARY

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In June 2018 ACT Corrective Services (ACTCS) took possession of a vehicle (Romeo 5) that was intended to transport up to eight detainees and two custodial officers at a time. In November 2019 WorkSafe ACT identified that the vehicle did not comply with weight requirements when loaded with detainees to its full capacity. WorkSafe ACT issued a prohibition notice on the vehicle in November 2019 and, in response, ACTCS instructed its staff that the vehicle was only to be used to carry a maximum of four detainees and two custodial officers at a time. This requirement has since been reduced to three detainees in practice.

Both before and after the WorkSafe ACT prohibition notice the vehicle was seldom used to transport detainees. Custodial officers have identified that they prefer not to drive it. Since the restrictions on its use have been imposed there has been a preference to use the other four-seater transport vehicles in the vehicle fleet.

This audit examines the effectiveness of ACTCS' procurement processes for the Romeo 5 vehicle and whether effective management arrangements for the operation of the vehicle have been put in place since the WorkSafe ACT prohibition notice.

## Conclusions

### PROCUREMENT OF ROMEO 5

ACT Corrective Services did not implement effective processes for the procurement of the Romeo 5 vehicle. Management and staff did not adequately consider and apply legislative, policy and procedural requirements or adequately consider the procurement risk environment.

ACT Corrective Services identified and engaged a preferred supplier (the Byron Group) without testing the market or seeking alternative quotes. This was not appropriate for a complex and high-risk procurement such as this and shows a predetermined outcome was being sought without consideration of alternative solutions or suppliers. Furthermore, ACT Corrective Services did not devise or communicate its own specifications for the eight-seater detainee transport vehicle and there is no evidence that it reviewed the Byron Group's proposed solution and associated design specifications to ensure that the vehicle would be fit for purpose and meet business and operational requirements.

A fundamental failure is that ACT Corrective Services did not have a contract with the Byron Group, which adequately documented the specifications and requirements for the vehicle and timeframes for its delivery. ACT Corrective Services relied on SG Fleet (the ACT Government's whole-of-government vehicle leasing supplier) to engage with the Byron Group for the design, construction and delivery of the vehicle. After the Byron Group went into voluntary administration during the build of the vehicle SG Fleet engaged with its successor, the Byron Wade Group, on behalf of ACT Corrective Services. It is very poor practice that ACT Corrective Services did not have a contract

with the Byron Group or Byron Wade Group for the construction and delivery of a specialised detainee module and its attachment to a truck chassis.

As a result of the procurement failures, the vehicle that was eventually commissioned is not fit for purpose and is now largely redundant.

**MANAGEMENT OF ROMEO 5**

Romeo 5 has not been effectively used as a detainee transport vehicle since its commissioning in 2018. Prior to the identification of workplace health and safety risks associated with its carrying capacity in November 2019, the vehicle was seldom used and was out of service for extended periods of time for repairs and maintenance.

Following the issuing of a WorkSafe ACT prohibition notice in November 2019, a mandatory Operating Procedure made under the *Corrections Management Act* 2007 has required that the vehicle only carry a maximum of six people (two staff and four detainees) and that the vehicle undergo ‘a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle’. The vehicle has since been operated in accordance with the procedure. The restrictions on its use, however, have made it even less attractive as an option for transporting detainees and the vehicle has not been used to transport detainees since March 2020.

**Key findings**

<b>PROCUREMENT OF ROMEO 5</b>	<b>Paragraph</b>
ACTCS did not prepare a business case to inform the procurement of a large multi-detainee transport vehicle. This was a missed opportunity to assess the operational and technical requirements, potential suppliers’ likely costs (including whole-of-life costs) and any potential implementation issues and risks of proceeding with a procurement. The lack of a business case, and the good governance and sound decision-making that it would foster, hampered the procurement and its decision-making processes.	2.12
ACTCS did not prepare a procurement plan for the procurement of a large multi-detainee transport vehicle. Initial activity on the part of ACTCS identified that the procurement would exceed \$200,000 (GST inc), but Procurement ACT was not consulted as part of initial planning for the procurement as required. The lack of a procurement plan hampered the procurement and its decision-making processes.	2.15
ACTCS did not undertake a risk assessment for the procurement, nor was a risk management plan prepared to manage procurement risks. The procurement of the vehicle was arguably high risk because it involved the procurement of a new and different court transport vehicle to previous fleet procurements. The lack of procurement risk management hampered the procurement and its decision-making processes.	2.18



There is no evidence that relevant detainee transport principles and requirements in the *Standard Guidelines for Corrections in Australia* (2012) or *Guiding Principles for Corrections in Australia* (2018) were explicitly recognised and documented by ACTCS as part of the procurement process. Although not legally binding, these represent agreed best practice by stakeholders across Australia. 2.22

In March 2015 the Byron Group provided a quotation to the Finance Coordinator of ACTCS for: the manufacture and supply of an eight-cell detainee transport module at a cost of \$214,500 (GST inc); and the supply of a Mitsubishi Fuso Canter truck at a cost of \$43,857 (GST inc). There is no information or documentation on the genesis of the quotation from the Byron Group or any instruction provided by ACTCS in relation to the request. It is understood that the potential for procuring an eight-seater detainee transport vehicle from the Byron Group was first identified in late 2013 during a visit by ACTCS officers to Byron Group premises in Sydney. 2.38

The quotation formed the basis of two draft Executive Briefs that were prepared in mid to late 2015, although there is no evidence the briefs were finalised or provided to decision-maker(s) for approval. Both briefs documented the need for an eight-seater detainee transport vehicle and the procurement of the vehicle through the Byron Group. Simultaneously documenting the business need and the proposed solution through a preferred supplier is poor practice for a complex and high-risk procurement such as this. It shows a predetermined outcome was being sought for the procurement and that there was insufficient consideration of alternative solutions or suppliers. 2.39

ACTCS did not devise or communicate its own specifications for the eight-seater detainee transport vehicle. Specifications for the vehicle, its supply and delivery were initially outlined in the March 2015 quotation from the Byron Group, which was subsequently re-issued in September 2015. With respect to 'compliance' the quotations simply stated 'engineering report' and 'weighbridge'; no further information was included in relation to responsibilities and accountabilities for the vehicle's compliance with Australian Design Rules or registration requirements. There is no evidence that ACTCS considered the vehicle's design specifications to ensure that it was fit for purpose and would meet ACTCS business and operational requirements in relation to safety and security. 2.44

There is evidence that ACTCS considered the financial implications of a range of options for the procurement including: purchase and own the vehicle and detainee module (Option 1); fully lease the vehicle and detainee module through SG Fleet (Option 2); and lease the vehicle and purchase the detainee module (Option 3). The analysis showed Option 2 was the most cost-effective for a five year scenario (\$324,118) and ten year scenario (\$691,452). However, the email accompanying the analysis identified that the assumptions underpinning the analysis across the different scenarios were not consistently applied and this was acknowledged as 'probably a bit naughty so I can change ... if you'd rather'. If the assumptions were consistently applied the cost of Option 3 would have been \$375,886 for five years and \$648,354 for ten years. By consistently applying the assumptions leasing the vehicle and purchasing the detainee module (Option 3) would have been more competitive for a five year scenario and the most cost-effective option over ten 2.57

years. The second draft Executive Brief in July 2015, which outlined the cost scenarios for each of the procurement options, identified that upfront capital funding for the procurement of the vehicle was not available and that leasing the vehicle was identified as a means to procure the vehicle, but spread the cost over a number of years.

In November 2015 a minute was provided to the Acting Executive Director, Capital Works in JACS from the Executive Director, ACTCS that sought approval for 'this lease quotation for a replacement vehicle for Justice and Community Safety'. The minute included two separate lease quotations from SG Fleet: detainee module – FBT value of \$214,500 – total monthly rental of \$2,930.48 for 96 months - \$281,326.08 total (GST inc); and vehicle – FBT value of \$43,857.00 – total monthly rental of \$1,384.67 for 96 months - \$132,928.32 (GST inc). The minute characterised the procurement as a 'replacement operating lease' and identified that the Director-General 'has delegated the authority to enter into replacement operating leases to the Executive Director, Capital Works'. The minute was approved on 18 November 2015. The Audit Office considers that categorising the procurement as a 'replacement operating lease' downplayed the complexity of the procurement; the eight-seater detainee vehicle was a new vehicle addition to the fleet and was unique and different to existing vehicles. The Audit Office also considers that three quotations should have been sought for the procurement of the vehicle and the module in accordance with the *Government Procurement Regulation 2007*; this was not done for the initial procurement. 2.70

On 11 December 2015, SG Fleet's quotations for the lease of the truck and the lease of the detainee module were signed by the Acting Executive Director, Capital Works. The lease quotations included a 'Quote Acceptance' section, which stated 'the undersigned accepts the above mentioned lease quotation and as such requests sgfleet to procure the vehicle described for the purpose of leasing the said vehicle to me/us'. It was on this basis that SG Fleet was given approval to obtain the vehicle and the detainee module on behalf of ACTCS. The Mitsubishi Fuso Canter truck chassis was to be supplied by Hartwigs in Queanbeyan and the detainee module was to be supplied by the Byron Group in Sydney. The Byron Group was to attach the module to the truck chassis. ACTCS did not have a contract with the Byron Group, nor did it engage with the Byron Group, for such a unique and highly specialised procurement, which involved the construction of a specially designed and constructed detainee module and its attachment to a truck chassis. It is inappropriate that ACTCS relied on SG Fleet to engage with the Byron Group for the construction and delivery of the eight-seater detainee transport vehicle. 2.76

Following the issuing of the purchase order to the Byron Group in December 2015 for the construction of the detainee module there is little evidence of what communication took place with the Byron Group after this. Initial expectations were that the build was to be completed in June 2016. This date continued to be pushed out until the Byron Group went into voluntary administration on 17 October 2016. There is evidence of communication with the Byron Group by both SG Fleet and ACTCS officers during this period. Poor documentation and record-keeping on the part of ACTCS, however, means that it is not possible to identify with any certainty whether and how ACTCS was managing the Byron Group for the construction and delivery of the module. It is also not possible to identify with any certainty whether 2.84

and how ACTCS was managing and coordinating with SG Fleet for the construction and delivery of the vehicle.

In late 2016 Byron Wade Pty Ltd , emerged as a potential purchaser of the Byron Group and the takeover was completed in late 2016. In advice to the Audit Office for the purpose of the audit, the SG Fleet representative advised 'we have then had significant involvement to try and get the build to resolution and had extensive consultation with [the Contracts, Procurement and Fleet Officer] Corrective Services throughout'. SG Fleet supplied an updated purchase order ... to the Wade Group' on 26 June 2017. The SG Fleet representative stated that because 'it was just a change in supplier [i.e. from the Byron Group to Byron Wade Pty Ltd] a new client sign off was not required'. The SG Fleet representative also advised that 'agreement was reached with [ACTCS representatives] hence we issued them a purchase order'. There are poor ACTCS corporate records to show what actions were being taken during this period. Accordingly, there is no evidence in ACTCS corporate records to confirm an intention to continue the build with Byron Wade Pty Ltd at the time of issuing the updated purchase orders in June 2017.

2.97

There is evidence that ACTCS confirmed an intention for Byron Wade Pty Ltd to continue with the build in December 2017. Following an inspection of the build by ACTCS on 3 November 2017 ACTCS advised of a list of concerns on 5 December 2017. This appears to have been resolved because in February 2018 the Contracts, Procurement and Fleet Officer (ACTCS) advised a range of ACTCS officers that 'following discussions with you all and correspondence with other jurisdictions regarding the same vehicle type, we instructed Byron Wade in December 2017 to continue as per original specification'. The build was completed on 23 April 2018 and Byron Wade Pty Ltd was paid. Following the identification of problems with the heating system after its initial delivery in April 2018, the vehicle was sent back to the Byron Wade Pty Ltd premises in Melbourne. The vehicle was then delivered a second time in May 2018 and passed inspection for registration on 5 June 2018. The vehicle was delivered to ACTCS on 22 June 2018.

2.98

ACTCS did not prepare a procurement plan for the second procurement, nor was a risk assessment undertaken or a risk management plan prepared to manage procurement risks. An undated *Buying Goods and Services Risk Questionnaire* was completed, but it is not clear who completed the questionnaire. The questionnaire does not constitute a risk assessment or a risk management plan. The lack of a procurement plan and risk management hampered the procurement and its decision-making processes.

2.104

On 8 May 2017 the Acting Director-General of JACS approved a 21 December 2016 minute from the Acting Executive Director of ACTCS for the procurement of a detainee module. There is no evidence for why it took almost five months for the minute to be approved. The minute sought approval for funding 'up to the value of \$200,000 (GST inclusive)'. There is no documentation supporting the estimate of the procurement and it is noted that the various quotations from the Byron Group for the initial procurement indicate that the cost of the procurement had a high chance of exceeding \$200,000 (GST inc). *Procurement Circular 23: Quotation and Tender Thresholds* states 'where an estimated value is determined and is under one of the stated thresholds by 10 per cent or less, the basis for selecting that estimated value

2.113

should be documented and placed on file for audit purposes before undertaking the procurement process'. This did not occur. The Commercial Services and Infrastructure Group's website states 'all purchases valued over \$200,000 (GST inclusive) must be referred to Procurement ACT'. This did not occur.

On 21 July 2017 a Request for Quotation was issued to five potential suppliers for a eight-person detainee transport module. This occurred after an updated purchase order had already been issued to Byron Wade Pty Ltd for the initial procurement on 26 June 2017. Two supplier responses were received, one supplier indicated an intention not to respond and the other two suppliers did not respond. A three-person tender evaluation panel identified that Specialised & Emergency Vehicles Australia (SEVA), a Queensland-based supplier, as best value for money and demonstrating the least risk to the Territory. The cost of the proposed construction was \$218,449 (GST inc).

2.128

It is apparent that the contract with SEVA was not finalised, as a mutually acceptable outcome for the design and construction of the module was not agreed. However, there are poor ACTCS corporate records to show why there was disagreement and why a contract was not finalised. In November 2020 a representative of SEVA advised that at the time the contract was being negotiated, SEVA held reservations as to whether the specifications in their planned module would fit the cab chassis selected by ACTCS and be fit for purpose. The SEVA representative advised that it is rarely the case that a detainee module, such as that procured by ACTCS, can be driven on a C-class drivers license and they are more appropriate to be driven on Medium Rigid licenses with an upgraded cab chassis. In this instance, the SEVA representative advised that it erred on the side of caution by not proceeding with the build.

2.129

## MANAGEMENT OF ROMEO 5

Paragraph

Since its delivery in July 2018 the Romeo 5 vehicle has been used for detainee transport-related purposes on up to 71 occasions between November 2018 and March 2020, on 28 working days in total for a total of 1066 kilometres. The majority of vehicle movements were for transporting detainees to and from the ACT law courts, while some were empty return trips and some were to other locations such as the Canberra Hospital or Dhulwa Mental Health Unit. Since its delivery it has been out of service for repairs and maintenance on six separate occasions for a total of 227 days. It has not been used to transport detainees since March 2020. The ACT Inspector of Correctional Services' November 2020 report (*ACT Corrective Services Court Transport Unit 2020*) identified that the Court Transport Unit facilitates an average total of 10.6 trips per working day of which six are between the AMC and the ACT law courts in Civic. The Romeo 5 vehicle has been significantly under-utilised.

