

STANDING COMMITTEE ON JUSTICE AND COMMUNITY  
SAFETY

**Inquiry into the delay in the commencement  
of operations at the Alexander Maconochie  
Centre**

NOVEMBER 2009



## **Committee Membership**

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## Resolution of Appointment<sup>1</sup>

On 9 December 2008 the Legislative Assembly appointed a **Standing Committee on Justice and Community Safety** (the committee) to perform the duties of a scrutiny of bills and subordinate legislation committee and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.

## Terms of Reference

On 21 January 2009 the Committee resolved that it would inquire into and report on the circumstances surrounding the delay in the commencement of operations of the Alexander Maconochie Centre (AMC), the cost of delays to the ACT Government, as well as the impact of delays, if any, on the delivery of corrective services. The Committee would consider:

- 1) The circumstances surrounding the official opening of the AMC on 11 September 2008.
- 2) The factors contributing to delays in the AMC project including:
  - i. Any variations to the original project design as awarded to the contractor; and
  - ii. The commissioning process.
- 3) The total cost of the delays to the ACT Government.
- 4) The impact of the delays on sentenced prisoners currently serving sentences in New South Wales prisons.
- 5) Whether the delays in the AMC project have caused or exacerbated human rights breaches at existing ACT corrective services facilities.
- 6) Any other relevant matters.

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<sup>1</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No 2, Tuesday 9 December 2008, p 12-15.

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## **FINDINGS**

### **FINDING 1**

1.11 Despite specific requests made in writing and repeated in hearings, copies of all relevant Ministerial Briefings were not provided to the Committee.

### **FINDING 2**

1.15 On 4 February 2009 when the Committee undertook a site visit, the AMC was clearly not ready for handover and it was apparent to the Committee Members that considerable work still needed to be done.

### **FINDING 3**

2.18 The Committee finds that, unlike most other parts of the project, the security system was not fully designed before it went out to tender. In the AMC project, the security system contract was unique in that it was a contract both to design and build.

### **FINDING 4**

2.52 The Strategic Procurement Plan and the relationship between Australian Capital Territory Corrective Services, Procurement Solutions and Sinclair Knight Merz created a confusing model for management of the contract. The allocation of responsibilities lacked clarity and the lines of communication and control were unclear.

### **FINDING 5**

3.17 The cessation of transfers of prisoners to NSW was never satisfactorily explained to the Committee.

### **FINDING 6**

3.18 The cessation of transfers of prisoners to NSW in December 2008 added to the pressure on ACT remand facilities, and contributed further to their failure to be human rights compliant.

## **FINDING 7**

3.22 While the ACT's remand facilities have always given rise to serious human rights concerns, these concerns were exacerbated during the period between the official opening of the AMC (September 2008) and the commencement of the transfer of remandees to the AMC on 30 March 2009. ACT remand facilities were not human rights compliant during this period.

## **FINDING 8**

3.29 Between September 2008 and March 2009 the remand facilities, and particularly the Belconnen Remand Centre, were overcrowded and grossly inadequate. This may have contributed to a number of incidents at remand facilities.

## **FINDING 9**

3.30 The ACT Human Rights Commissioner and the ACT Ombudsman were vigilant in raising human rights concerns and encouraging the Government to maintain standards even in adverse conditions.

## **FINDING 10**

3.31 During the period from September 2008 to March 2009 human rights standards, such as in keeping sentenced and remanded prisoners separated, were not met.

## **FINDING 11**

4.17 At the time of the official opening, the Minister for Corrective Services was not well briefed on delays in completing the AMC and the impact that this would have on the transfer of prisoners.

## **FINDING 12**

4.18 The failure to brief the Minister in a timely way led to the inappropriate raising of expectations about the commencement of the operation of the AMC.

## **FINDING 13**

4.19 The Minister and ACT Corrective Services decided on and proceeded with an official opening on 11 September 2008 despite at least eight changes over the previous six months to the completion date of the Alexander Maconochie Centre.



#### **FINDING 14**

4.20 At the time of the opening, as the Minister was not appropriately briefed on the delays, the community was not adequately informed about the delays to the commencement of operation of the Alexander Maconochie Centre.

#### **FINDING 15**

5.6 The Radio Frequency Identification System was not completely operational at the time that prisoner and remandees were transferred into the Alexander Maconochie Centre.

#### **FINDING 16**

5.7 The lack of the Radio Frequency Identification System at the time of the transfer of prisoners and remandees meant that the Alexander Maconochie Centre security system, as envisaged, was not fully functional.

#### **FINDING 17**

5.26 At the time of the commencement of operation of the AMC there was no uninterrupted power supply for the building management system.

#### **FINDING 18**

5.34 Problems with the security system were a significant but not the sole contributor to delays in the commencement of the operation of the AMC.

#### **FINDING 19**

5.43 Only one Factory Acceptance Test (FAT) was undertaken, in February 2008, on the security system despite some concerns that more work was needed. The FAT was not repeated because of concern about slipping deadlines.

#### **FINDING 20**

5.53 At the time of the commencement of operation of the AMC Defect 2.6 (involving the hierarchy of the security system and how the master control and subordinate control points relate to each other) was unresolved.

#### **FINDING 21**

5.61 The development of the security system for AMC was adversely affected by other delays such as delays in fitting of locks, general delays in other systems and damage to work already done.

#### **FINDING 22**

5.65 While there were significant delays in installing the AMC security system not all the delays to the commencement of operations of the AMC were due to the security system as the Attorney-General has contended.

#### **FINDING 23**

6.22 The Committee finds that communications failures between the various parties – client, contractors and sub-contractors - contributed to delays in the finalisation of the AMC's security system.

#### **FINDING 24**

6.25 The Committee finds that there was insufficient time scheduled between the completion of the physical structures of the AMC and the overall completion date to allow the security contractors clear access to the building to complete their work.

#### **FINDING 25**

6.37 At the time of reporting the total cost to the ACT of delays in construction of the AMC is \$3.516 million.

## RECOMMENDATIONS

### RECOMMENDATION 1

4.11 That client agencies monitor the cumulative effect of delays in capital works projects and ensure that responsible Ministers are regularly and adequately briefed on the overall impact of those delays on the progress of capital works projects.

### RECOMMENDATION 2

4.12 That the Department of Justice and Community Safety review its procedures for ministerial briefing and ensure that ministers receive appropriate and timely briefings.

### RECOMMENDATION 3

5.8 The Committee recommends that the Minister for Corrective Services report to the Assembly on the installation of the RFID system.

### RECOMMENDATION 4

5.27 That the Minister for Corrective Services report to the Assembly on progress with the installation of an uninterrupted power supply for the AMC's building management system

### RECOMMENDATION 5

5.54 That the Minister for Corrective Services report regularly to the Assembly on progress to rectify Defect 2.6 ( involving the hierarchy of the security system and how the master control and subordinate control points relate to each other) which, at the time of commencement of operations, remained unresolved and that the Minister also advise the Assembly when the defect has been rectified.

### RECOMMENDATION 6

6.26 The Committee recommends that the ACT Government in negotiating contracts for future major projects make reasonable allowances for probable delays and adopt realistic construction schedules.

**RECOMMENDATION 7**

6.38 That the Minister for Corrections report regularly to the Legislative Assembly about progress with the negotiations around liquidated damages relating to the AMC contracts.

**RECOMMENDATION 8**

6.39 That the Minister for Corrections, upon completion of the negotiations around liquidated damages, report the quantum of liquidated damages received by the ACT to the Legislative Assembly of the ACT within three sitting days.

**RECOMMENDATION 9**

7.8 The Committee recommends that for future large capital projects, the ACT Government seek to set up management structures that facilitate clear lines of communications and responsibility.

**RECOMMENDATION 10**

7.12 The Committee recommends that the Standing Committee on Public Accounts, as part of its inquiry into ACT Government Procurement, review the contract management issues raised by the AMC project.

**RECOMMENDATION 11**

7.13 The Committee further recommends that the Standing Committee on Public Accounts, as part of its inquiry into ACT Government Procurement, consider whether ACT Procurement Solutions should develop an in house project management capability.

# 1 INTRODUCTION AND CONDUCT OF THE INQUIRY

## Referral of the inquiry

- 1.1 On 14 January Mr Jeremy Hanson CSC MLA wrote to the Committee drawing to its attention the 'ongoing delays in the Alexander Maconochie Centre (AMC)' suggesting that the situation warranted inquiry and suggesting some terms of reference. Considering its reference to examine matters related to corrections, the Committee chose to use its power to self-refer an inquiry into the Alexander Maconochie Centre (AMC) project.

## Conduct of the inquiry

- 1.2 The Committee established its terms of reference<sup>2</sup> on 21 January 2009 and publicly announced its intention to inquire into the matter on 22 January 2009.

## Submissions

- 1.3 Apart from the public statement referred to above the Committee did not make a public call for submissions. Rather it wrote to relevant organisations, inviting them to participate in the inquiry as it became clear that their evidence might assist the Committee. Between 4 and 11 February 2009 the Committee wrote to the Attorney-General, the Minister for Corrections, ACT Procurement Solutions, the ACT Human Rights Commissioner, Prisoners' Aid and ACTCOSS inviting them to make submissions and appear before the Committee. Bovis Lend Lease and Chubb were also invited to make submissions. Bovis Lend Lease declined to do so (see paragraphs 1.17-1.18 below).

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<sup>2</sup> See p ii

- 1.4 Following the first public hearing on 20 February 2009, Bovis Lend Lease and Chubb were invited to appear while the Commonwealth Public Sector Union, Sinclair Knight Merz and Webb Security were invited to make submissions.
- 1.5 The Committee received three submissions, one of which the Committee has chosen to keep confidential.<sup>3</sup> The individuals and organisations that lodged submissions are listed at **Appendix A**.

## Documents sought

- 1.6 On 22 January 2009 the Committee wrote to the acting Minister for Corrections seeking the following documents:
- The original project design and specifications;
  - Changes to the project design and specifications;
  - The project tender guidelines for the construction of the AMC;
  - The main construction contract in full, as well as all auxiliary contracts, as awarded to relevant contractors;
  - Any variations to the design of the AMC, and subsequent changes to relevant contracts;
  - Documents relating to the building schedule and changes to the building schedule;
  - Documents relating to the official handover date including documents relating to the change in date;
  - Any documents exchanged between the ACT Government and the NSW Government in relation to the extension of adult correctional services for ACT sentenced prisoners in NSW correctional facilities due to delays in the commencement of operations of the AMC including advice, if any, on the impact of AMC delays on sentenced prisoners in NSW;
  - All Ministerial speeches given at the official opening of the AMC;
  - The programme for the official opening of the AMC held on 11 September 2008;

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<sup>3</sup> See pp 7 – 8 for a discussion of why certain evidence in this inquiry remains confidential.

- Documents detailing any changes to rehabilitation programs intended for the AMC as a result of variations to the projects design;
  - Any reports conducted by or on behalf of the ACT Government in relation to any impacts AMC project delays were having on inmates at other ACT corrective services facilities, including:
  - Any advice to the ACT Government about the impact of the delays in the AMC project on remandees, detainees and sentenced prisoners; and
  - Any representations made to the ACT Government in relation to the impact of AMC project delays on sentenced prisoners in NSW.
- 1.7 The Minister provided his response, although unfortunately not until after the first public hearing had concluded. The documentation supplied filled three large boxes. The Committee made extensive use of this material but as much of it covers matters of commercial sensitivity, the Committee has chosen not to publish it.
- 1.8 The Committee also learned that Mr Jeremy Hanson MLA had received extensive documentation as a result of the release of information under the Freedom of Information (FOI) Act. Those documents were also provided to the Committee. While these documents largely represented a subset of the documents already received by the Committee, Mr Hanson's FOI request also included documents that had not been included in the documents provided to the Committee following its letter of 22 January 2009, referred to above.
- 1.9 Further documentation was made available to the Committee during the course of the inquiry, either at the Committee's request or due to the actions of witnesses who wished to place information before the Committee. Some of the information requested by Committee members at hearings, such as the full set on briefings to the Minister for Corrective Services on the progress of the project, was not provided.
- 1.10 The Committee also notes that certain documents that were common to all parties that addressed key issues in the inquiry were only offered to the Committee by certain witnesses. Despite the considerable amount of documentation now in its possession the Committee also sought copies of Ministerial briefings. These were not provided. In the interests of completing

the inquiry in a timely matter the Committee has opted not to seek further documentation.