3.13

Thirty-four journeys were selected for further consideration for the purpose of the audit. Twenty-nine of these were conducted prior to November 2019 and the issuing of the WorkSafe ACT prohibition notice. On four of these occasions the Romeo 5 vehicle was used to transport more than four detainees. On these trips it is likely that the vehicle exceeded its GVM carrying capacity of 4500kg. This presented a major operational and workplace health and safety risk to corrections officers and detainees.

3.17

Since its delivery in July 2018 Romeo 5 has experienced a wide range of operational challenges and workplace health and safety risks (in addition to the main health and safety risk relating to it being loaded in excess of its Gross Vehicle Mass carrying weight capacity). Correctional officers are reluctant to use the vehicle due to its size and difficulty in handling. The Audit Office was advised that the vehicle could be 'used as a last resort', but the availability of other vehicles and correctional officers' preference for driving the other vehicles, means that there is no real need to use it.	3.26
Romeo 4 (the Mercedes Sprinter), which was the vehicle that Romeo 5 was intended to replace in 2015, continues to be used; correctional officers prefer to use Romeo 4 over Romeo 5. The ACT Inspector of Correctional Services' November 2020 report into the Court Transport Unit (the <i>ACT Corrective Services Court Transport Unit 2020</i> ) identified that 'there is a design flaw with the Romeo 4 transport vehicle that could put the lives of detainees at risk in the event of a vehicle accident or fire' and recommended that it be replaced as soon as possible.	3.27
Following the implementation of the mandatory Operating Procedure in December 2019, there was no evidence of occurrences where Romeo 5 was loaded with more than four detainees on one journey. There was one occurrence (30 January 2020) where Romeo 5 transported the maximum permitted number of four detainees in one journey.	3.37
On 12 December 2019 Notifiable Instrument NI2019-809 Corrections Management (R5 Vehicle – Mandatory Checks) Operating Procedure 2019 was made under section 14 of the Corrections Management Act 2007. The Operating Procedure requires that the vehicle only carry a maximum of six people (two staff and four detainees) and that the vehicle undergo 'a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle'. A review of the Electronic Logbook and detainee escort transfer sheets indicates that the vehicle has not been used to transport more than six people at a time since then. Two weight verification checks have taken place as required in January 2020 and July 2020. The vehicle has been used appropriately since the implementation of the Operating Procedure and the weight verification checks have been conducted as required.	3.40

## Recommendations

### RECOMMENDATION 1 ACT CORRECTIVE SERVICES PROCUREMENT FRAMEWORK

ACT Corrective Services should review its procurement framework, including policies, procedures and practices, in order to ensure:

- a) roles and responsibilities for procurement are clearly identified and documented. This includes roles and responsibilities for the management of suppliers in the design and construction of future fleet vehicles;
- b) procurements appropriately consider and document value for money and risk; and
- c) training is provided to all staff involved in procurement. This should include training on probity, risk management and value for money considerations.

### RECOMMENDATION 2 FUTURE USE OF ROMEO 5

ACT Corrective Services should:

- a) review its need for, and use of, the Romeo 5 vehicle. The review should take account of risk and safety considerations and whether it is appropriate to end the lease and commission a new vehicle; and
- b) outline a clear vision of what its expectations are for the use of Romeo 5 for the duration of its lease.

## Response from entities

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Justice and Community Safety Directorate was provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment.

In accordance with subsection 18(3) of the *Auditor-General Act 1996* other entities considered to have a direct interest in the report were also provided with extracts of the draft proposed and final proposed reports for comment. All comments on the extracts of the draft proposed report were considered and required changes made in the final proposed report.

No comments were provided for inclusion in this Summary Chapter.

# 1 INTRODUCTION

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## Background

### ACT Inspector of Correctional Services referral

- 1.1 In May 2020, the ACT Audit Office was advised by the ACT Inspector of Correctional Services of a procurement process that allegedly resulted in the purchase of a detainee transport vehicle (Romeo 5) that was not fit for purpose. The ACT Audit Office undertook preliminary research into the matter and in June 2020 decided to undertake a performance audit in relation to the procurement of Romeo 5.

### Romeo 5 vehicle

- 1.2 Romeo 5 is a specialised vehicle that was intended to transport detainees to and from the Alexander Maconochie Centre (AMC). It comprises a specially constructed eight cell detainee module that sits atop a Mitsubishi Fuso Canter truck chassis.
- 1.3 The detainee module and the truck have been separately leased through SG Fleet, the ACT Government's lease services provider as follows:
- eight cell detainee module – 96 months – 19 April 2018 to 18 April 2026; and
  - Mitsubishi Fuso truck – 96 months – 22 June 2018 to 21 June 2026.
- 1.4 Romeo 5 was delivered to ACT Corrective Services (ACTCS) in June 2018 and was first used to transport detainees in November 2018.

### WorkSafe ACT prohibition notice

- 1.5 On 11 November 2019 WorkSafe ACT conducted an inspection of the Romeo 5 vehicle. It was during this inspection that WorkSafe ACT identified that Romeo 5 did not comply with carrying weight capacity requirements when loaded at capacity. WorkSafe ACT issued a prohibition notice on the vehicle.
- 1.6 The vehicle has a Tare Weight of 3,700 kilograms and a Gross Vehicle Mass (GVM) of 4,500 kilograms.

### *Tare Weight*

- 1.7 Tare Weight refers to the weight of the empty vehicle, including the detainee cell module, with all of its fluids (e.g. oils and coolants) but with only 10 litres of fuel in the tank.



### *Gross Vehicle Mass*

- 1.8 Gross Vehicle Mass (GVM) refers to the maximum weight that the vehicle can carry. This is the maximum or total weight of the vehicle including body, payload, fuel and driver. It is a figure set by the manufacturer and is lodged with registration authorities and is stamped on the compliance plate of the weight.
- 1.9 When loaded with two corrections officers and their equipment, eight detainees and fuel the vehicle's GVM of 4,500 kilograms will be exceeded.

### *ACT Corrective Services Operating Procedure*

- 1.10 On 12 December 2019 the ACT Corrective Services Commissioner issued an Operating Procedure under section 14 of the *Corrections Management Act 2007*. The Operating Procedure requires:
- the vehicle to only transport a maximum of six people (two corrections officers and four detainees); and
  - the vehicle to undergo a weight verification assessment in January and July each year to confirm the weight of the vehicle.

## **ACT Inspector of Correctional Services report**

- 1.11 In November 2020 the ACT Inspector of Correctional Services completed a report into the ACT Corrections Services' Court Transport Unit; the *ACT Corrective Services Court Transport Unit 2020* report. The report considered the unit's management of its fleet vehicles for detainees.
- 1.12 In discussing the management and use of the Romeo 5 vehicle the *ACT Corrective Services Court Transport Unit 2020* report stated:
- In effect, an eight-passenger vehicle became a very big and expensive four-passenger vehicle. There have also been issues with the height and manoeuvrability of Romeo 5 which have frustrated CTU officers.
- 1.13 The *ACT Corrective Services Court Transport Unit 2020* report included the following finding:
- That the Mitsubishi Fuso detainee transport vehicle ("Romeo 5") has never been "fit for purpose" and there are serious questions around the vehicle procurement process.
- 1.14 In consideration of this finding, and other findings and observations about other Court Transport Unit vehicles, the ACT Inspector of Correctional Services made the following recommendation:
- That the Justice and Community Safety Directorate conduct a review of the process(es) by which ACT Corrective Services makes decisions about the acquisition of Court Transport Unit vehicles, with particular attention to the principles of sound corporate governance.



## Audit objective and scope

### Audit objective

- 1.15 The objective of this audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of ACTCS' procurement processes for the Romeo 5 vehicle.

### Audit scope

- 1.16 The scope of the audit included consideration of the activities of ACTCS in procuring the vehicle, including:
- its initial identification of business and operational needs to commence the procurement; and
  - its conduct of the procurement process, including:
    - its approach to the market;
    - consideration and evaluation of potential suppliers; and
    - selection of the solution.
- 1.17 The audit includes consideration of:
- whether appropriate processes were followed when conducting the procurement, including adherence to ACT Government procurement rules and guidelines;
  - whether the procurement fully considered the risk environment; and
  - whether the procurement represented value for money.
- 1.18 WorkSafe ACT placed a prohibition notice on the modified vehicle as it exceeded the permitted GVM when fully loaded and posed a risk of serious personal injury to passengers. This imposed restrictions on ACTCS' continued use of the vehicle. The audit also considered the management and use of the vehicle since then including:
- whether ACTCS has implemented effective management arrangements for the use of the vehicle in accordance with the prohibition notice issued by WorkSafe ACT in November 2019; and
  - whether ACTCS has complied with the prohibition notice issued by WorkSafe ACT in November 2019.

## Audit criteria, approach and method

### Audit criteria

- 1.19 To form a conclusion against the objective, the following criteria were assessed as part of this performance audit:
- Did ACTCS appropriately identify its business and operational needs prior to commencing the procurement?
  - Did ACTCS adhere to ACT Government procurement rules and guidelines and the identified business and operational needs when procuring the vehicle?
  - Has ACTCS complied with the prohibition notice issued by WorkSafe ACT and implemented effective management arrangements for the operation of the vehicle?
- 1.20 The audit was performed in accordance with *ASAE 3500 – Performance Engagements*. The audit adopted the policy and practice statements outlined in the Audit Office's *Performance Audit Methods and Practices* (PAMPr) which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements*
- 1.21 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.

### Audit approach and method

- 1.22 In relation to the procurement of the vehicle the audit approach and method consisted of:
- reviewing relevant ACT procurement rules and guidelines;
  - reviewing legislation, information and documentation that relate to the transport of detainees, including Australian and ACT standards for correctional services (including human rights and duty of care obligations);
  - reviewing documentation associated with the procurement of the vehicle, including the initial business case/needs identification and the identification and selection of the truck and its associated modifications; and
  - interviews and discussions with key staff in ACTCS involved in the procurement of the vehicle.
- 1.23 In relation to the ongoing management of the vehicle the audit approach and method consisted of:
- interviews and discussions with key staff in ACTCS involved in the ongoing management and operation of the vehicle;
  - identifying and documenting internal controls and procedures in ACTCS that relate to the ongoing use of the vehicle to transport detainees to and from ACT courts; and

- analysis and sample testing of escort journey logs to ascertain compliance with vehicle carrying capacity in accordance with the line with the Operating Procedure issued on 12 December 2019.



## 2 PROCUREMENT OF ROMEO 5

- 2.1 This chapter considers the effectiveness of ACTCS’ procurement of Romeo 5. It considers whether ACT Government procurement requirements were followed and whether business and operational needs were adequately identified prior to commencing the procurement.

### Summary

### Conclusions

ACT Corrective Services did not implement effective processes for the procurement of the Romeo 5 vehicle. Management and staff did not adequately consider and apply legislative, policy and procedural requirements or adequately consider the procurement risk environment.

ACT Corrective Services identified and engaged a preferred supplier (the Byron Group) without testing the market or seeking alternative quotes. This was not appropriate for a complex and high-risk procurement such as this and shows a predetermined outcome was being sought without consideration of alternative solutions or suppliers. Furthermore, ACT Corrective Services did not devise or communicate its own specifications for the eight-seater detainee transport vehicle and there is no evidence that it reviewed the Byron Group’s proposed solution and associated design specifications to ensure that the vehicle would be fit for purpose and meet business and operational requirements.

A fundamental failure is that ACT Corrective Services did not have a contract with the Byron Group, which adequately documented the specifications and requirements for the vehicle and timeframes for its delivery. ACT Corrective Services relied on SG Fleet (the ACT Government’s whole-of-government vehicle leasing supplier) to engage with the Byron Group for the design, construction and delivery of the vehicle. After the Byron Group went into voluntary administration during the build of the vehicle SG Fleet engaged with its successor, the Byron Wade Group, on behalf of ACT Corrective Services. It is very poor practice that ACT Corrective Services did not have a contract with the Byron Group or Byron Wade Group for the construction and delivery of a specialised detainee module and its attachment to a truck chassis.

As a result of the procurement failures, the vehicle that was eventually commissioned is not fit for purpose and is now largely redundant.

### Key findings

	Paragraph
ACTCS did not prepare a business case to inform the procurement of a large multi-detainee transport vehicle. This was a missed opportunity to assess the operational and technical requirements, potential suppliers’ likely costs (including whole-of-life costs) and any potential implementation issues and risks of proceeding with a	2.12

procurement. The lack of a business case, and the good governance and sound decision-making that it would foster, hampered the procurement and its decision-making processes.

ACTCS did not prepare a procurement plan for the procurement of a large multi-detainee transport vehicle. Initial activity on the part of ACTCS identified that the procurement would exceed \$200,000 (GST inc), but Procurement ACT was not consulted as part of initial planning for the procurement as required. The lack of a procurement plan hampered the procurement and its decision-making processes. 2.15

ACTCS did not undertake a risk assessment for the procurement, nor was a risk management plan prepared to manage procurement risks. The procurement of the vehicle was arguably high risk because it involved the procurement of a new and different court transport vehicle to previous fleet procurements. The lack of procurement risk management hampered the procurement and its decision-making processes. 2.18

There is no evidence that relevant detainee transport principles and requirements in the *Standard Guidelines for Corrections in Australia* (2012) or *Guiding Principles for Corrections in Australia* (2018) were explicitly recognised and documented by ACTCS as part of the procurement process. Although not legally binding, these represent agreed best practice by stakeholders across Australia. 2.22

In March 2015 the Byron Group provided a quotation to the Finance Coordinator of ACTCS for: the manufacture and supply of an eight-cell detainee transport module at a cost of \$214,500 (GST inc); and the supply of a Mitsubishi Fuso Canter truck at a cost of \$43,857 (GST inc). There is no information or documentation on the genesis of the quotation from the Byron Group or any instruction provided by ACTCS in relation to the request. It is understood that the potential for procuring an eight-seater detainee transport vehicle from the Byron Group was first identified in late 2013 during a visit by ACTCS officers to Byron Group premises in Sydney. 2.38

The quotation formed the basis of two draft Executive Briefs that were prepared in mid to late 2015, although there is no evidence the briefs were finalised or provided to decision-maker(s) for approval. Both briefs documented the need for an eight-seater detainee transport vehicle and the procurement of the vehicle through the Byron Group. Simultaneously documenting the business need and the proposed solution through a preferred supplier is poor practice for a complex and high-risk procurement such as this. It shows a predetermined outcome was being sought for the procurement and that there was insufficient consideration of alternative solutions or suppliers. 2.39

ACTCS did not devise or communicate its own specifications for the eight-seater detainee transport vehicle. Specifications for the vehicle, its supply and delivery were initially outlined in the March 2015 quotation from the Byron Group, which was subsequently re-issued in September 2015. With respect to 'compliance' the quotations simply stated 'engineering report' and 'weighbridge'; no further information was included in relation to responsibilities and accountabilities for the vehicle's compliance with Australian Design Rules or registration requirements. 2.44

There is no evidence that ACTCS considered the vehicle's design specifications to ensure that it was fit for purpose and would meet ACTCS business and operational requirements in relation to safety and security.

There is evidence that ACTCS considered the financial implications of a range of options for the procurement including: purchase and own the vehicle and detainee module (Option 1); fully lease the vehicle and detainee module through SG Fleet (Option 2); and lease the vehicle and purchase the detainee module (Option 3). The analysis showed Option 2 was the most cost-effective for a five year scenario (\$324,118) and ten year scenario (\$691,452). However, the email accompanying the analysis identified that the assumptions underpinning the analysis across the different scenarios were not consistently applied and this was acknowledged as 'probably a bit naughty so I can change ... if you'd rather'. If the assumptions were consistently applied the cost of Option 3 would have been \$375,886 for five years and \$648,354 for ten years. By consistently applying the assumptions leasing the vehicle and purchasing the detainee module (Option 3) would have been more competitive for a five year scenario and the most cost-effective option over ten years. The second draft Executive Brief in July 2015, which outlined the cost scenarios for each of the procurement options, identified that upfront capital funding for the procurement of the vehicle was not available and that leasing the vehicle was identified as a means to procure the vehicle, but spread the cost over a number of years.

2.57

In November 2015 a minute was provided to the Acting Executive Director, Capital Works in JACS from the Executive Director, ACTCS that sought approval for 'this lease quotation for a replacement vehicle for Justice and Community Safety'. The minute included two separate lease quotations from SG Fleet: detainee module – FBT value of \$214,500 – total monthly rental of \$2,930.48 for 96 months - \$281,326.08 total (GST inc); and vehicle – FBT value of \$43,857.00 – total monthly rental of \$1,384.67 for 96 months - \$132,928.32 (GST inc). The minute characterised the procurement as a 'replacement operating lease' and identified that the Director-General 'has delegated the authority to enter into replacement operating leases to the Executive Director, Capital Works'. The minute was approved on 18 November 2015. The Audit Office considers that categorising the procurement as a 'replacement operating lease' downplayed the complexity of the procurement; the eight-seater detainee vehicle was a new vehicle addition to the fleet and was unique and different to existing vehicles. The Audit Office also considers that three quotations should have been sought for the procurement of the vehicle and the module in accordance with the *Government Procurement Regulation 2007*; this was not done for the initial procurement.

2.70

On 11 December 2015, SG Fleet's quotations for the lease of the truck and the lease of the detainee module were signed by the Acting Executive Director, Capital Works. The lease quotations included a 'Quote Acceptance' section, which stated 'the undersigned accepts the above mentioned lease quotation and as such requests sgfleet to procure the vehicle described for the purpose of leasing the said vehicle to me/us'. It was on this basis that SG Fleet was given approval to obtain the vehicle and the detainee module on behalf of ACTCS. The Mitsubishi Fuso Canter truck chassis was to be supplied by Hartwigs in Queanbeyan and the detainee module was to be supplied by the Byron Group in Sydney. The Byron Group was to attach the

2.76

module to the truck chassis. ACTCS did not have a contract with the Byron Group, nor did it engage with the Byron Group, for such a unique and highly specialised procurement, which involved the construction of a specially designed and constructed detainee module and its attachment to a truck chassis. It is inappropriate that ACTCS relied on SG Fleet to engage with the Byron Group for the construction and delivery of the eight-seater detainee transport vehicle.

Following the issuing of the purchase order to the Byron Group in December 2015 for the construction of the detainee module there is little evidence of what communication took place with the Byron Group after this. Initial expectations were that the build was to be completed in June 2016. This date continued to be pushed out until the Byron Group went into voluntary administration on 17 October 2016. There is evidence of communication with the Byron Group by both SG Fleet and ACTCS officers during this period. Poor documentation and record-keeping on the part of ACTCS, however, means that it is not possible to identify with any certainty whether and how ACTCS was managing the Byron Group for the construction and delivery of the module. It is also not possible to identify with any certainty whether and how ACTCS was managing and coordinating with SG Fleet for the construction and delivery of the vehicle.

2.84

In late 2016 Byron Wade Pty Ltd , emerged as a potential purchaser of the Byron Group and the takeover was completed in late 2016. In advice to the Audit Office for the purpose of the audit, the SG Fleet representative advised ‘we have then had significant involvement to try and get the build to resolution and had extensive consultation with [the Contracts, Procurement and Fleet Officer] Corrective Services throughout’. SG Fleet supplied an updated purchase order ... to the Wade Group’ on 26 June 2017. The SG Fleet representative stated that because ‘it was just a change in supplier [i.e. from the Byron Group to Byron Wade Pty Ltd] a new client sign off was not required’. The SG Fleet representative also advised that ‘agreement was reached with [ACTCS representatives] hence we issued them a purchase order’. There are poor ACTCS corporate records to show what actions were being taken during this period. Accordingly, there is no evidence in ACTCS corporate records to confirm an intention to continue the build with Byron Wade Pty Ltd at the time of issuing the updated purchase orders in June 2017.

2.97

There is evidence that ACTCS confirmed an intention for Byron Wade Pty Ltd to continue with the build in December 2017. Following an inspection of the build by ACTCS on 3 November 2017 ACTCS advised of a list of concerns on 5 December 2017. This appears to have been resolved because in February 2018 the Contracts, Procurement and Fleet Officer (ACTCS) advised a range of ACTCS officers that ‘following discussions with you all and correspondence with other jurisdictions regarding the same vehicle type, we instructed Byron Wade in December 2017 to continue as per original specification’. The build was completed on 23 April 2018 and Byron Wade Pty Ltd was paid. Following the identification of problems with the heating system after its initial delivery in April 2018, the vehicle was sent back to the Byron Wade Pty Ltd premises in Melbourne. The vehicle was then delivered a second time in May 2018 and passed inspection for registration on 5 June 2018. The vehicle was delivered to ACTCS on 22 June 2018.

2.98



ACTCS did not prepare a procurement plan for the second procurement, nor was a risk assessment undertaken or a risk management plan prepared to manage procurement risks. An undated *Buying Goods and Services Risk Questionnaire* was completed, but it is not clear who completed the questionnaire. The questionnaire does not constitute a risk assessment or a risk management plan. The lack of a procurement plan and risk management hampered the procurement and its decision-making processes. 2.104

On 8 May 2017 the Acting Director-General of JACS approved a 21 December 2016 minute from the Acting Executive Director of ACTCS for the procurement of a detainee module. There is no evidence for why it took almost five months for the minute to be approved. The minute sought approval for funding 'up to the value of \$200,000 (GST inclusive)'. There is no documentation supporting the estimate of the procurement and it is noted that the various quotations from the Byron Group for the initial procurement indicate that the cost of the procurement had a high chance of exceeding \$200,000 (GST inc). *Procurement Circular 23: Quotation and Tender Thresholds* states 'where an estimated value is determined and is under one of the stated thresholds by 10 per cent or less, the basis for selecting that estimated value should be documented and placed on file for audit purposes before undertaking the procurement process'. This did not occur. The Commercial Services and Infrastructure Group's website states 'all purchases valued over \$200,000 (GST inclusive) must be referred to Procurement ACT'. This did not occur. 2.113

On 21 July 2017 a Request for Quotation was issued to five potential suppliers for a eight-person detainee transport module. This occurred after an updated purchase order had already been issued to Byron Wade Pty Ltd for the initial procurement on 26 June 2017. Two supplier responses were received, one supplier indicated an intention not to respond and the other two suppliers did not respond. A three-person tender evaluation panel identified that Specialised & Emergency Vehicles Australia (SEVA), a Queensland-based supplier, as best value for money and demonstrating the least risk to the Territory. The cost of the proposed construction was \$218,449 (GST inc). 2.128

It is apparent that the contract with SEVA was not finalised, as a mutually acceptable outcome for the design and construction of the module was not agreed. However, there are poor ACTCS corporate records to show why there was disagreement and why a contract was not finalised. In November 2020 a representative of SEVA advised that at the time the contract was being negotiated, SEVA held reservations as to whether the specifications in their planned module would fit the cab chassis selected by ACTCS and be fit for purpose. The SEVA representative advised that it is rarely the case that a detainee module, such as that procured by ACTCS, can be driven on a C-class drivers license and they are more appropriate to be driven on Medium Rigid licenses with an upgraded cab chassis. In this instance, the SEVA representative advised that it erred on the side of caution by not proceeding with the build. 2.129

## Fleet procurement in the ACT

### ACT Government procurement requirements

2.2 The procurement of goods and services by Territory entities is guided by the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*. A key principle of ACT procurement legislation is that Territory entities must ensure the ‘best available procurement outcome’ having regard for value for money.

2.3 Determining value for money involves a wide-ranging assessment that includes consideration of price, ‘whole of life’ costs and risks, while encouraging competition and conducting the procurement process transparently. These concepts are explained in the ACT Government Purchasing Principles as follows:

- **Value for money**

Value for money is generally assessed as the provision of goods and services at the optimum price and quality over an acceptable timeframe with due regard to whole of life costs and an acceptable level of risk.

- **Accountability and effective competition**

A directorate and its officers are responsible for ensuring that any procurement process is open and transparent and that decisions are justified. Procedures must be in place to ensure that procurement processes are conducted soundly and that procurement related actions are documented, defensible and substantiated in accordance with legislation and government policy.

- **Assessing and managing risk**

A risk assessment should be documented and commensurate with a procurement’s value and complexity. Risk management, however, should be an on-going process through the contract lifecycle and, as such, it is important to identify all possible risks early and assess the likelihood of the risk occurring as well as the consequences that may follow.

- **Optimising whole of life costs**

In making a decision about which good or service offers the best value for money, all significant costs and benefits (including fit for purpose considerations) associated with the purchase should be considered. Whole of life costing takes into account all risks, costs and benefits incurred across the entire procurement cycle – including the costs associated with the acquisition, maintenance, operation, training and disposal.

- **Probity and ethical behaviour**

In conforming to the standards of probity, clear procedures must be established, understood and observed from the outset. Ensure that behaviour in arranging and managing a contract is, and can be proven to be, ethical and impartial in accordance with the Territory’s legislative and policy framework, which is applicable to all Territory employees.

## Procurement requirements

- 2.4 ACT Corrective Services was required to adhere to the *Government Procurement Act 2001*, *Government Procurement Regulation 2007* and associated ACT Purchasing Principles and Procurement Circulars.

### Seeking quotes

- 2.5 Clause 6 of the *Government Procurement Regulation 2007* requires that when procurements are below \$200,000 (but above \$25,000) at least three written quotes should be sought from suppliers:

A territory entity must seek at least 3 written quotations from suppliers for the procurement of goods, services or works if the total estimated value of the procurement is \$25 000 or more and less than \$200 000.

- 2.6 Clause 9 of the *Government Procurement Regulation 2007* requires that when procurements are above \$200,000 a public tender process should be conducted:

A territory entity must invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is \$200 000 or more.

### Consultation with ACT Procurement Board

- 2.7 The Commercial Services and Infrastructure Group's website states:

Purchases over \$200,000 (GST inclusive) are considered complex ...

All purchases valued over \$200,000 (GST inclusive) must be referred to Procurement ACT. When we receive your procurement we will then work with you to understand the importance of the procurement to the Territory and to your business area, and work together to develop an appropriate sourcing strategy, help to get the relevant approvals that may be needed and provide guidance and support throughout the full approach to market process.

## Fleet Management Procurement Policy (2017)

- 2.8 The *ACT Fleet Management Policy (2017)* provides specific instructions with respect to the conduct of vehicle related procurement. The Policy states:

**Fleet Policy 8:** Where a Directorate chooses to undertake a heavy vehicle(s) purchase or customised build, the procurement process **must align with the Territory's procurement framework** and thresholds and **must be supported by a business case** detailing whole of life cost for the proposed vehicle.

**Fleet Policy 9:** Where a Directorate chooses to undertake a customised build involving separate providers of vehicle components (e.g. chassis and body), the **Directorate must ensure that contractual arrangements provide certainty regarding the specifications and delivery checklist of each component**. The Directorate must also ensure that there is contractual clarity regarding responsibility for assembly and testing of the completed vehicle.

**Fleet Policy 10:** Where a Directorate proposes to undertake a customised build, consideration must be given to any relevant Territory or inter-jurisdictional panel arrangement that may provide an appropriate option for the customised build.

**Fleet Policy 11:** A Directorate's selection between heavy vehicle leasing, buying, or custom build options must **reflect evaluation of all associated workplace health and safety considerations**. [Emphasis added]

- 2.9 Much of the procurement activity for the Romeo 5 vehicle occurred prior to the implementation of the *ACT Fleet Management Policy* (2017). Nevertheless, the policy provides useful guidance on expectations for an effective procurement for a specialised vehicle.

## Initial procurement (2015)

### Planning for the procurement

#### Business case

- 2.10 Since 2017 it has been a requirement of the *ACT Fleet Management Policy* (2017) for heavy vehicle procurements and customised builds that a business case is prepared.
- 2.11 A business case is necessary for proper procurement planning and supporting good governance and sound decision making. A business case should document the technical requirements and objectives of a procurement and should help decision-makers decide whether to support a proposed procurement activity prior to committing financial resources. A business case should assess the benefits of a procurement, its likely costs (including whole-of-life costs) and any foreseen implementation issues and risks of proceeding with a planned project.
- 2.12 ACTCS did not prepare a business case to inform the procurement of a large multi-detainee transport vehicle. This was a missed opportunity to assess the operational and technical requirements, potential suppliers' likely costs (including whole-of-life costs) and any potential implementation issues and risks of proceeding with a procurement. The lack of a business case, and the good governance and sound decision-making that it would foster, hampered the procurement and its decision-making processes.

#### Procurement plan

- 2.13 It is better practice to prepare a procurement plan. Planning for a procurement encourages consideration of roles, responsibilities and accountabilities, potential procurement methods, risks, evaluation methodologies and stakeholder needs.
- 2.14 Procurements over \$200,000 (GST inc) are considered complex. Business units are expected to refer complex procurements to Procurement ACT (in the Commercial Services and Infrastructure Group) for assistance with procurement planning. Procurement ACT is expected to 'work with you to understand the importance of the procurement to the Territory and to your business area, and work together to develop an appropriate sourcing strategy, help to get the relevant approvals that may be needed and provide guidance and support throughout the full approach to market process'.

- 2.15 ACTCS did not prepare a procurement plan for the procurement of a large multi-detainee transport vehicle. Initial activity on the part of ACTCS identified that the procurement would exceed \$200,000 (GST inc), but Procurement ACT was not consulted as part of initial planning for the procurement as required. The lack of a procurement plan hampered the procurement and its decision-making processes.

### Procurement risk management

- 2.16 Consistent with the *Government Procurement Act (2001)*, *Procurement Circular 24: Risk Management* outlines the importance of applying effective risk management techniques when undertaking government procurement. The Circular states:

... a Territory entity must, in the procurement of goods, services or works:

- identify, analyse and evaluate any likely risks; and
- implement sound risk management strategies to mitigate them.