## FINDING 1

- 1.11 **Despite specific requests made in writing and repeated in hearings copies of all relevant Ministerial briefings were not provided to the Committee.**

### Public hearings

- 1.12 The Committee held public hearings on 18 February, 27 February, 3 March, and 4 March 2009. Witnesses who attended the public hearings are listed at **Appendix B**.

### In camera hearings

- 1.13 In camera hearings are hearings that the public may not attend and for which the transcripts are not automatically published. The Committee held three hearings in camera to allow discussions of aspects of the AMC's security system and matters that may be commercially sensitive. The Committee held an in camera hearing on 20 March 2009 with the Minister for Corrections, and representatives of ACT Corrective Services, ACT Procurement Solutions, Codd Stenders May+Russell, and Webb Australia Group. The Committee also held in camera hearings on 27 March 2009 with Chubb Australasia and on 8 April 2008 with representatives of Bovis Lend Lease.

### Site visits

- 1.14 The Committee visited the AMC site on 4 February 2009 and toured the facility. The tour was conducted by senior staff of Corrective Services and a member of the Minister's staff was also present. There was considerable installation and fit-out work taking place. The Committee was informed that some of the work related to the installation of the Radio Frequency Identification (RFID) system which will be discussed in later chapters. Workers were sweeping the oval with metal detectors. The Committee's progress around the site was hampered on a number of occasions by the



failure of doors and locks. The Committee subsequently learned that on the day of their visit there was a major failure of parts of the security system.<sup>4</sup>

## FINDING 2

- 1.15 **On 4 February 2009 when the Committee undertook a site visit, the AMC was clearly not ready for handover and it was apparent to the Committee Members that considerable work still needed to be done.**
- 1.16 On 11 March 2009 the Committee visited the Belconnen Remand Centre, the Symonston Temporary Remand Centre and the Symonston Correctional Centre (formerly known as Quamby).

## Summons

- 1.17 The Committee took the unusual step of summoning a witness. After the Committee's in camera hearing with Chubb Australasia on 27 March 2009 the Committee decided that it would be severely hampered in its inquiry if it were unable to hear the view of Bovis Lend Lease on certain key questions that had arisen. The Committee had written to Bovis Lend Lease on 6 February, 23 February and 13 March 2009 seeking their input into the inquiry. Bovis Lend Lease responded to the Committee on 25 February and 11 March 2009 indicating that they denied responsibility for the delays but that they would not be making a submission or seeking to appear.
- 1.18 On 30 March 2009 the Committee Secretary issued a summons for Mr Ross Norman, General Manager, ACT, Bovis Lend Lease to appear before the Committee on 8 April 2009. Mr Norman and other representatives of Bovis Lend Lease subsequently appeared before the committee in an in camera hearing on that date.
- 1.19 The Committee understands that this is the first time that a Standing Committee of the ACT Legislative Assembly has made use of its power to summons.

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<sup>4</sup> Committee Transcript of Evidence, 27 February 2009, pp 61-62 (hereafter referred to as 'Transcript of Evidence')

## Nature of the evidence before the Committee

- 1.20 In most Committee inquiries evidence is heard openly and information received is made available to the public. One of the key roles of Committees is to scrutinise Government decision making and create additional transparency to facilitate accountability. This inquiry is unusual in the amount of oral evidence taken in camera and not published, and the amount of documentation received and, also, not published.
- 1.21 A key reason for this relates to public safety. In order to fully understand the reasons for the delay in the AMC project, the Committee received detailed information about the structure and operations of the AMC's security system. While aspects of the problems with the security system were made public during the course of the inquiry, the Committee has opted not to reveal further detail. While this has at times made discussion of the issue within this report less detailed than a reader may desire, the Committee felt that it was not in the best interests of the safety of the public and staff at the AMC for details of a prison security system to be made freely available.
- 1.22 The Committee was also mindful that it was in receipt of material that is potentially commercially sensitive and that may form the basis of future litigation between the parties, should such litigation arise. While evidence given to the Committee is protected by absolute privilege and so cannot be used in court, the parties may understandably have been reluctant to reveal their possible argumentation in public hearings. The Committee has made use of this material in its deliberations but has chosen not to publish it.

## Ministerial Comment on the Inquiry

- 1.23 The Attorney-General and former Minister for Corrective Services, Mr Simon Corbell MLA, on his first appearance before the Committee, welcomed the inquiry as a 'valuable opportunity to clear the air'.<sup>5</sup> He made similar public statements at the time the inquiry was announced.

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<sup>5</sup> Transcript of Evidence, 18 February 2009, p 2

- 1.24 In sharp contrast, at his first appearance before the Committee the Minister for Corrections, Mr John Hargreaves MLA, said that this inquiry had “to be seen for what it is: a largely counterproductive witch-hunt and a cynical political exercise”.<sup>6</sup> The Committee feels that it must address this remark and explain why it chose to undertake this inquiry.
- 1.25 The following chapter sets out the history of the AMC project. It has been a high profile project and one that has been a source of debate within the Assembly for many years. There were many groups interested in the completion of the project including prisoners and remandees; corrections staff; community sector organisations that provide, or are planning to provide, services to prisoners during incarceration or post-release; and the taxpayers of the ACT. The official opening of the prison had been widely reported in the media, as had the subsequent failure of the AMC to commence operations.
- 1.26 As the Assembly Standing Committee responsible for corrections matters, the Committee unanimously decided that it was appropriate that it conduct a comprehensive inquiry into the delays to end speculation about the reasons for the delay and to provide a comprehensive report to inform the public on this issue.
- 1.27 While Committees are made up of members of the Assembly their approach generally differs from the directly adversarial approach common within Assembly sittings. Committees strive to reach a consensus based on the evidence before it and are generally a poor tool with which to conduct a “witch-hunt”.
- 1.28 The Committee acknowledges that subsequent statements by the Minister for Corrections characterised the Committee’s inquiry differently. He was quoted as saying that “These people on that Committee are the elected representatives of the community . . . the Legislative Assembly is the ultimate accountability forum in this territory”<sup>7</sup>. The Committee agrees with

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<sup>6</sup> Transcript of Evidence, 27 February 2009, p 52

<sup>7</sup> *Canberra Times*, Independent security probe urged for jail, 18 March 2009, accessed at: <http://www.canberratimes.com.au/news/local/news/general/independent-security-probe-urged-for-jail/1462009.aspx>

this statement and trusts that this report will assist the Assembly and through it the community to come to a better understanding of the project.

## Acknowledgements

- 1.29 The Committee extends its thanks to those who wrote submissions or appeared before the Committee as witnesses. It also wishes to acknowledge the assistance of officials in supplying the Committee with documents, answers to questions, and for escorting the Committee on its tours of the AMC site and operating correctional facilities. The Committee acknowledges the responsive and accessible approach taken by the Minister for Corrections' office.
- 1.30 The Committee would like to particularly acknowledge the assistance given to the Committee by witnesses from commercial entities, both those that represented the Territory and those who were contractors or subcontractors. The Committee is aware that dealing with the Legislative Assembly's processes is not a normal part of commercial business. The Committee also acknowledges the difficult position that commercial entities are in when appearing before Assembly Committees.

## 2 THE AMC PROJECT

- 2.1 Prior to the AMC, the ACT had no facility for holding sentenced prisoners. While remandees could be detained awaiting trial, upon sentencing prisoners were transferred into the New South Wales prison system and the ACT reimbursed NSW for the cost of holding those prisoners.
- 2.2 There has long been debate in the Territory about the construction of a prison in the ACT. One witness to this inquiry attended a meeting on the issue in the mid-1970s.<sup>8</sup> Various reports had recommended its construction, including a series of reports by this Committee's Fourth Assembly incarnation. It was argued that it would be appropriate for the ACT to take responsibility for its own prisoners and that a facility in the ACT would make it easier for prisoners to maintain contact with their families and reduce post-release re-offending.
- 2.3 On 30 May 2001 the government of the day announced that it would construct a prison in the ACT. The site for the prison was chosen in 2004, with planning activities continuing into 2005. At that time the government was aiming to have the prison finished in mid-2007.<sup>9</sup>

### Strategic Procurement Plan

- 2.4 On 23 January 2004 ACT Procurement Solutions, acting as an agent for ACT Corrective Services (ACTCS), issued a Strategic Procurement Plan for the AMC Project. Corrective Services and Treasury signed off on this plan on 24 June 2004. The Government Procurement Board confirmed its endorsement of the plan on 19 July 2004. The Strategic Procurement Plan had a timetable with May 2007 as the date for estimated completion of

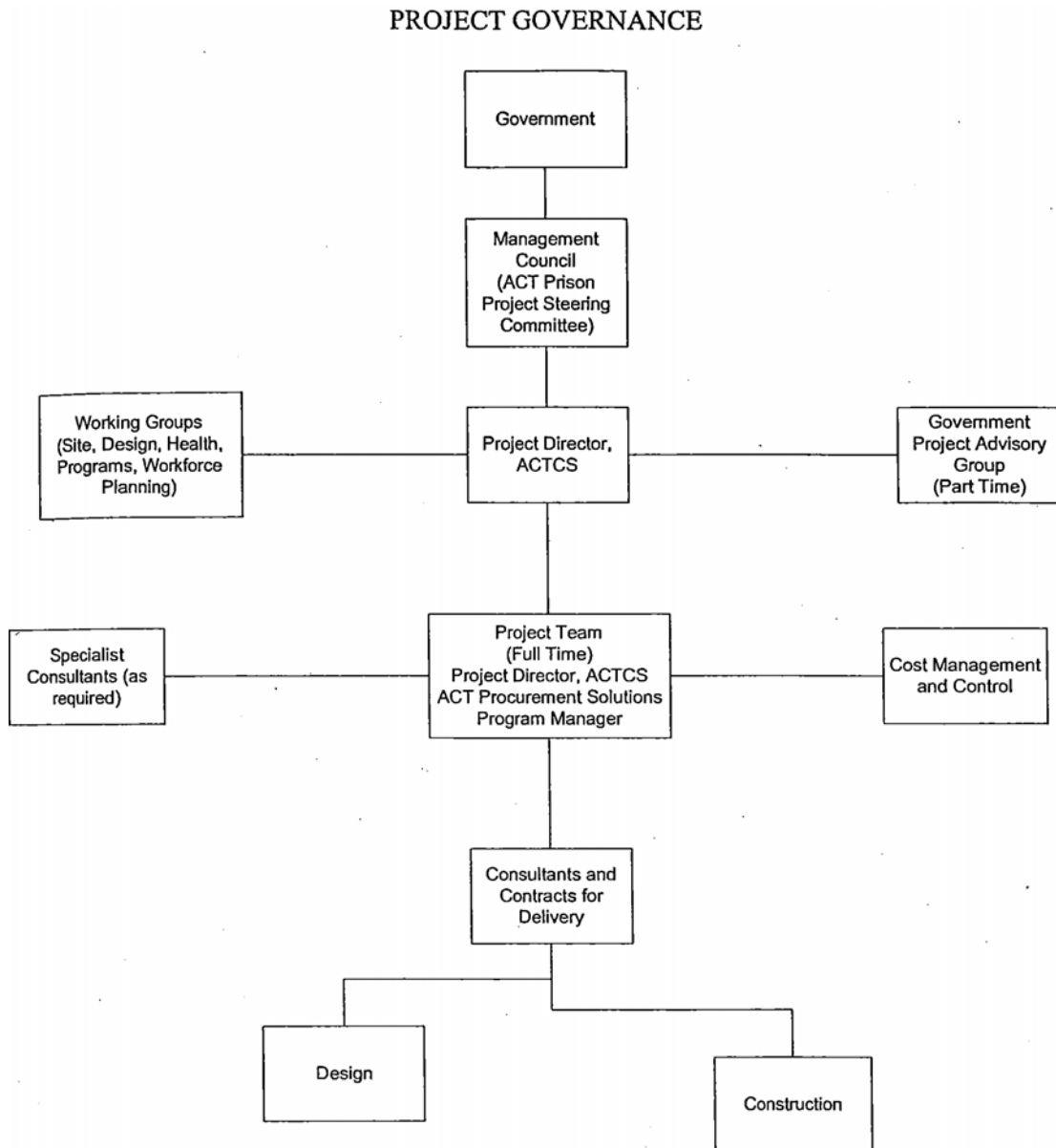
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<sup>8</sup> Transcript of Evidence, 4 March 2009, p 150

<sup>9</sup> Jon Stanhope MLA, *ACT prison site works commence*, Media Release 1 June 2005, accessed at <http://www.chiefminister.act.gov.au/media.php?v=3252&m=51&s=43>

commissioning.<sup>10</sup> The plan set out a three-stage process: engage a Program Manager, engage a Design Consultant, and procure the construction work.