- 2.17 The Circular outlines three ways to manage risk effectively:

- early and systematic identification, analysis and assessment of risks and developing plans for handling them;
- allocating responsibility to the party best placed to manage risks, which may involve implementing new practices, procedures or systems, or simply negotiating suitable contractual arrangements; and
- ensuring that the costs incurred in risk management are commensurate with the importance of the procurement activity and the risks involved.

- 2.18 ACTCS did not undertake a risk assessment for the procurement, nor was a risk management plan prepared to manage procurement risks. The procurement of the vehicle was arguably high risk because it involved the procurement of a new and different court transport vehicle to previous fleet procurements. The lack of procurement risk management hampered the procurement and its decision-making processes.

### The operating context – the safety environment

- 2.19 The corrections environment has unique features that it is reasonable to expect would underpin procurement planning in ACTCS. The safety considerations when transporting detainees are especially important when developing a new transportation arrangement – in this case, an eight-seater detainee transport vehicle as opposed to a modified off the shelf vehicle which were more routinely used by ACTCS in the past.

- 2.20 Duty of care principles in relation to the safe transport of detainees are referenced in the *Standard Guidelines for Corrections in Australia* (2012) which states:

- 1.100 All vehicles used for the transport of persons in custody should:
- (i) Provide for the safety, comfort and security of the person being transported.
  - (ii) Meet the relevant state design standards and the Australian Design Standards.

(iii) Where possible consider the use of natural light and privacy from outside views.

(iv) Provide for sufficient space so that where possible the movement of personal property is done in conjunction with the movement of the person in custody.

1.101 All vehicles used for the transport of persons in custody should be fitted with:

(i) Seat belts except where under state law an authority can apply for an exemption.

(ii) Forward or rear facing seats for persons in custody undergoing transport.

(iii) Appropriate communication systems to facilitate the communication between the persons conducting the transport and the persons in custody being transported.

(iv) Effective climate control for those areas of the vehicle where persons in custody are located.

(v) Where possible, an appropriate power system for the maintenance of all electrical systems including air conditioning and monitoring systems.

(vi) Relevant equipment for dealing with emergency situations and breakdowns.

2.21 Furthermore, the *Guiding Principles for Corrections in Australia* (2018) state:

3.1.11 Persons in custody are transported using fit for purpose vehicles that are safe and meet relevant standards and are subject to regular and routine safety checks.

3.1.12 Transport of persons in custody is conducted in a safe and humane manner, taking into account the dignity of the person being transported.

2.22 There is no evidence that relevant detainee transport principles and requirements in the *Standard Guidelines for Corrections in Australia* (2012) or *Guiding Principles for Corrections in Australia* (2018) were explicitly recognised and documented by ACTCS as part of the procurement process. Although not legally binding, these represent agreed best practice by stakeholders across Australia.

## Need for a replacement vehicle

2.23 Notwithstanding the lack of a documented business case or procurement plan, the need for a large multi-detainee transport vehicle was first documented in 2015.

### *Draft Executive Brief (undated – early 2015)*

2.24 A draft Executive Brief was prepared in early 2015, the purpose of which was to:

- seek an exemption from the requirement of section 9 of the *Government Procurement Regulation 2007* to ‘invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is \$200,000 or more’; and

- approve the procurement of an eight-seater vehicle for the transport of detainees from the Byron Group.

2.25 The draft Executive Brief, which was from the Executive Director of ACTCS to the Director-General of the Justice and Community Safety Directorate (JACS) was not dated, but identified a critical date for response of 30 April 2015. There is no evidence that the Brief was finalised or provided to the Director-General.

2.26 The Brief identified issues arising from the continued reliance on the Romeo 4 vehicle (a Mercedes-Benz Sprinter van), including significant risks to the ability to transport detainees:

[Romeo 4] was purchased in 2007 and the lease has been extended twice since 2011. The vehicle is currently failing and is now critical and at risk of not being salvageable. It has been unusable for a few weeks with mechanical issues and it now has technical issues with failing CCTV, intercom and monitors within the van internal cabin.

The vehicle [needs] to be replaced as [a] whole as the cells at the back for the vehicle can't be re-fitted to other leased vehicle available on the market.

#### *Draft Executive Brief (July 2015)*

2.27 In July 2015 another draft Executive Brief was prepared, the purpose of which was to 'seek a resolution for ACT Corrective Services to replace the existing Large Escort Van for the Courts Transport Unit'. This draft Executive Brief, which was similarly from the Executive Director of ACTCS to the Director-General of JACS was not dated. There is no evidence that the Brief was finalised or provided to the Director-General.

2.28 Similar to the earlier Brief, it identified issues arising from the continued reliance on the Romeo 4 vehicle, including significant risks to the ability to transport detainees:

The large prisoner transport vehicle ... is failing and is now critical and at risk of not being available to transport detainees.

The current vehicle was purchased in 2007. The lease has been extended twice since the original expiry in 2011. Mechanically the vehicle is now unreliable and technically (CCTV, monitors and intercoms) the systems are failing. ... The ACT Fleet provider will no longer extend the lease and is actively contacting officers in the Directorate to hand back the vehicle. ...

ACT Corrective Services is now at risk of not being able to transport prisoners to Court. It should also be noted that this vehicle also supports Bimberi Youth Justice transport requirements for juvenile offenders to children's court.

### **Identification of a replacement vehicle**

#### *Draft Executive Briefs (undated – early 2015) (July 2015)*

2.29 Both draft Executive Briefs identified that Byron Group was best placed to deliver a replacement vehicle.

2.30 The first draft Executive Brief sought approval:

... to engage a specialist supplier of special heavy vehicles, BYRON Group, to manufacture, supply and fit one (1) x 8 cell plus property lightweight service body including the supply of

one (1) x Fuso Canter 515 4x2 MWB Duonic Wide Cab Chassis, to the value of \$258,357.00 (GST inclusive).

- 2.31 The first draft Executive Brief identified that the Byron Group 'has extensive experience across design and maintenance of detainee transportation' and 'has a proven history of supplying these detainee transportation vehicles to several jurisdictions throughout Australia'. The Brief also identified that 'Byron Group has supplied two x four cell detainee transportation vehicles to ACT Corrective Services in recent months with great success'.
- 2.32 The first draft Executive Brief identified that 'it is estimated that a likely outcome in a normal tender process, in any case, Byron Group will be selected, given a value for money advantage and specialised knowledge advantage'.
- 2.33 The second draft Executive Brief was predicated on similar assumptions to the first draft Executive Brief, but provided more information and detail on procurement options including:
- Option 1 - purchase and own the vehicle and detainee module;
  - Option 2 - fully lease the vehicle and detainee module through SG Fleet; and
  - Option 3 - lease the vehicle and purchase the detainee module.

#### *March 2015 Byron Group quotation*

- 2.34 Both draft Executive Briefs were based on the procurement of a Mitsubishi Fuso Canter truck at a cost of \$43,857 (GST inc) and the manufacture and supply of an eight-seater detainee transport module by the Byron Group at a cost of \$214,500 (GST inc). This is a total cost of \$258,357 (GST inc).
- 2.35 These costs were derived from a 30 March 2015 quotation from the Byron Group. The quotation was addressed to the Finance Coordinator of ACTCS. The quotation was in two parts:
- a quotation from Byron Group to ACTCS for the manufacture and supply of the module; and
  - a quotation for the supply of the truck from Fuso Truck and Bus to the Byron Group.
- 2.36 There is no information or documentation on the genesis of the quotation from the Byron Group or any instruction provided by ACTCS in relation to the request.
- 2.37 During audit fieldwork the Audit Office was advised that the potential for procuring an eight-seater detainee transport vehicle from the Byron Group was first identified in late 2013 during a visit by ACTCS officers to Byron Group premises in Sydney. The purpose of the visit was to discuss two four-seater detainee transport vehicles that the Byron Group was in the process of supplying to ACTCS. During this visit it is understood that an informal discussion about a potential eight-seater detainee transport vehicle took place.



- 2.38 In March 2015 the Byron Group provided a quotation to the Finance Coordinator of ACTCS for: the manufacture and supply of an eight-cell detainee transport module at a cost of \$214,500 (GST inc); and the supply of a Mitsubishi Fuso Canter truck at a cost of \$43,857 (GST inc). There is no information or documentation on the genesis of the quotation from the Byron Group or any instruction provided by ACTCS in relation to the request. It is understood that the potential for procuring an eight-seater detainee transport vehicle from the Byron Group was first identified in late 2013 during a visit by ACTCS officers to Byron Group premises in Sydney.
- 2.39 The quotation formed the basis of two draft Executive Briefs that were prepared in mid to late 2015, although there is no evidence the briefs were finalised or provided to decision-maker(s) for approval. Both briefs documented the need for an eight-seater detainee transport vehicle and the procurement of the vehicle through the Byron Group. Simultaneously documenting the business need and the proposed solution through a preferred supplier is poor practice for a complex and high-risk procurement such as this. It shows a predetermined outcome was being sought for the procurement and that there was insufficient consideration of alternative solutions or suppliers.

## Conduct of the procurement

### Vehicle requirements

- 2.40 ACTCS did not devise or communicate its own specifications for the eight-seater detainee transport vehicle.
- 2.41 Specifications for the vehicle, its supply and delivery were initially outlined in the March 2015 quotation from the Byron Group. The quotation was subsequently re-issued in September 2015. For each of these quotations a list of specifications were outlined, including requirements for the exterior body, external door, entry step well, manufacture of cells, cell doors, seats, seat belts, frame, brackets, internal flooring, air conditioning, intercom, CCTV, lighting, other inclusions and compliance requirements.
- 2.42 The quotations were to 'manufacture, and supply and fit one (1) x 8 cell plus property lightweight services body to suit a Fuso Canter 515 4 x 2 MWB Duonic Wide Cab Chassis'.
- 2.43 With respect to 'compliance' the quotations simply stated 'engineering report' and 'weighbridge'. No further information was included in relation to responsibilities and accountabilities for the vehicle's compliance with Australian Design Rules (ADR) or registration requirements.
- 2.44 ACTCS did not devise or communicate its own specifications for the eight-seater detainee transport vehicle. Specifications for the vehicle, its supply and delivery were initially outlined in the March 2015 quotation from the Byron Group, which was subsequently re-issued in September 2015. With respect to 'compliance' the quotations simply stated 'engineering report' and 'weighbridge'; no further information was included in relation to responsibilities and accountabilities for the vehicle's compliance with Australian Design

Rules or registration requirements. There is no evidence that ACTCS considered the vehicle's design specifications to ensure that it was fit for purpose and would meet ACTCS business and operational requirements in relation to safety and security.

## Leasing solution

### *Consideration of SG Fleet*

2.45 SG Fleet is the whole-of-government supplier for vehicles. The Commonwealth Department of Finance administers the Fleet Services Contract with SG Fleet (dated 7 December 2012). The Territory has joined the Fleet Services Contract via a Letter of Agreement that includes a Services Agreement for the provision of leasing and fleet management services to Territory entities.

2.46 There is evidence that ACTCS approached SG Fleet and sought information on the cost of leasing the eight-seater detainee transport vehicle. In an email from an SG Fleet representative to the Procurement Officer, Capital Works and Infrastructure on 24 June 2015 it was advised that the most suitable option would be two separate leases – one for the vehicle and one for the detainee module. Specifically, the SG Fleet representative advised:

I am quoting this one up for you. I have been talking to our commercial area and they have advised that with no market in Australia for 2<sup>nd</sup> hand prisoner vans, there would be an option for us to have 2 separate leases ...

Due to the purchase cost of the body, we believe it would be better at lease end that we should re-furbish the body and fit to another cab chassis for a further 5 years.

Our Commercial area is in the process of working all costs out for me.

I will then be able to provide you with the quotes.

2.47 It is not clear whether quotes were provided as discussed in the email and whether they informed decision-making. Two quotes from SG Fleet dated 28 October 2015 (one for the vehicle and one for the detainee module) were subsequently provided (refer to paragraphs 2.34 to 2.35).

### *Consideration of leasing vs purchase*

2.48 As discussed in paragraph 2.33, the second draft Executive Brief in July 2015 provided information and detail on procurement options including:

- Option 1 - purchase and own the vehicle and detainee module;
- Option 2 - fully lease the vehicle and detainee module through SG Fleet; and
- Option 3 - lease the vehicle and purchase the detainee module.

2.49 The second draft Executive Brief in July 2015 identified two cost scenarios for each of the procurement options; a five year cost scenario and ten year cost scenario. The cost scenarios were based on a purchase price for the vehicle of \$43,857 (GST inc) and the

detainee module of \$214,500 (GST inc) as per the March 2015 quotation from the Byron Group.

- 2.50 The cost scenarios included leasing costs (for Options 2 and 3), purchase costs (for Options 1 and 3), maintenance, fuel, insurance and depreciation costs. Comprehensive insurance costs were not included in the calculations as information was not available, but this was identified as being the same for all three options and therefore not determinative. Table 2-1 shows the cost scenarios for the procurement options as outlined in the second draft Executive Brief in July 2015.

**Table 2-1 Cost scenarios for three procurement options**

Procurement options	Cost over five years (\$)	Cost over ten years (\$)
Option 1 - purchase and own the vehicle and detainee module	501,554	791,914
Option 2 - fully lease the vehicle and detainee module through SG Fleet	324,118	691,452
Option 3 - lease the vehicle and purchase the detainee module	473,386	728,354

Source: Justice and Community Safety Directorate (draft Executive Brief, July 2015)

- 2.51 The second draft Executive Brief in July 2015 identified that over a five year period and ten year period Option 2 was the most cost effective.
- 2.52 An email accompanying the second draft Executive Brief from the Manager, Finance and Budget to the Senior Manager, Administration (ACTCS) identified that ‘the total vehicle outright purchase’ was depreciated over ten years for Option 1 and this was identified as ‘standard for this type of vehicle’. The email identified that the purchase of the detainee module under Option 3 was only depreciated over five years and this was acknowledged as ‘probably a bit naughty so I can change to 10 years if you’d rather’. The 24 June 2015 advice from the SG Fleet representative had previously recommended leasing the detainee module over ten years.
- 2.53 The Audit Office re-performed the analysis using the calculation spreadsheet that accompanied the second draft Executive Brief, but changed the assumptions associated with Option 3 to depreciate the cost of the purchase of the detainee module over ten years, i.e. to make the timeframes comparable to Option 1. The cost scenarios change significantly. The five year cost scenario for Option 3 would have been \$375,886 (as opposed to \$473,386) and the ten year cost scenario would have been \$648,354 (as opposed to \$728,354). This would have made leasing the vehicle and purchasing the module outright a more competitive solution in a five year timeframe and the most cost-effective solution in a ten year timeframe.
- 2.54 Various documents associated with the initial procurement indicated that upfront capital funding for the procurement of the vehicle was not available and that leasing the vehicle

was identified as a means to procure the vehicle, but avoid the upfront capital cost. The second draft Executive Brief identified:

ACT Corrective Services has no capital budget for vehicle replacement. If procurement of the vehicle was supported, capital funding would need to be located, and approval sought for vehicle replacement in the future. Continuing with the current lease arrangement will also require a capital budget component for the proposed cabin (fitout) procurement and future lease change over costs. Fully leasing the vehicle and cabin as a whole will reduce the risk Corrective Services currently faces of being unable to transport prisoners to court, due to unavailability of capital funding, and will spread the cost of the vehicle over a five year lease aligning it with Corrective Services other escort vehicles that are all currently leased.