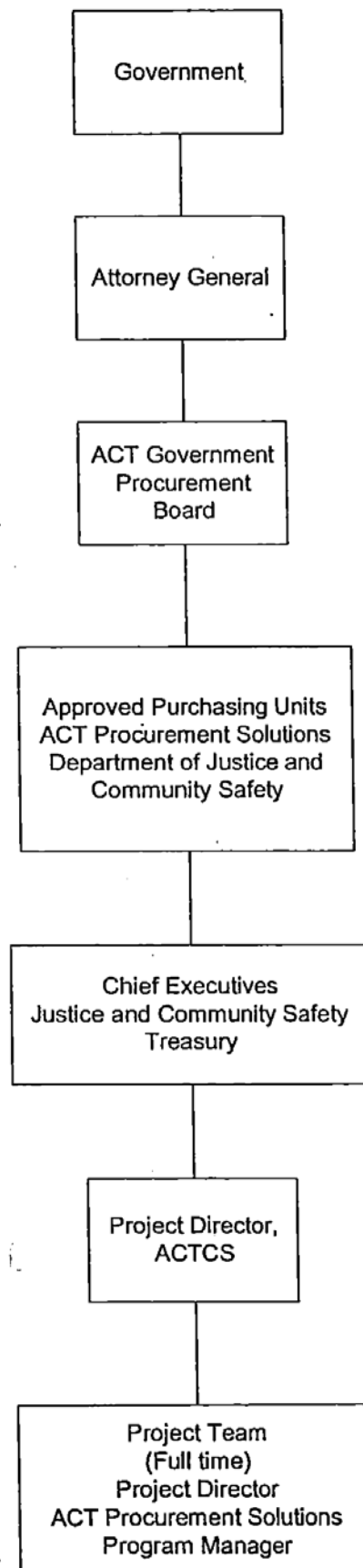
- 2.5 Two diagrammatic representations of the governance process were set out in the Strategic Procurement Plan showing different chains and levels of responsibility for the project.<sup>11</sup>



<sup>10</sup> ACT Procurement Solutions, *Alexander Maconochie Centre (ACT Prison Project) - Strategic Procurement Plan 2004*, p 20

<sup>11</sup> *Ibid* pp 6 & 13

## PROCUREMENT GOVERNANCE



2.6 Elements of the hierarchies of responsibility in the two charts reproduced above are at odds with the evidence received by the Committee. For example, the Management Council or Project Steering Committee which sits immediately below the Government in the Project Governance chart was not mentioned at any stage during the Committee's inquiry despite being responsible for:

- '...broad policy direction for the ACT Prison Project to the extent to which issues carry inter-departmental impacts';
- '...major policy considerations at critical stages in the decision making process'; and
- consideration of '...the overall timetable, philosophy and budget for the project'.<sup>12</sup>

## Project management

2.7 ACT Corrective Services established their own project team to oversee the project. The Project Director was John Paget, a senior corrections official from South Australia who had previous experience in prison construction projects. Organisational charts and project governance documents suggest that this position was to be central to the management of the whole project, being at the core of communication involving the Project Advisory Group, the Project Team, the CEO of JACS and the Design Consultant and Construction Manager.<sup>13</sup>

2.8 ACT Procurement Solutions conducted an *Expressions of Interest* process that resulted in an agreement with Sinclair Knight Merz Pty Limited (SKM) to act as Program Manager. This contract, entered into in September 2004, was for \$2.715 million.<sup>14</sup> SKM describes itself as a "leading engineering, sciences and project delivery firm".<sup>15</sup> The Committee heard about the experience that

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<sup>12</sup> *Ibid* p 4

<sup>13</sup> *Ibid* p 4

<sup>14</sup> Transcript of Evidence 18 February, 2009 p 3

<sup>15</sup> <http://www.skmconsulting.com/>



various members of SKM's team on the AMC project had with prison construction.<sup>16</sup>

2.9 The Strategic Procurement Plan included a

shared role of ACT Procurement Solutions and the Program Manager as the Principal's Representatives for this project. ACT Procurement Solutions will act as the ACT Government Principal's Representative and will undertake procurement services and manage the associated risks . . . The Program Manager, as the non-ACT Government Principal's Representative will undertake the role of an expert manager in corrective facilities design and construction planning and programming including cost control, monitoring specialist advice and managing associated project risks. Both Principal's Representatives . . . will assist . . . in the management of relevant contracts.<sup>17</sup>

2.10 There was no clear role for the ACTCS project team in the Strategic Procurement Plan and considerable uncertainty about who was actually responsible for the project.

2.11 In the course of the hearings the Committee asked numerous questions about the chain of command, the lines of responsibility and who was ultimately responsible for the contract. The answers varied, depending on who was being questioned. For example, while it was agreed that the client was ACTCS and that the person ultimately responsible was the Chief Executive of the Department of Justice and Community Safety,<sup>18</sup> the CEO of JACS defined responsibility for the day-to-day management of the project as follows:

Corrective Services, which is part of my department [JACS], and Procurement Solutions, which is acting as my agent, meet with Sinclair

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<sup>16</sup> Transcript of Evidence 3 March 2009, pp117-118

<sup>17</sup> ACT Procurement Solutions, *Alexander Maconochie Centre (ACT Prison Project) - Program Manager Expressions of Interest (EOI) Procurement Plan* 2004, p 2

<sup>18</sup> Transcript of Evidence, 27 February 2009, p 77

Knight Merz for the daily contract management. But the responsibility for the contract rests with the department.<sup>19</sup>

## The Design Consultant

- 2.12 ACT Procurement Solutions conducted an *Expressions of Interest* process, which produced a shortlist of companies to receive Requests for Proposals, for a Design Consultant for the AMC Project. The Design Consultant's role was to meet the requirements of the Project Brief and associated documents. This included documents prepared by Corrective Services such as the functional brief, which set out what outcomes Corrective Services was seeking from the project. Corrective Services' brief might specify response times to deal with an incident but not what brand of fencing or security camera. It was the design consultant's role to take these briefs and turn them into a set of drawings and specifications.
- 2.13 On 11 March 2005 Codd Stender and May+Russell (CSMR), a joint venture, signed an agreement to be the Design Consultant for a value of \$8.28 million<sup>20</sup>. Codd Stender is a Queensland based architecture firm while May+Russell is a Canberra firm. The contract required CSMR both to provide architectural services and ensure project compliance with specifications and technical requirements.<sup>21</sup>
- 2.14 The Committee is aware of comments that the finalisation of the design experienced "significant time delays"<sup>22</sup> but is unaware if this was due to problems with the brief supplied by Corrective Services, problems experienced by the Design Consultant, or a combination of both.
- 2.15 CSMR employed a number of consultants to assist them in the design, including Taylor Thomson Whiting Consulting Engineers (structure), Hughes Trueman Pty Ltd (hydraulics) and the Webb Australia Group. Webb

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<sup>19</sup> Ms R Leon, Department of Justice and Community Safety, Transcript of Evidence, 27 February 2009, p 78

<sup>20</sup> Transcript of Evidence, 18 February 2009, p 3

<sup>21</sup> Transcript of Evidence, 18 February 2009, p 3

<sup>22</sup> Michael Berry, ACT Procurement Solutions, letter to Mr John Paget, ACT Corrective Services, 21 July 2006 (attachment to SKM Agreement)

was employed to assist in the design of the areas of electrical, mechanical, fire and, most importantly for this report, security.

- 2.16 Generally these consultants developed the specifications and ensured that the performance requirements of the specifications were met as components and systems were installed, tested and commissioned.<sup>23</sup> In the case of the security contract however there were large elements of the project which were left to the contractor to design to meet the specifications set down by Webb.<sup>24</sup>
- 2.17 The issue about lines of communication arose regularly in the inquiry with the Committee receiving confusing and conflicting answers.

### FINDING 3

- 2.18 **The Committee finds that, unlike most other parts of the project, the security system was not fully designed before it went out to tender. In the AMC project the security system contract was unique in that it was a contract both to design and build.**

## Construction

- 2.19 Construction was divided into three parts: early works construction, bulk earthworks and main construction. The early works construction contract was let on 9 September 2005 to Canberra Contractors for \$2,534,357. The work comprised the road intersection with the Monaro Highway, water supply to the site and connection to the sewer system. These works were completed on 8 February 2006 with variations resulting in this work coming in \$201,605 under budget.
- 2.20 BMD Contractors were awarded the earthworks contract on 25 January 2006. The contract was worth \$2,595,919 and included all the bulk earthworks for building platforms and roadworks. The contract was completed on 2 June

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<sup>23</sup> Transcript of Evidence, 20 March 2009 (in camera)

<sup>24</sup> Transcript of Evidence, 8 April 2009 (in camera)

2006 with variations, particularly around external roadworks and carparks, resulting in this work coming in over budget by \$597,469.

- 2.21 The Main Works Construction contract was let to Bovis Lend Lease (BLL) on 11 October 2006 for \$113,302,539. BLL describe themselves as ‘one of the world’s leading project management and construction companies operating in more than 30 countries worldwide and employing over 8,500 people’.<sup>25</sup> BLL’s responsibilities included the in-ground services (power, water, sewerage), laying the floor slabs, constructing the buildings, installing the security system and testing for defects.
- 2.22 While most of BLL’s contract involved following the design and specification provided by CSMR, some parts of the contract were ‘design and build’. For the security system, pre-cast concrete elements and structural steel BLL were not provided with finalised drawings but had to finish the design on those aspects themselves. The Committee understands that this is not uncommon in these types of contracts – some contracts will be fully designed while others will include aspects to be finished by the contractor.
- 2.23 BLL won the contract after being selected from a shortlist of five companies. In order to be selected BLL had to provide evidence of their experience and ability to complete this type of project, and provide a detailed account of their ability to meet each part of the specification.
- 2.24 During the tender negotiation phase the government decided to delete some aspects of the original concept brief in order to bring down the cost of the project which was rising above budget. These deletions reduced the number of beds from 374 to 300, including downsizing the Transitional Release Centre from 60 beds to 45. The chapel, gymnasium and dog squad were also deleted at this stage. These deletions were made before the contract with BLL was signed. The only significant deletion from the contract after it was signed was RFID system which is discussed in later chapters.<sup>26</sup>

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<sup>25</sup> [http://www.bovislendlease.com/llweb/bll/main.nsf/all/all\\_whooverview](http://www.bovislendlease.com/llweb/bll/main.nsf/all/all_whooverview) accessed on 22 April 2009

<sup>26</sup> Robyn Hardy, Executive Director, ACT Procurement Solutions, letter to the Chair of the Committee, 26 March 2009

- 2.25 In order to complete the contract BLL employed around 50 subcontractors to work on aspects of the project. These subcontractors employed various numbers of people leading to over 200 subcontracted workers working on site over the project's life. In some areas the contract specified a shortlist of subcontractors that the contractor could select from. BLL selected Chubb as its subcontractor to deliver the AMC project's security system. Chubb describes itself as 'Australia's leading provider of security and fire safety solutions, protecting people, property and assets. Chubb combines more than 185 years of safety expertise with state-of-the art technology and a highly skilled workforce to give customers confidence in their systems'.<sup>27</sup>

## Construction progress

- 2.26 As part of its program management role SKM produced monthly Monitoring and Management Reports from December 2006. These reports, which were dated no later than 15 days into the month following that reported on, summarised progress in the project, variations to the contract, progress payments made, risk management plans and provided updated timelines for the project as a whole. The following paragraphs summarise the key events described in these reports, illustrating how the construction progressed.
- 2.27 In its first report in December 2006, SKM noted that design, early works and bulk earthworks were all complete and the main construction was in the start-up phase. SKM noted that 'In parallel with the commencement of work on site, the contractor [BLL] is progressing with his own design responsibilities and in particular security design and the management of critical activities e.g. subcontract award . . .'.<sup>28</sup> The Master Control Program, a timeline for the project, had the prison being handed over to ACT

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<sup>27</sup> <http://www.chubb.com.au/utcfs/Templates/Pages/Template-66/0,8070,pageId%3D38897%26siteId%3D582,00.html> accessed on 22 April 2009. In a confidential submission from Chubb Electronic Security Pty Ltd it noted that it had "...undertaken prison installations in Victoria and Queensland including the Women's Prison, the Melbourne Assessment Prison and the Barwin [sic] Prison."