- 2.55 As identified in Table 2-1, it was decided to proceed with the second option, i.e. leasing of both the vehicle and the module.
- 2.56 Apart from the second draft Executive Brief, for which there is no evidence of its finalisation or approval, there was no other documentation supporting the decision to approve the leasing of the vehicle and the module.
- 2.57 There is evidence that ACTCS considered the financial implications of a range of options for the procurement including: purchase and own the vehicle and detainee module (Option 1); fully lease the vehicle and detainee module through SG Fleet (Option 2); and lease the vehicle and purchase the detainee module (Option 3). The analysis showed Option 2 was the most cost-effective for a five year scenario (\$324,118) and ten year scenario (\$691,452). However, the email accompanying the analysis identified that the assumptions underpinning the analysis across the different scenarios were not consistently applied and this was acknowledged as 'probably a bit naughty so I can change ... if you'd rather'. If the assumptions were consistently applied the cost of Option 3 would have been \$375,886 for five years and \$648,354 for ten years. By consistently applying the assumptions leasing the vehicle and purchasing the detainee module (Option 3) would have been more competitive for a five year scenario and the most cost-effective option over ten years. The second draft Executive Brief in July 2015, which outlined the cost scenarios for each of the procurement options, identified that upfront capital funding for the procurement of the vehicle was not available and that leasing the vehicle was identified as a means to procure the vehicle, but spread the cost over a number of years.

### Approval for the procurement

- 2.58 An 11 September 2015 email from the Finance Coordinator of ACTCS to the Senior Manager, Administration (ACTCS) stated:
- I have been instructed to go ahead and have the process started to lease a vehicle to replace the larger of our Court Transport vehicles. We have been dealing with the Byron Group who have been building these vehicles for several other jurisdictions.
- 2.59 No further information or evidence was found in relation to this assertion or the basis on which it was made.

### Engagement of SG Fleet

- 2.60 In November 2015 a minute was provided to the Acting Executive Director, Capital Works in the Justice and Community Safety Directorate from the Executive Director, ACT Corrective Services. The minute sought approval for ‘this lease quotation for a replacement vehicle for Justice and Community Safety’. The minute included two separate lease quotations from SG Fleet for the eight-seater detainee module and the Mitsubishi Fuso truck dated 28 October 2015:
- detainee module – FBT value of \$214,500 – total monthly rental of \$2,930.48 for 96 months - \$281,326.08 total (GST inc); and
  - truck – FBT value of \$43,857.00 – total monthly rental of \$1,384.67 for 96 months - \$132,928.32 (GST inc).
- 2.61 The minute identified that the Treasurer had ‘delegated the authority to enter into new operating leases in accordance with subsection 40(c) of the *Financial Management Act 1996* to the Director General’ and that the Director-General ‘has delegated the authority to enter into replacement operating leases to the Executive Director, Capital Works’. Subsection 40(c) of the *Financial Management Act 1996* provides authority for ‘[entering] into a financing lease’. The minute was approved on 18 November 2015.
- 2.62 The minute characterised the vehicle as a replacement vehicle. By characterising the vehicle as a replacement vehicle the Acting Executive Director, Capital Works was acting within the scope of their delegation and therefore able to approve the procurement.
- 2.63 The Audit Office sought further information as to what is defined as a new vehicle and a replacement vehicle. The Justice and Community Safety Directorate advised ‘a new vehicle is defined as additional to the Fleet [and] a replacement vehicle is replacing an existing vehicle’ and that the Director-General must approve all requests for additional vehicles.
- 2.64 The Audit Office considers that categorising the procurement as a ‘replacement operating lease’ downplayed the complexity of the procurement. The proposed eight-seater detainee vehicle was a new vehicle addition to the fleet in as much as it was unique and different to existing vehicles and it was not a like-for-like replacement of the existing Romeo 4 Mercedes-Benz Sprinter van, which it was intended to succeed. It is also noted that Romeo 4 has since continued to be used.

### Need for three written quotes

- 2.65 As discussed in paragraphs 2.5 to 2.6, the *Government Procurement Regulation 2007* requires ACT Government entities to:
- seek at least three written quotes from suppliers when procurements are below \$200,000 (but above \$25,000); and
  - invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is \$200 000 or more.

- 2.66 The total cost of leasing the detainee module was identified as \$281,326.08 (FBT value of \$214,500) and the total cost of leasing the vehicle was identified as \$132,928.32 (GST inc) (FBT value of \$43,857).
- 2.67 Three written quotes were not sought for the supply of either the detainee module or the vehicle, nor was a public tender process conducted.
- 2.68 The need to seek three written quotations (or conduct a public tender process) appeared to have been recognised at the outset, as the draft Executive Brief prepared in early 2015 specifically sought to seek an exemption from the requirement of section 9 of the *Government Procurement Regulation 2007* to 'invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is \$200,000 or more'.
- 2.69 This approach was subsequently endorsed in advice from Procurement ACT. After problems emerged in the delivery and supply of the vehicle (refer to paragraphs 2.95 to 2.97) ACTCS sought input from Procurement ACT. On 10 May 2017 the Manager, Contracts & Category Management, Goods and Services Procurement in Procurement and Capital Works in the Chief Minister, Treasury and Economic Development Directorate provided advice in relation to the procurement to a range of ACTCS representatives:
- As with any procurement, if, at the outset, it was estimated that the build was going to cost more than \$200 000, a procurement activity should have been registered and the appropriate procurement process followed to ensure that the Territory was adequately covered from a contractual perspective. Generally speaking this would have meant approaching the market in order to seek quotes and ultimately setting up the required contracts between the parties. I am making the assumption that this process was followed, that Byron was the successful supplier and that Corrective Services has a contract in place between itself and Byron.
- 2.70 In November 2015 a minute was provided to the Acting Executive Director, Capital Works in JACS from the Executive Director, ACTCS that sought approval for 'this lease quotation for a replacement vehicle for Justice and Community Safety'. The minute included two separate lease quotations from SG Fleet: detainee module – FBT value of \$214,500 – total monthly rental of \$2,930.48 for 96 months - \$281,326.08 total (GST inc); and vehicle – FBT value of \$43,857.00 – total monthly rental of \$1,384.67 for 96 months - \$132,928.32 (GST inc). The minute characterised the procurement as a 'replacement operating lease' and identified that the Director-General 'has delegated the authority to enter into replacement operating leases to the Executive Director, Capital Works'. The minute was approved on 18 November 2015. The Audit Office considers that categorising the procurement as a 'replacement operating lease' downplayed the complexity of the procurement; the eight-seater detainee vehicle was a new vehicle addition to the fleet and was unique and different to existing vehicles. The Audit Office also considers that three quotations should have been sought for the procurement of the vehicle and the module in accordance with the *Government Procurement Regulation 2007*; this was not done for the initial procurement.

## Engagement of the Byron Group

- 2.71 On 3 December 2015 SG Fleet re-issued the lease quotations for the vehicle and the detainee module. The re-issued quotations were the same in almost all respects as the 28 October 2015 versions, but now included an identified residual value for each. This had the effect of reducing the monthly lease charge.
- 2.72 The lease quotations were signed on 11 December 2015 by the Acting Executive Director, Capital Works. All iterations of the SG Fleet quotations included a 'Quote Acceptance' section, which stated:
- The undersigned accepts the above mentioned lease quotation and as such requests sgfleet to procure the vehicle described for the purpose of leasing the said vehicle to me/us.
- 2.73 It was on this basis that SG Fleet was given approval to obtain the vehicle and associated detainee module on behalf of ACTCS. In advice to the Audit Office for the purpose of the audit an SG Fleet representative advised 'once we have an accepted order from the client we then issue a Purchase Order to the supplier'. On the basis of the signed lease quotations SG Fleet:
- raised a vehicle order to Hartwigs in Queanbeyan for the supply of the truck; and
  - issued a purchase order to the Byron Group 'for the details contained within the quote for \$195,000.00 exc GST'.
- 2.74 The SG Fleet representative advised that:
- The orders were placed in December 2015, the sgfleet nominated truck dealer was Hartwigs and the advice was that the body was to be completed by Byron Group in Sydney.
- 2.75 The SG Fleet representative advised that the Byron Group had advised they 'would need 8 weeks from order to obtain all parts and then the vehicle would be required by them' and 'the dealer would then arrange to transport the vehicle to Byron at that point in time'.
- 2.76 On 11 December 2015, SG Fleet's quotations for the lease of the truck and the lease of the detainee module were signed by the Acting Executive Director, Capital Works. The lease quotations included a 'Quote Acceptance' section, which stated 'the undersigned accepts the above mentioned lease quotation and as such requests sgfleet to procure the vehicle described for the purpose of leasing the said vehicle to me/us'. It was on this basis that SG Fleet was given approval to obtain the vehicle and the detainee module on behalf of ACTCS. The Mitsubishi Fuso Canter truck chassis was to be supplied by Hartwigs in Queanbeyan and the detainee module was to be supplied by the Byron Group in Sydney. The Byron Group was to attach the module to the truck chassis. ACTCS did not have a contract with the Byron Group, nor did it engage with the Byron Group, for such a unique and highly specialised procurement, which involved the construction of a specially designed and constructed detainee module and its attachment to a truck chassis. It is inappropriate that ACTCS relied on SG Fleet to engage with the Byron Group for the construction and delivery of the eight-seater detainee transport vehicle.



## Construction and delivery (2016)

- 2.77 In advice to the Audit Office for the purpose of the audit, the SG Fleet representative advised that following the issuing of the purchase order to the Byron Group in December 2015 ‘the Byron Group advised that the chassis was not required to be sent to them until March’ and that ‘in January 2016, the Byron Group advised the completion would be mid to late May’.
- 2.78 There is little evidence of what communication took place with the Byron Group following the issuing of the purchase orders in December 2015. There is some evidence of communication with the Byron Group by both SG Fleet and ACT Corrective Services representatives.
- 2.79 On 18 May 2016 the Byron Group provided ACT Corrective Services with a build completion date of 22 June 2016.
- 2.80 On 1 June 2016 the Byron Group advised an SG Fleet representative and the Contracts, Procurement and Fleet Officer (ACTCS) ‘there has unfortunately been a shift in delivery date. The revised delivery date will be looking more like the end [of] July, of course this will be brought forward if at all possible’. On 22 July 2016 the Byron Group advised an SG Fleet representative of further delays. The SG Fleet representative advised that at a meeting on 25 August 2016 Byron Group representatives advised:
- the build had been sent to its Melbourne premises; and
  - the build was expected to be completed in early November 2016.
- 2.81 There is no further evidence of who was in attendance at this meeting.
- 2.82 On 9 August 2016, the Contracts, Procurement and Fleet Officer (ACTCS) reported to the Senior Manager, Administration (ACTCS) and Senior Manager, Industries/Facilities (ACTCS) that the delivery date had been pushed back another month with an estimated completion date of 1 September 2016.
- 2.83 On 17 October 2016 the Byron Group went into voluntary administration. In an email to the Contracts, Procurement and Fleet Officer (ACTCS) on 19 October 2016 the Byron Group advised:
- SG Fleet representatives had been advised of the voluntary administration;
  - the Byron Group was providing a report to the administrators of all of its work in progress; and
  - ‘the administrative team will be working through this report and will be available to discuss with you’.
- 2.84 Following the issuing of the purchase order to the Byron Group in December 2015 for the construction of the detainee module there is little evidence of what communication took place with the Byron Group after this. Initial expectations were that the build was to be



completed in June 2016. This date continued to be pushed out until the Byron Group went into voluntary administration on 17 October 2016. There is evidence of communication with the Byron Group by both SG Fleet and ACTCS officers during this period. Poor documentation and record-keeping on the part of ACTCS, however, means that it is not possible to identify with any certainty whether and how ACTCS was managing the Byron Group for the construction and delivery of the module. It is also not possible to identify with any certainty whether and how ACTCS was managing and coordinating with SG Fleet for the construction and delivery of the vehicle.

### Recommencement of build

2.85 In late 2016 Byron Wade Pty Ltd, emerged as a potential purchaser of the Byron Group. It purchased the assets of the Byron Group in late 2016.

2.86 In advice to the Audit Office for the purpose of the audit, the SG Fleet representative advised:

We have then had significant involvement to try and get the build to resolution and had extensive consultation with [the Contracts, Procurement and Fleet Officer (ACTCS)] and Corrective Services throughout.

2.87 The SG Fleet representative advised of activities such as:

- an inspection of the build by Byron Wade Pty Ltd on 31 January 2017 ‘to confirm they could complete’; and
- a visit from ACT Corrective Services representatives to Byron Wade Pty Ltd’s premises ‘to inspect facilities’ on 10 April 2017.

2.88 There is no evidence of the visit from ACTCS representatives to Byron Wade Pty Ltd in April 2017 in ACTCS corporate records.

2.89 The SG Fleet representative advised an ‘updated purchase order [was] supplied to Wade Group’ on 26 June 2017. The updated purchase order was supplied to Byron Wade Pty Ltd by SG Fleet. The SG Fleet representative advised:

As the Wade Group had agreed to take it over without change in cost, it was just a change in supplier that triggered a new Purchase order to be raised to the Wade Group, a new client sign off was not required.

2.90 The SG Fleet representative advised:

The agreement was reached with [the Contracts, Procurement and Fleet Officer (ACTCS)] and team following the inspections and meetings, that Wade Group would complete the build, hence we issued them a purchase order. There is no evidence in ACTCS corporate records to confirm an intention to continue the build with the Wade Group at the time of issuing the updated purchase orders in June 2017.

2.91 The SG Fleet representative advised that Byron Wade Pty Ltd ‘honoured the original pricing’. The SG Fleet representative advised that the build re-commenced and ‘majority of the cells [were] completed’ by 15 August 2017.

### *ACT Corrective Services perspective*

- 2.92 In an email to a range of ACTCS executives and managers in February 2018 the Contracts, Procurement and Fleet Officer (ACTCS) advised:

Following discussions with you all and correspondence with other jurisdictions regarding the same vehicle type, we instructed Byron Wade in December 2017 to continue as per original specification.

- 2.93 The Contracts, Procurement and Fleet Officer (ACTCS) advised:

Build is ongoing, Supplier recently appointed a new Production Manager ... I am now receiving weekly updates ... with some progress photographs, this is the most communication I have received from the supplier since I took on this project so hopefully positive for build progress. I have been informed that this vehicle is on schedule for a March delivery. Latest report and email correspondence attached.