<sup>28</sup> SKM, Monitoring and Management Report, December 2006, p 1

Corrective Services on 14 May 2008 with the first prisoners being moved in on 16 July 2008.

2.28 In February 2007 SKM noted that:

BLL are experiencing some difficulty with details relating to the fitting of windows and doors in a corrections environment and this may cause some delays to contract completion. In addition BLL have lodged several claims for extension of time which have been approved or are under assessment. These include claims for alleged delay by the Principal and for wet weather.<sup>29</sup>

2.29 The Monitoring and Management Reports frequently provide updates on 'Extensions of Time' sought by the contractor. These are claims made by the contractor that events beyond their control, such as wet weather or errors in the Design Consultant's drawings, have delayed the project and that the project completion date should accordingly be moved back. ACT Corrective Services, although in practice Procurement Solutions and SKM, then decide to agree to or reject these claims for extensions. If BLL was unhappy with the decision they could seek 'expert determination', an independent decision maker ruling on whether the claims were appropriate or not.

2.30 By March 2007 the Master Control Programme had the prison being handed over on 28 June 2008 and over the ensuing months this date would move back by a few days or a week each month. By December 2007 the anticipated hand over date was 12 August 2008.

2.31 In July 2007 SKM noted that 'the number and total value of variations is growing and is a significant call now on the project contingency'.<sup>30</sup>

2.32 By July 2007 SKM were describing main construction as 'well advanced'. The 'letting of subcontracts is almost complete' and '[d]etailed design and shop drawings are virtually complete for all contractor design elements'.<sup>31</sup>

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<sup>29</sup> SKM, Monitoring and Management Report, February 2007, p 1

<sup>30</sup> SKM, Monitoring and Management Report, July 2007, p 1

<sup>31</sup> SKM, Monitoring and Management Report, July 2007, p 7

- 2.33 The security system was one of these design elements. Possible failure of, or faults in, the security system had been recognised as a major risk from the beginning<sup>32</sup> but this was the first month that the risk management plan noted that ‘Chubb have not done many prisons so greater vigilance will need to be exercised in design reviews etc’.<sup>33</sup>
- 2.34 In the proceeding months SKM had advised that it was seeking cost savings to address the pressure on the project contingency but by August 2007 they advised ‘[h]owever at the rate of increasing variations, this is not likely to be sufficient and other reductions must now be urgently considered, eg deletion of the TRC [Transitional Release Centre] building which is still at sub-floor level’.<sup>34</sup>
- 2.35 In September 2007 SKM noted that “[i]nternal servicing and fitout is well advanced on a large number of buildings”<sup>35</sup>. They also noted:
- A significant increase in project risk has resulted from the premature departure from the project of the ACTCA Project Director [John Paget]. This will put pressure on the balance of the project team to mitigate the effect of risks arising from potentially diminished project leadership and a significant loss of continuity and corporate knowledge.<sup>36</sup>
- 2.36 In November 2007 SKM noted slowness in aspects of the security system preparation, an area addressed fully in chapter 5.
- 2.37 In December 2007 SKM noted that main construction was 75% complete and that ‘[p]re-completion activities including building and services inspections will commence in January’.<sup>37</sup> By March 2008 main construction was 90% complete, pre-completion ‘inspection have been completed to a significant

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<sup>32</sup> SKM, Monitoring and Management Report, December 2006, Appendix C, Risk Management Plan Response table as reviewed on 29 November 2006.

<sup>33</sup> SKM, Monitoring and Management Report, July 2007, Appendix C, Risk Management Plan Response table as reviewed on 12 July 2007.

<sup>34</sup> SKM, Monitoring and Management Report, August 2007, p 1

<sup>35</sup> SKM, Monitoring and Management Report, September 2007, p 7

<sup>36</sup> SKM, Monitoring and Management Report, September 2007, p 1

<sup>37</sup> SKM, Monitoring and Management Report, December 2007, p 1

number of buildings' and an 'advance party of ACTCS staff has occupied the Facilities Building'.<sup>38</sup> SKM also noted that:

BLL have lodged other notices of alleged delay, presumably as protective measures to attempt to mitigate the effect of the potential for the levying by the Principal of Liquidated Damages in the event BLL are late in completing the Prison.<sup>39</sup>

- 2.38 In May 2008, with main construction 97% complete, SKM noted that '[b]uilding services and security systems commissioning is well advanced on a building-by-building basis including cell blocks'.<sup>40</sup> By June 2008 SKM reported that '[f]inalisation of the security installation is the only major item still to be completed before the 28 day pre-completion period commences'.<sup>41</sup>

## Commissioning process

- 2.39 Officials explained that throughout the construction phase components would be commissioned, meaning that they were certified that they functioned according to the specification.<sup>42</sup> Once commissioning was complete, and the contractor had tested for and fixed any defects, a 28 day pre-completion period would begin.
- 2.40 Prior to the commencement of the 28 days the contractor needed to hand over inspection and test plans and certify that everything works according to specification. The 28 day period was meant as a bedding down period when staff used the facility and any problems could be identified. The 28 day period could be suspended and recommenced later if serious faults were uncovered.<sup>43</sup>
- 2.41 Following completion of the 28 day period a 'five day fault free' period began. In this phase ACT Corrective Services and the Territory's consultants

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<sup>38</sup> SKM, Monitoring and Management Report, March 2008, p 7

<sup>39</sup> SKM, Monitoring and Management Report, March 2008, p 1

<sup>40</sup> SKM, Monitoring and Management Report, May 2008, p 7

<sup>41</sup> SKM, Monitoring and Management Report, June 2008, p 1

<sup>42</sup> Transcript of Evidence, 18 February 2009, p 15

<sup>43</sup> Transcript of Evidence, 18 February 2009, pp 17-18



would 'hammer the system' and 'make it do everything that it is supposed to do – put it through the hardest tests that we can to make sure that it is not going to fail'.<sup>44</sup> Assuming the system came through that five day period without fault, the site would be handed over to Corrective Services.