### *Delivery of the vehicle*

- 2.94 The SG Fleet representative advised that there was an inspection of the build by ACTCS on 3 November 2017 and that that ACTCS 'responded with a list of concerns' on 5 December 2017, which was responded to on 25 January 2018. On this date the build was expected to be completed by March 2018.

- 2.95 The SG Fleet representative advised:

- the build was completed on 23 April 2018 and Byron Wade Pty Ltd was paid;
- the vehicle left for delivery to Hartwigs Queanbeyan on 30 April 2018;
- following the identification of water loss in the transiting vehicle, the vehicle was sent back to the Byron Wade Pty Ltd premises on 10 May 2018 'to inspect and alter water flow to rear Heater'.

- 2.96 The SG Fleet representative advised the vehicle was booked for transport to Hartwigs Queanbeyan on 30 May 2018 and passed inspection for registration on 5 June 2018. The vehicle was delivered to ACTCS on 22 June 2018.

- 2.97 In late 2016 Byron Wade Pty Ltd, emerged as a potential purchaser of the Byron Group and the takeover was completed in late 2016. In advice to the Audit Office for the purpose of the audit, the SG Fleet representative advised 'we have then had significant involvement to try and get the build to resolution and had extensive consultation with [the Contracts, Procurement and Fleet Officer] Corrective Services throughout'. SG Fleet supplied an updated purchase order ... to the Wade Group' on 26 June 2017. The SG Fleet representative stated that because 'it was just a change in supplier [i.e. from the Byron Group to Byron Wade Pty Ltd] a new client sign off was not required'. The SG Fleet representative also advised that 'agreement was reached with [ACTCS representatives] hence we issued them a purchase order'. There are poor ACTCS corporate records to show what actions were being taken during this period. Accordingly, there is no evidence in ACTCS corporate records to confirm an intention to continue the build with Byron Wade Pty Ltd at the time of issuing the updated purchase orders in June 2017.

- 2.98 There is evidence that ACTCS confirmed an intention for Byron Wade Pty Ltd to continue with the build in December 2017. Following an inspection of the build by ACTCS on 3 November 2017 ACTCS advised of a list of concerns on 5 December 2017. This appears to have been resolved because in February 2018 the Contracts, Procurement and Fleet Officer (ACTCS) advised a range of ACTCS officers that ‘following discussions with you all and correspondence with other jurisdictions regarding the same vehicle type, we instructed Byron Wade in December 2017 to continue as per original specification’. The build was completed on 23 April 2018 and Byron Wade Pty Ltd was paid. Following the identification of problems with the heating system after its initial delivery in April 2018, the vehicle was sent back to the Byron Wade Pty Ltd premises in Melbourne. The vehicle was then delivered a second time in May 2018 and passed inspection for registration on 5 June 2018. The vehicle was delivered to ACTCS on 22 June 2018.

## Second procurement (2017)

- 2.99 On 21 July 2017 ACTCS issued a Request for Quotation for the construction and delivery of a detainee transport module. The second procurement exercise was for a detainee module only.

### Procurement planning

#### Procurement plan

- 2.100 As with the initial procurement, ACTCS did not prepare a procurement plan for the second procurement that was commenced in 2017.

#### Procurement risk management

- 2.101 As with the initial procurement there was no risk assessment undertaken for the second procurement, nor was a risk management plan prepared to manage procurement risks.
- 2.102 An undated *Buying Goods and Services Risk Questionnaire* was completed for the second procurement process. It is not clear who completed the questionnaire. The purpose of the questionnaire is to help consider and embrace the notion of risk in relation to the procurement in question. However, it does not constitute a risk assessment or a risk management plan. The questionnaire had two questions that were marked for further attention, as they were marked ‘Yes’ on the Risk Questionnaire:

Will you need to go outside the Canberra region to source your purchase?

Will you need to make staged or periodic payments for your purchase?

- 2.103 The *Buying Goods and Services Risk Questionnaire* recommends that officers undertaking procurements view the Australian Capital Territory Insurance Authority (ACTIA) website and the sections on risk where further assessments on risk could be undertaken. There is no evidence that this occurred.

- 2.104 ACTCS did not prepare a procurement plan for the second procurement, nor was a risk assessment undertaken or a risk management plan prepared to manage procurement risks. An undated *Buying Goods and Services Risk Questionnaire* was completed, but it is not clear who completed the questionnaire. The questionnaire does not constitute a risk assessment or a risk management plan. The lack of a procurement plan and risk management hampered the procurement and its decision-making processes.

### Approval for the procurement

- 2.105 A 21 December 2016 minute to the Director-General of JACS from the Acting Executive Director of ACTCS sought approval for the procurement of a detainee transport cell module:

... approval for funding up to the value of \$200,000 (GST inclusive) to carry out a procurement process to engage a specialist supplier of heavy vehicles to custom build a lightweight service body for the use of detainee transport by the ACT Corrective Services (ACTCS) Court Transport Unit.

### Identifying the business need

- 2.106 The same business need was identified in late 2016 as it was in 2015 when the initial procurement commenced. The December 2016 minute to the Director-General identified continuing issues with Romeo 4:

In 2014 this vehicle was identified as being at the end of its reasonable serviceable life and a risk to the CTU after several mechanical and ongoing technical issues were identified (including failing CCTV, intercom and monitors within the van's internal cabin).

These failures have rendered the vehicle unusable, at times for periods of several weeks, while repairs took place.

The vehicle needs to be replaced as a whole, as the cells at the back of the vehicle cannot be re-fitted to other leased vehicles available on the market.

- 2.107 The minute goes on to identify the problems associated with the initial procurement and the supply of the vehicle from the Byron Group:

ACTCS is engaged in an agreement for the supply of a vehicle through SG Fleet Australia that has experienced extensive delays and is now almost six months past the initial expected delivery date. The subcontracted supplier, Byron Group Holdings, has now been placed in voluntary administration, halting all work on the ACTCS vehicle until the process outcomes are reached, timeframes of which cannot be known.

Given ACTCS is now at risk of not being able to transport detainees between secure sites and unable to support Bimberi Youth Justice transportation requirements for juvenile offenders to Children's Court, it is critical to progress an additional procurement to replace the vehicle as soon as possible to ensure that ACTCS is able to maintain its capacity and responsibility to transport detainees in a safe and secure environment.

- 2.108 Unlike the earlier procurement process, ACTCS identified a preference to purchase the detainee transport cell module outright. The risk of undertaking an additional procurement process, while the outcome of the initial procurement process was still unknown, was subsequently acknowledged by ACTCS. In an email from the Senior Manager, Administration (ACTCS) to the Acting Executive Director, ACT Corrective Services on 07 December 2016, it was noted:

We have engaged with [the ACT Government Solicitor's Office] for legal advice to understand our current obligations with Byron, SG Fleet and the new providers.

Worst case scenario we end up with one pod purchased outright and (if we cannot remove ourselves legally) we end up with another pod under lease. I think either way we are in a good position other than the current risks of the vehicle failure.

### *Cost estimate*

- 2.109 The 21 December 2016 minute to the Director-General of the Justice and Community Safety Directorate from the Acting Executive Director of ACTCS sought approval for funding 'up to the value of \$200,000 (GST inclusive)' for the procurement.
- 2.110 There is no documentation supporting the estimate of the procurement as being 'up to the value of \$200,000 (GST inclusive)'. It is noted that the various quotations from the Byron Group may have provided an indication of the expected cost of the procurement. The construction and delivery of the module from the Byron Group under the initial procurement was at a cost of \$214,500 (GST inclusive).
- 2.111 The approval amount for the subsequent procurement was at the threshold's upper limit of \$200,000. This meant that additional requirements needed to be met, as outlined in *Procurement Circular 23: Quotation and Tender Thresholds*:

The quotation and tender thresholds (\$25,000 and \$200,000) are 'estimated values' that determine the procurement action to be followed. The estimated value of a particular requirement, that is, the anticipated whole of life contract value (including GST), must be established before selecting the appropriate procurement process as per the table.

Where an estimated value is determined and is under one of the stated thresholds by 10 per cent or less, the basis for selecting that estimated value should be documented and placed on file for audit purposes before undertaking the procurement process. This is because there is a possibility that when the final offers are received, the actual preferred offer may exceed the next threshold. This could create a perception that the officer managing the process may have underestimated to avoid the requirements of a higher threshold.

- 2.112 On 8 May 2017 the Acting Director-General of JACS approved the 21 December 2016 minute. In approving the Brief, the Acting Director-General noted 'need to follow procurement process' and 'money from cash reserves to fund this'.
- 2.113 On 8 May 2017 the Acting Director-General of JACS approved a 21 December 2016 minute from the Acting Executive Director of ACTCS for the procurement of a detainee module. There is no evidence for why it took almost five months for the minute to be approved. The minute sought approval for funding 'up to the value of \$200,000 (GST inclusive)'. There is no documentation supporting the estimate of the procurement and it is noted that the

various quotations from the Byron Group for the initial procurement indicate that the cost of the procurement had a high chance of exceeding \$200,000 (GST inc). *Procurement Circular 23: Quotation and Tender Thresholds* states 'where an estimated value is determined and is under one of the stated thresholds by 10 per cent or less, the basis for selecting that estimated value should be documented and placed on file for audit purposes before undertaking the procurement process'. This did not occur. The Commercial Services and Infrastructure Group's website states 'all purchases valued over \$200,000 (GST inclusive) must be referred to Procurement ACT'. This did not occur.

## Conduct of the procurement

### Approach to market

- 2.114 A Request for Quotation was issued on 21 July 2017 to five potential suppliers. This occurred after an updated purchase order had already been issued to Byron Wade Pty Ltd for the initial procurement on 26 June 2017 (refer to paragraphs 2.85 to 2.89).
- 2.115 The Request for Quotation process included:
- Schedule 1 – Statement of Requirement;
  - Schedule 2 – Supplier Quotation including three assessment criteria the quotation will be reviewed against;
  - Schedule 3 – Special Conditions (if any); and
  - Attachment A – Request for Quotation definitions.
- 2.116 A Statement of Requirement was developed for the procurement which defined the minimum requirements for the design, manufacture and installation of the detainee module. The Statement of Requirement specified that the detainee module must be built using 'Best Engineering Practice'.
- 2.117 The Request for Quotation identified that responses would be assessed against three criteria:
- Does the response from the supplier demonstrate that it can meet the requested requirements?
  - Does the response from the supplier demonstrate that it can meet your timetable for delivery and or start and finish work?
  - Does the response from the supplier meet your budget or cost expectations?
- 2.118 Two supplier responses were received, one supplier indicated an intention not to respond and the other two suppliers did not respond.
- 2.119 A three-person tender evaluation panel was formed and produced a tender evaluation report, which evaluated responses against the criteria identified in the Request for Quotation. Specialised & Emergency Vehicles Australia (SEVA), a Queensland-based supplier, scored highest overall in the assessment and their response was identified as best

value for money and demonstrated the least risk to the Territory. The cost of the proposed construction was \$218,449 (GST inc).

### Contract and design negotiations

2.120 In October 2017 the ACT Government Solicitor's Office (ACTGS) was engaged with a view to assist in the negotiation of a mutually agreeable contract.

2.121 Following the identification of SEVA as the preferred supplier ACTCS engaged with SEVA to prepare a contract for the services. During this time an issue emerged with respect to the proposed height of the cells in the module. SEVA had identified that the cells would have an internal floor to ceiling height of 1.75 metres and that the cell access door height would be 1.665 metres. An email from the SEVA representative to the Contracts, Procurement and Fleet Officer (ACTCS) on 8 November 2017 advised:

As manufacture has not yet commenced, there is scope to increase on the dimensions if required. Any change would have the potential to impact on the 4500kg vehicle GVM. We will leave with ACT CS to provide comment on provided dimensions.

2.122 In an email to a range of ACTCS executives and managers on 8 November 2017 the Contracts, Procurement and Fleet Officer (ACTCS) advised:

Please see below email from SEVA confirming internal height of proposed vehicle to be 1750mm. As we all discussed, this would most likely cause WHS and operational concerns.

I suspect we will need to discuss an alternate proposal for the design of this vehicle, please let me know your thoughts.

2.123 In an email to a range of ACTCS executives and managers on 5 February 2018 the Contracts, Procurement & Fleet Officer (ACTCS) advised that 'I facilitated the delivery of the Cab-Chassis to SEVA on 14/11/2017 in preparation for work to commence' and that a pre-production meeting between ACTCS and SEVA was held on 7 November 2017. The Contracts, Procurement and Fleet Officer (ACTCS) advised:

I understood from this meeting that the vehicle that SEVA intended to begin building did not meet AMC needs. At this point the contract that I had prepared for SEVA was scrapped (unsigned) and GSO were engaged to assist in developing a new Design/Construct contract to ensure AMC needs were met in the design. Latest draft attached.

2.124 The Contracts, Procurement and Fleet Officer (ACTCS) further advised:

... I understand from our discussion last week that you are potentially willing to accept SEVA's original proposal with internal roof heights the same as the Byron Wade Vehicle.

Given the stage we are now at with Design/Construct contract, are we willing to continue with this plan? [The Senior Manager, Administration (ACTCS)] has identified that ACTCS input regarding height of vehicle etc may transfer risk onto the Territory. This vehicle is to be engineered and certified by the supplier, so I believe they would wear this risk. ACTCS would provide input on desired outcomes and be advised by the Engineer as to whether these are realistic, safe and meet Australian Design Rules.

*Disagreement over the design and construction of the module*

- 2.125 It is apparent that the contract with SEVA was not finalised, as a mutually acceptable outcome for the design and construction of the module was not agreed. There are poor ACTCS corporate records to show why there was disagreement and why a contract was not finalised.
- 2.126 In November 2020 the ACT Audit Office spoke with a representative of SEVA with respect to the reasons for the contract not proceeding. The SEVA representative advised that at the time the contract was being negotiated, SEVA held reservations as to whether the specifications in their planned module would fit the cab chassis selected by ACTCS and be fit for purpose. The SEVA representative advised that it is rarely the case that a detainee module, such as that procured by ACTCS, can be driven on a C-class drivers license and they are more appropriate to be driven on Medium Rigid licenses with an upgraded cab chassis. In this instance, SEVA erred on the side of caution by not proceeding with the build.
- 2.127 As a result, the procurement process did not conclude with a contract to undertake the build of the module.
- 2.128 On 21 July 2017 a Request for Quotation was issued to five potential suppliers for a eight-person detainee transport module. This occurred after an updated purchase order had already been issued to Byron Wade Pty Ltd for the initial procurement on 26 June 2017. Two supplier responses were received, one supplier indicated an intention not to respond and the other two suppliers did not respond. A three-person tender evaluation panel identified that Specialised & Emergency Vehicles Australia (SEVA), a Queensland-based supplier, as best value for money and demonstrating the least risk to the Territory. The cost of the proposed construction was \$218,449 (GST inc).
- 2.129 It is apparent that the contract with SEVA was not finalised, as a mutually acceptable outcome for the design and construction of the module was not agreed. However, there are poor ACTCS corporate records to show why there was disagreement and why a contract was not finalised. In November 2020 a representative of SEVA advised that at the time the contract was being negotiated, SEVA held reservations as to whether the specifications in their planned module would fit the cab chassis selected by ACTCS and be fit for purpose. The SEVA representative advised that it is rarely the case that a detainee module, such as that procured by ACTCS, can be driven on a C-class drivers license and they are more appropriate to be driven on Medium Rigid licenses with an upgraded cab chassis. In this instance, the SEVA representative advised that it erred on the side of caution by not proceeding with the build.



**RECOMMENDATION 1**

**ACT CORRECTIVE SERVICES PROCUREMENT FRAMEWORK**

ACT Corrective Services should review its procurement framework, including policies, procedures and practices, in order to ensure:

- a) roles and responsibilities for procurement are clearly identified and documented. This includes roles and responsibilities for the management of suppliers in the design and construction of future fleet vehicles;
- b) procurements appropriately consider and document value for money and risk; and
- c) training is provided to all staff involved in procurement. This should include training on probity, risk management and value for money considerations.



# 3 MANAGEMENT OF ROMEO 5

3.1 This chapter considers the management and use of Romeo 5 since it was first delivered to ACT Corrective Services in June 2018. The chapter also considers whether the vehicle has been effectively managed to comply with WorkSafe ACT prohibition requirements since November 2019.

## Conclusions

Romeo 5 has not been effectively used as a detainee transport vehicle since its commissioning in 2018. Prior to the identification of workplace health and safety risks associated with its carrying capacity in November 2019, the vehicle was seldom used and was out of service for extended periods of time for repairs and maintenance.

Following the issuing of a WorkSafe ACT prohibition notice in November 2019, a mandatory Operating Procedure made under the *Corrections Management Act* 2007 has required that the vehicle only carry a maximum of six people (two staff and four detainees) and that the vehicle undergo ‘a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle’. The vehicle has since been operated in accordance with the procedure. The restrictions on its use, however, have made it even less attractive as an option for transporting detainees and the vehicle has not been used to transport detainees since March 2020.

## Key findings

### Paragraph

Since its delivery in July 2018 the Romeo 5 vehicle has been used for detainee transport-related purposes on up to 71 occasions between November 2018 and March 2020, on 28 working days in total for a total of 1066 kilometres. The majority of vehicle movements were for transporting detainees to and from the ACT law courts, while some were empty return trips and some were to other locations such as the Canberra Hospital or Dhulwa Mental Health Unit. Since its delivery it has been out of service for repairs and maintenance on six separate occasions for a total of 227 days. It has not been used to transport detainees since March 2020. The ACT Inspector of Correctional Services’ November 2020 report (*ACT Corrective Services Court Transport Unit 2020*) identified that the Court Transport Unit facilitates an average total of 10.6 trips per working day of which six are between the AMC and the ACT law courts in Civic. The Romeo 5 vehicle has been significantly under-utilised.

3.13

Thirty-four journeys were selected for further consideration for the purpose of the audit. Twenty-nine of these were conducted prior to November 2019 and the issuing of the WorkSafe ACT prohibition notice. On four of these occasions the Romeo 5 vehicle was used to transport more than four detainees. On these trips it is likely that the vehicle exceeded its GVM carrying capacity of 4500kg. This presented a major

3.17

operational and workplace health and safety risk to corrections officers and detainees.

Since its delivery in July 2018 Romeo 5 has experienced a wide range of operational challenges and workplace health and safety risks (in addition to the main health and safety risk relating to it being loaded in excess of its Gross Vehicle Mass carrying weight capacity). Correctional officers are reluctant to use the vehicle due to its size and difficulty in handling. The Audit Office was advised that the vehicle could be 'used as a last resort', but the availability of other vehicles and correctional officers' preference for driving the other vehicles, means that there is no real need to use it. 3.26

Romeo 4 (the Mercedes Sprinter), which was the vehicle that Romeo 5 was intended to replace in 2015, continues to be used; correctional officers prefer to use Romeo 4 over Romeo 5. The ACT Inspector of Correctional Services' November 2020 report into the Court Transport Unit (the *ACT Corrective Services Court Transport Unit 2020*) identified that 'there is a design flaw with the Romeo 4 transport vehicle that could put the lives of detainees at risk in the event of a vehicle accident or fire' and recommended that it be replaced as soon as possible. 3.27

Following the implementation of the mandatory Operating Procedure in December 2019, there was no evidence of occurrences where Romeo 5 was loaded with more than four detainees on one journey. There was one occurrence (30 January 2020) where Romeo 5 transported the maximum permitted number of four detainees in one journey. 3.37

On 12 December 2019 Notifiable Instrument NI2019-809 Corrections Management (R5 Vehicle – Mandatory Checks) Operating Procedure 2019 was made under section 14 of the Corrections Management Act 2007. The Operating Procedure requires that the vehicle only carry a maximum of six people (two staff and four detainees) and that the vehicle undergo 'a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle'. A review of the Electronic Logbook and detainee escort transfer sheets indicates that the vehicle has not been used to transport more than six people at a time since then. Two weight verification checks have taken place as required in January 2020 and July 2020. The vehicle has been used appropriately since the implementation of the Operating Procedure and the weight verification checks have been conducted as required. 3.40

## Use of Romeo 5

### Transportation of detainees

- 3.2 Information on ACT Corrective Services' use of Romeo 5 for the transportation of detainees was not easily identifiable and obtainable. Accordingly, the audit sought to identify the use of the vehicle based on a review of its Electronic Logbook and other documentation.

### *Analysis of Electronic Logbook*

- 3.3 The Electronic Logbook records information on the purpose of a vehicle's trip, the name of the driver, the start time and location and odometer, the end time and location and odometer and the overall trip distance.
- 3.4 The Electronic Logbook identified movement of the vehicle between 5 October 2018 and 29 July 2020. It was evident that the vehicle was first used to transport detainees on 9 November 2018. The lease agreement with SG Fleet for the eight-cell detainee module commenced on 19 April 2018, over six months before it was first used to transport detainees.
- 3.5 There was no movement of the vehicle between 29 July 2020 and 30 September 2020 (the date when the Logbook was obtained by the Audit Office). The Audit Office inspected the vehicle at the Alexander Maconochie Centre (AMC) on 8 October 2020 and during that inspection it was noted that the vehicle had not been used for some time and its battery was flat.

### *Occasions of use*

- 3.6 Based on analysis of the Electronic Logbook, the Audit Office considered that Romeo 5 may have been used to transport detainees:
  - on up to 71 occasions between November 2018 and March 2020;
  - on 28 working days in total; and
  - for a total of 1066 kilometres.
- 3.7 From a review of the start and end locations and the overall duration of the trip it was apparent when the vehicle had made trips to and from the AMC and the ACT law courts in the City, the Canberra Hospital and the Dhulwa Mental Health Unit. These were considered potential uses of the vehicle for the transportation of detainees. However, the Electronic Logbook does not in fact show whether the vehicle had been used to transport detainees on these occasions. Accordingly, the Audit Office sought further information through detainee escort transfer sheets.

### *Detainee escort transfer sheets*

- 3.8 Detainee escort transfer sheets are a paper based document that identifies: the name of the detainee; the vehicle they are being transported in; where and when they are being transported, as well as alerts or additional information to assist in effective detainee movements.
- 3.9 Based on the 71 potential uses of the vehicle for detainee transport the Audit Office identified 34 journeys between November 2018 and March 2020 that, based on distance and start and end locations, were likely for detainee movements. The Audit Office sought further information through detainee escort transfer sheets. From these 34 journeys it was apparent that 27 of the journeys were clearly related to detainee movements to and from

the ACT law courts. The remaining seven journeys were either empty return travel (three journeys), or travel to and from the Canberra Hospital and Dhulwa Mental Health Unit (four journeys) where detainee transfer sheets are not utilised.

### Repairs and additional work

3.10 The review of the Electronic Logbook shows that the vehicle was out of service for repairs and additional work on at least six separate occasions between October 2018 and July 2020. Analysis shows that the vehicle was undergoing repairs and maintenance for a total of 227 days:

- 5 October 2018 to 31 October 2018 (27 days). Modifications were undertaken to the vehicle's rear suspension to address wheel clearance and a broken rear step was replaced;
- 5 November 2018 to 7 November 2018 (three days) (reason unknown);
- 10 December 2018 to 18 December 2018 (nine days). Vehicle rear suspension was modified;
- 18 February 2019 to 11 June 2019 (124 days). The vehicle was transported to Melbourne as modifications were required to the air conditioning system;
- 10 July 2019 to 17 July 2019 (eight days). Callsign decals were applied to the vehicle; and
- 6 November 2019 to 31 December 2019 (56 days). The vehicle required repairs to the rear cab. Damage was incurred when the vehicle was driven into the sally port; the vehicle struck the roof and required repairs to the rear cab body.

### Comparison with other Court Transport Unit vehicles

3.11 The ACT Inspector of Correctional Services November 2020 report into the Court Transport Unit (the *ACT Corrective Services Court Transport Unit 2020*) identified that between 1 March 2019 and 31 December 2019 there was a total of 261 working days for which the Court Transport Unit facilitated:

- an average total of 10.6 trips per working day; including
- an average total of six trips per working day between the AMC and the ACT law courts in Civic.

3.12 During this period of time Romeo 5 was not available for use until July 2019, because it was undergoing repairs and maintenance (refer to paragraph 3.10). However, once it was available for use, it was only used on 15 occasions between July 2019 and December 2019 for detainee transport. This contrasts significantly with the average total of six trips per working day between the AMC and the ACT law courts in the City.

3.13 Since its delivery in July 2018 the Romeo 5 vehicle has been used for detainee transport-related purposes on up to 71 occasions between November 2018 and March 2020, on

28 working days in total for a total of 1066 kilometres. The majority of vehicle movements were for transporting detainees to and from the ACT law courts, while some were empty return trips and some were to other locations such as the Canberra Hospital or Dhulwa Mental Health Unit. Since its delivery it has been out of service for repairs and maintenance on six separate occasions for a total of 227 days. It has not been used to transport detainees since March 2020. The ACT Inspector of Correctional Services' November 2020 report (*ACT Corrective Services Court Transport Unit 2020*) identified that the Court Transport Unit facilitates an average total of 10.6 trips per working day of which six are between the AMC and the ACT law courts in Civic. The Romeo 5 vehicle has been significantly under-utilised.

## Use of the vehicle prior to WorkSafe ACT prohibition notice

- 3.14 Of the 34 journeys selected for consideration by the Audit Office, 29 of these were conducted prior to November 2019, which was the date of the WorkSafe ACT prohibition notice.
- 3.15 A review of these journeys shows that the Romeo 5 vehicle was used to transport more than four detainees on four occasions:
- two occurrences where Romeo 5 was loaded with seven detainees (20 and 22 November 2018); and
  - two occurrences where Romeo 5 was loaded with eight detainees (19 and 22 November 2018).
- 3.16 On these trips it is likely that Romeo 5 exceeded its Gross Vehicle Mass (GVM) of 4500 kilograms. This presented a major operational and health and safety risk to corrections officers and detainees.
- 3.17 Thirty-four journeys were selected for further consideration for the purpose of the audit. Twenty-nine of these were conducted prior to November 2019 and the issuing of the WorkSafe ACT prohibition notice. On four of these occasions the Romeo 5 vehicle was used to transport more than four detainees. On these trips it is likely that the vehicle exceeded its GVM carrying capacity of 4500kg. This presented a major operational and workplace health and safety risk to corrections officers and detainees.

## Complaints about Romeo 5

- 3.18 Since its delivery in July 2018 Romeo 5 has experienced a wide range of operational challenges including:
- not being able to easily enter the secure detainee drop off area (the sally port) at the ACT Magistrates Court due to the height of Romeo 5 being too close to the ceiling. As discussed in paragraph 3.10, in November 2019 damage was incurred when the vehicle was driven into the sally port and the vehicle struck the roof and required repairs to the rear cab body;

- having an 'isolation switch' which some staff do not know how to operate. If this is not activated at the conclusion of each journey, the vehicle's battery will run flat; and
- issues with heating and air conditioning. As discussed in paragraph 3.10, between February 2019 and June 2019 the vehicle was transported to Melbourne as modifications were required to the air conditioning system.

3.19 In addition to the main health and safety risk relating to Romeo 5 being loaded in excess of its carrying weight capacity, the vehicle has also experienced health and safety risks including:

- the vehicle being generally unstable and difficult to handle (due to the detainee module being too large for the cab chassis itself);
- internal doors that due to their positioning present a potential risk to corrections officers when releasing detainees from the vehicle;
- exposed bolts in individual carrying cells presenting a safety risk; and
- a broken step ladder intended to assist detainees step down from the vehicle, and safety signs not being clear and visible when entering the vehicle.

### Future use of Romeo 5

3.20 At the time of the audit Romeo 5 was stationed in the carpark at the AMC. It had not been used to transport detainees since March 2020. Correctional officers are reluctant to use the vehicle due to its size and difficulty in handling.

3.21 The Audit Office was advised that the vehicle could be 'used as a last resort', but that the availability of other vehicles and corrections officers' preference for driving these other vehicles, means that there is no real need to use it.

### Continued use of Romeo 4

3.22 Romeo 4 (the Mercedes-Benz Sprinter van), which was the vehicle that Romeo 5 was intended to replace in 2015, continues to be used. For the reasons outlined in paragraphs 3.26 to 3.27, corrections officers prefer to use Romeo 4 over Romeo 5.

3.23 It has been recognised in other reports and by ACTCS that Romeo 4 is well past its useful life. Romeo 4 has travelled over 260,000 kilometres and has notable damage. The ACT Inspector of Correctional Services' November 2020 report (*ACT Corrective Services Court Transport Unit 2020*) stated:

The Mercedes Benz Sprinter van (Romeo 4) was manufactured in 2007 and is the oldest in the fleet. CTU staff raised serious concerns regarding the safety of this vehicle given its age and condition.

Further, Romeo 4 has a serious design flaw, being the internal double-padlocked "box" inside the double-padlocked outer door ... In the event of an accident or vehicle fire, it could be very difficult to extract detainees from the "box" in a timely manner if at all.



3.24 The ACT Inspector of Correctional Services' November 2020 report made a finding:

That there is a design flaw with the Romeo 4 transport vehicle that could put the lives of detainees at risk in the event of a vehicle accident or fire.

3.25 The ACT Inspector of Correctional Services' November 2020 report included the following recommendation:

That ACT Corrective Services replace the Romeo 4 vehicle as soon as possible.

3.26 Since its delivery in July 2018 Romeo 5 has experienced a wide range of operational challenges and workplace health and safety risks (in addition to the main health and safety risk relating to it being loaded in excess of its Gross Vehicle Mass carrying weight capacity). Correctional officers are reluctant to use the vehicle due to its size and difficulty in handling. The Audit Office was advised that the vehicle could be 'used as a last resort', but the availability of other vehicles and correctional officers' preference for driving the other vehicles, means that there is no real need to use it.

3.27 Romeo 4 (the Mercedes Sprinter), which was the vehicle that Romeo 5 was intended to replace in 2015, continues to be used; correctional officers prefer to use Romeo 4 over Romeo 5. The ACT Inspector of Correctional Services' November 2020 report into the Court Transport Unit (the *ACT Corrective Services Court Transport Unit 2020*) identified that 'there is a design flaw with the Romeo 4 transport vehicle that could put the lives of detainees at risk in the event of a vehicle accident or fire' and recommended that it be replaced as soon as possible.

## Compliance with the WorkSafe ACT prohibition notice

### WorkSafe ACT prohibition notice

3.28 On 11 November 2019 WorkSafe ACT conducted an inspection of the Romeo 5 vehicle. It was during this inspection that WorkSafe ACT identified that Romeo 5 did not comply with the Gross Vehicle Mass carrying weight capacity when loaded at capacity. WorkSafe ACT issued a prohibition notice on the vehicle.

3.29 On 12 November 2019 ACT Corrective Services responded to WorkSafe ACT:

The concerns around the above vehicle and its weight were duly noted. Whilst it is the view of ACTCS that these issues have been appropriately managed it is noted that these should be formally documented. It is also noted further review of our transport needs continue noting the procurement issues discussed.

**Proposed approach:** an operational procedure will be drafted and confirm the following points:

- The vehicle is able to be driven using a C class licence only with a maximum loaded weight of 4500kg
- There is no ability for the vehicle to be driven at a weight above 4500kg irrespective of the drivers class of licence

- To manage this no more than 6 people should be loaded on the vehicle at any one time (this includes 2 staff and 4 detainees)
- The vehicle will be subject to a weight verification every 6 months to ensure that its weight is not increasing through 'road grime' etc – adjustments to loading will be reviewed accordingly where necessary.

## Romeo 5 Operating Procedure

3.30 On 12 December 2019 *Notifiable Instrument NI2019-809 Corrections Management (R5 Vehicle – Mandatory Checks) Operating Procedure 2019* was made under section 14 of the *Corrections Management Act 2007*. The Operating Procedure was signed by the Commissioner for ACT Corrective Services and commenced the following day.

3.31 The Operating Procedure instructs staff on mandatory requirements for the operation of the vehicle. The Operating Procedure was communicated to staff via email on 17 December 2019 by the Executive Director, ACT Corrective Services. The communication included both an overview of the procedure and a link to the procedure.

3.32 The instructions provided to staff in the Operating Procedure state:

### **1 Checks**

- 1.1. The driver of the R5 vehicle must hold a C class license.
- 1.2. The R5 vehicle has a maximum weight of 4500kg. There is no ability for the vehicle to be driven at a weight above 4500kg irrespective of the class of license held by the driver.
- 1.3. To ensure the vehicle weight remains below 4500kg, the R5 vehicle must only carry a maximum of six (6) people, including: a. two (2) staff; and b. up to four (4) detainees only.

### **2 Weight Verification**

- 2.1. The Head of Contracts and Procurement will ensure the R5 vehicle receives a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle.
- 2.2. The Head of Contracts and Procurement will provide written confirmation of the weight requirements of the R5 vehicle following a weight assessment to the: a. Head of Security; and b. CO3 Court Transport Unit officers.
- 2.3. The Head of Contracts and Procurement will: a. make adjustments to the maximum loading under section 1.3 where necessary following a weight verification; and b. maintain records of each assessment.

3.33 Interviews with officers indicate that the limitations described above have been further reduced to no more than three detainees (plus two staff) to further minimise any risk from excess weight issues. The Audit Office was advised that this change was verbally communicated to staff, but the Operating Procedure itself has not been updated to reflect this practice.

## Compliance with Romeo 5 Operating Procedure

3.34 The audit considered whether ACT Corrective Services has complied with the two requirements outlined in the Operating Procedure: the checks in relation to carrying capacity; and the weight verification assessments.

## Carrying capacity

- 3.35 The audit considered whether the carrying capacity requirements in Clause 1.3 of the Operating Procedure have been complied with, i.e. that the vehicle has only carried up to a maximum of six people (four detainees and two corrections officers) on any given journey. The audit did this by examining a selection of detainee escort transfer sheets.
- 3.36 Of the 34 journeys selected for consideration by the Audit Office (refer to paragraph 3.14), five of these were conducted after November 2019, which was the date of the WorkSafe ACT prohibition notice. Following the implementation of the mandatory Operating Procedure in December 2019, there were no occurrences where Romeo 5 was loaded with more than four detainees on one journey. There was one occurrence (30 January 2020) where Romeo 5 transported the maximum permitted number of four detainees on one journey.
- 3.37 Following the implementation of the mandatory Operating Procedure in December 2019, there was no evidence of occurrences where Romeo 5 was loaded with more than four detainees on one journey. There was one occurrence (30 January 2020) where Romeo 5 transported the maximum permitted number of four detainees in one journey.

## Weight verification certifications

- 3.38 The audit considered whether the weight verification instruction in Clause 2.1 of the Operating Procedure has been complied with. The vehicle is required to undergo a weight verification check every six months to ensure that its weight is not increasing through road grime. Necessary adjustments to loading are required to be reviewed where necessary.
- 3.39 Following the implementation of the Operating Procedure, weight verification checks have been carried out at Mugga Lane in Symonston in accordance with the requirements of the Operating Procedure:
- the first assessment was conducted on 16 January 2020 where Romeo 5 was assessed as having a Tare Weight of 3.82 tonnes; and
  - the second assessment was conducted on 24 July 2020 where Romeo 5 was assessed as having a Tare Weight of 3.80 tonnes.
- 3.40 On 12 December 2019 *Notifiable Instrument NI2019-809 Corrections Management (R5 Vehicle – Mandatory Checks) Operating Procedure 2019* was made under section 14 of the *Corrections Management Act 2007*. The Operating Procedure requires that the vehicle only carry a maximum of six people (two staff and four detainees) and that the vehicle undergo ‘a weight verification assessment in January and July each year to confirm the weight requirements of the vehicle’. A review of the Electronic Logbook and detainee escort transfer sheets indicates that the vehicle has not been used to transport more than six people at a time since then. Two weight verification checks have taken place as required in January 2020 and July 2020. The vehicle has been used appropriately since the

implementation of the Operating Procedure and the weight verification checks have been conducted as required.

3.41 The ACT Inspector of Correctional Services’ November 2020 report (*ACT Corrective Services Court Transport Unit 2020*) made a number of findings and recommendations in relation to the ACTCS Court Transport Unit and the management of its vehicle fleet. Findings were made in relation to the procurement of some vehicles and whether they were fit for purpose. Recommendation 3 of the report is:

That the Justice and Community Safety Directorate conduct a review of the process(es) by which ACT Corrective Services makes decisions about the acquisition of Court Transport Unit vehicles, with particular attention to the principles of sound corporate governance.

3.42 The Audit Office agrees with, and endorses, this recommendation. The Audit Office also considers that appropriate and immediate consideration needs to be given to Romeo 5 and the future use of this vehicle.

RECOMMENDATION 2	FUTURE USE OF ROMEO 5
ACT Corrective Services should:	
a) review its need for, and use of, the Romeo 5 vehicle. The review should take account of risk and safety considerations and whether it is appropriate to end the lease and commission a new vehicle; and	
b) outline a clear vision of what its expectations are for the use of Romeo 5 for the duration of its lease.	

# APPENDIX A: CHRONOLOGY OF EVENTS FOR THE PROCUREMENT OF ROMEO 5

**Table A-1** Chronology of events for the procurement of Romeo 5

Date	Event
Late 2013 (date unknown)	ACTCS officers visit the Byron Group's premises in Sydney. The purpose of the visit was to discuss two four-seater detainee transport vehicles that the Byron Group was in the process of supplying to ACTCS. During this visit it is understood that an informal discussion about a potential eight-seater detainee transport vehicle took place.
30 March 2015	<p>The Byron Group provide a quotation to the Finance Coordinator of ACTCS. The quotation was in two parts:</p> <ul style="list-style-type: none"> <li>• a quotation from the Byron Group to ACTCS for the manufacture and supply of a detainee transport module; and</li> <li>• a quotation for the supply of the truck from Fuso Truck and Bus to the Byron Group.</li> </ul>
Early 2015 (date unknown)	<p>A draft Executive Brief is prepared, the purpose of which is to:</p> <ul style="list-style-type: none"> <li>• seek an exemption from the requirement of section 9 of the <i>Government Procurement Regulation 2007</i> to 'invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is \$200,000 or more'; and</li> <li>• approve the procurement of an eight-seater vehicle for the transport of detainees from the Byron Group.</li> </ul> <p>The draft Executive Brief is from the Executive Director of ACTCS to the Director-General of the Justice and Community Safety Directorate (JACS).</p> <p>There is no evidence that the Brief is finalised or provided to the Director-General.</p>
24 June 2015	In response to an apparent request from ACTCS SG Fleet provide advice on leasing options. SG Fleet advise that the most suitable option would be to have two separate leases – one for the vehicle and one for the detainee module.
July 2015 (date unknown)	<p>A draft Executive Brief is prepared, the purpose of which is to 'seek a resolution for ACT Corrective Services to replace the existing Large Escort Van for the Courts Transport Unit'.</p> <p>The draft Executive Brief advises that fully leasing the vehicle and detainee module through SG Fleet would be the most cost-effective option.</p> <p>The draft Executive Brief was from the Executive Director of ACTCS to the Director-General of JACS. There is no evidence that the Brief is finalised or provided to the Director-General.</p>
11 September 2015	The Finance Coordinator of ACTCS advises the Senior Manager, Administration (ACTCS) that 'I have been instructed to go ahead and have the process started to lease a vehicle

Date	Event
	to replace the larger of our Court Transport vehicles. We have been dealing with the Byron Group who have been building these vehicles for several other jurisdictions.'
28 October 2015	SG Fleet issues two separate lease quotations for the eight-seater detainee module and the Mitsubishi Fuso truck.
18 November 2015	<p>A minute is provided to the Acting Executive Director, Capital Works (JACS) from the Executive Director, ACT Corrective Services seeking approval for 'this lease quotation for a replacement vehicle for Justice and Community Safety'. The minute included the 28 October 2015 lease quotations from SG Fleet.</p> <p>The minute was approved on 18 November 2015.</p>
3 December 2015	SG Fleet re-issues two lease quotations for the eight-seater detainee module and the Mitsubishi Fuso truck.
11 December 2015	SG Fleet lease quotations are signed by the Acting Executive Director, Capital Works.
December 2015 (date unknown)	SG Fleet issues purchase orders for supply of Mitsubishi Fuso truck chassis from Hartwigs in Queanbeyan and the supply of the eight-seater detainee module from the Byron Group.
February 2016 to October 2016	Various communications from the Byron Group to ACTCS and SG Fleet representatives advise of delays to the build.
17 October 2016	Byron Group goes into voluntary administration. The Contracts, Procurement and Fleet Officer (ACTCS) is advised on 19 October 2016.
7 December 2016	There is evidence that ACTCS is contemplating the procurement of a detainee transport module. The Senior Manager, Administration (ACTCS) advises the Acting Executive Director, ACT Corrective Services that ACTCS has 'engaged with [the ACT Government Solicitor's Office] for legal advice to understand our current obligations with Byron, SG Fleet and the new providers'.
21 December 2016	Acting Executive Director of ACTCS provides a minute to the Director-General of JACS seeking approval for the procurement of a detainee transport module.
Late 2016	Byron Wade Pty Ltd purchases assets of the Byron Group and a new entity is formed.
8 May 2017	The Acting Director-General of JACS approves the 21 December 2016 minute from the Acting Executive Director of ACTCS.
26 June 2017	Updated purchase order is supplied to Byron Wade Pty Ltd from SG Fleet.
21 July 2017	ACTCS issues a Request for Quotation for the construction and delivery of a detainee transport module. The second procurement exercise was for a detainee module only.

Date	Event
	Two suppliers submit a response to the RFQ, and one supplier declines to respond.
31 August 2017	A tender evaluation panel (with three members) assesses the two responses to the RFQ. A tender evaluation report is prepared, which identifies Specialised & Emergency Vehicles Australia (SEVA), a Queensland-based supplier, as the preferred supplier of the module.
3 October 2017	A Minute is prepared for and signed off by an ACTCS Executive Director. The Minute advises that the procurement selection has concluded and funding of \$218,449 is needed to purchase the detainee module from SEVA outright.
October/ November 2017	ACT Government Solicitor's Office is engaged to assist in the negotiation of a mutually agreeable contract between ACTCS and SEVA.
December 2017 (date unknown)	ACTCS instructs Byron Wade Pty Ltd to continue the build according to original specification.
22 June 2018	Original vehicle (procured through Byron Wade Pty Ltd ) delivered to ACTCS.





# APPENDIX B: GLOSSARY

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Table A-2    Glossary

ACTCS	ACT Corrective Services
ACTGS	ACT Government Solicitor
ADR	Australian Design Rules
AMC	Alexander McConachie Centre
CTU	Court Transport Unit in ACT Corrective Services
GVM	Gross Vehicle Mass
JACS	Justice and Community Safety Directorate
RFQ	Request for Quotation
SEVA	Specialised and Emergency Vehicles Australia



## Audit reports

Reports Published in 2020-21	
Report No. 02 – 2021	Total Facilities Management Contract Implementation
Report No. 01 – 2021	Land Management Agreements
Report No. 10 – 2020	2019-20 Financial Audit – Financial Results and Audit Findings
Report No. 09 – 2020	2019-20 Financial Audits Overview
Report No. 08 – 2020	Annual Report 2019-20
Report No. 07 – 2020	Management of care of people living with serious and continuing illness
Reports Published in 2019-20	
Report No. 06 – 2020	Transfer of workers' compensation arrangements from Comcare
Report No. 05 – 2020	Management of household waste services
Report No. 04 – 2020	Residential Land Supply and Release
Report No. 03 – 2020	Data Security
Report No. 02 – 2020	2018-19- Financial Audits – Computer Information Systems
Report No. 01– 2020	Shared Services Delivery of HR and Finance Services
Report No. 11 – 2019	Maintenance of ACT Government School Infrastructure
Report No. 10 – 2019	2018-19 Financial Audits – Financial Results and Audit Findings
Report No. 09 – 2019	2018-19 Financial Audits – Overview
Report No. 08 – 2019	Annual Report 2018-19
Reports Published in 2018-19	
Report No. 07 – 2019	Referral Processes for the Support of Vulnerable Children
Report No. 06 – 2019	ICT Strategic Planning
Report No. 05 – 2019	Management of the System-Wide Data Review implementation program
Report No. 04 – 2019	2017-18 Financial Audits Computer Information Systems
Report No. 03 – 2019	Access Canberra Business Planning and Monitoring
Report No. 02 – 2019	Recognition and implementation of obligations under the <i>Human Rights Act 2004</i>
Report No. 01 – 2019	Total Facilities Management Procurement
Report No. 12 – 2018	2017-18 Financial Audits – Financial Results and Audit Findings
Report No. 11 – 2018	2017-18 Financial Audits – Overview
Report No. 10 – 2018	Annual Report 2017-18
Report No. 09 – 2018	ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour

These and earlier reports can be obtained from the ACT Audit Office's website at <http://www.audit.act.gov.au>.