2.42 In July 2008, with main construction 99% complete, SKM noted:

Contractual completion date is 22 August 2008. This may change if BLL are successful with further EOT claims . . . Actual completion currently looks to be around late September 2008.<sup>45</sup>

Completion of security installation is behind schedule and current advice from BLL is that is likely to delay the completion of the prison by around one month to late September 2008.<sup>46</sup>

2.43 In their August 2008 report<sup>47</sup> SKM noted significant shifts in both the agreed contract completion date, due to agreed variations, and in the likely actual completion date. In reference to the 28 day post-commissioning period SKM wrote:

This was to have started the week beginning 1 September 2008 but the system proved to still be incomplete. Current indications are that it may now take until mid November to complete this work and all associated testing before the project may be brought to completion.

The contractual completion date is currently 2 September 2008. This may change if BLL are successful with further EOT [extension of time] claims.<sup>48</sup>

...completion of security installation has slipped further behind schedule and current advice from BLL is that is likely to potentially now delay the completion of the prison to mid November 2008.<sup>49</sup>

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<sup>44</sup> Transcript of Evidence, 18 February 2009, p 24

<sup>45</sup> SKM, Monitoring and Management Report, July 2008, p 1

<sup>46</sup> SKM, Monitoring and Management Report, July 2008, p 7

<sup>47</sup> The report is dated 9 September 2008.

<sup>48</sup> SKM, Monitoring and Management Report, August 2008, p 1

<sup>49</sup> SKM, Monitoring and Management Report, August 2008, p 7

## Official opening

- 2.44 On 11 September 2008 the Government held an official opening ceremony at the AMC. The Minister informed the Committee that the decision to hold the opening on this date was made on 13 August 2008.<sup>50</sup>

## Post-opening delays

- 2.45 SKM's September 2008 report advised that delays in security installation work had pushed project completion back to "late November or early December". The report also noted:

Given that the contractual completion date has now passed, the Principal has commenced the levying of Ligated Damages (LDs), as offsets to monies claimed by BLL for the current monthly progress claim. In the event BLL are successful in winning additional EOT claims, the application some or all LDs may be reversed.<sup>51</sup>

- 2.46 The October 2008 report advised of further delays saying that the 28 day period:

...was to have started the week beginning 6 October 2008 but the system once again proved to be incomplete. In order to be proactive in trying to expedite the process, the Design Consultant commenced system inspections the week beginning 3 November 2008. On current indications it is likely to take until at least early December to complete this work and all associated testing before the project may be brought to completion. The current projected completion date is 19 December 2008.<sup>52</sup>

- 2.47 The November 2008 report contains a phrase that will be discussed in detail in the examination of problems with the security system:

... the Design Consultant commenced system inspections the week beginning 3 November 2008, which revealed some 1200 defects, 6 of

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<sup>50</sup> Transcript of Evidence, 18 February 2009, p 4

<sup>51</sup> SKM, Monitoring and Management Report, September 2008, p 1

<sup>52</sup> SKM, Monitoring and Management Report, October 2008, p 1

which were considered showstoppers preventing the commencement of the 28 day Performance Monitoring and Assessment period.<sup>53</sup>

- 2.48 The December 2008 report states that the 28 day period began on 5 January 2009. In fact that was retrospectively agreed as the start date on 12 January. Corrective Services officers began fitting out rooms in the AMC with furniture and fittings such as telephones. The Committee is aware that on 16 January 2009 a 'catastrophic failure' required that the 28 day period be suspended.<sup>54</sup> When the Committee began its inquiry the 28 day period was still in suspension as the contractor and subcontractors sought to get the security system running smoothly. While the contractors were working on this Corrective Services had members on site, allowing them to complete some of the work and training required before the prison could be opened after handover.

## Post-completion

- 2.49 During the course of the inquiry the 28 day period was completed, followed by the five day fault free period. On 30 March 2009 the Minister for Corrections announced that the AMC had accepted its first prisoners that day, with all ACT prisoners and remandees to be progressively moved to the AMC over the next few months.<sup>55</sup>
- 2.50 The 12 months after the handover of the prison is called the 'post-completion' period. During this time BLL and its subcontractors are responsible for maintenance at the AMC. This is intended to ensure that they fix any problems that may have arisen from the construction. SKM are also contracted for this period to oversee BLL's compliance with the contract.<sup>56</sup>

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<sup>53</sup> SKM, Monitoring and Management Report, November 2008, p 2

<sup>54</sup> Minutes of site meeting No 62, 5 February 2009

<sup>55</sup> Mr John Hargreaves MLA, Media release *AMC accepts first prisoners* 30 March 2009

<sup>56</sup> Transcript of Evidence, 18 February 2009 pp. 24-25

## Who is who in the AMC Project?

2.51 This list identifies the individuals and agencies and contractorsd with significant responsibilities for the AMC project:

- Simon Corbell MLA: As well as Attorney-General he was Minister for Corrections and therefore the Minister responsible for the project until 11 November 2008
- John Hargreaves MLA: He became the Minister responsible for the project when he was made Minister for Corrections on 11 November 2008
- ACT Corrective Services: The 'client' who set out what they wanted from the project and who set up a project team to manage their interests.
- Department of Justice and Community Safety (JACS): Corrective Services are part of JACS and therefore the CEO of JACS was ultimately responsible for the project as the funds for it come from the JACS budget.
- ACT Procurement Solutions: A part of the Department of Territory and Municipal Services, Procurement Solutions acted as Corrective Services'/JACS' agent in procuring the project and managing the contract.
- Sinclair Knight Merz (SKM): Contracted by Corrective Services, via Procurement Solutions, to act as their agent and manage the project and contracts.
- Codd Stender and May+Russell (CSMR): The design consultants (also contracted by Corrective Services, via Procurement Solutions) who drew up the project specifications and were responsible for checking that the final project met those specifications.
- Webb Australia: A sub-contractor of CSMR, they consulted in a number of areas, most importantly the security system in which they were heavily involved in drawing up the specifications and testing for compliance with those specifications.
- Bovis Lend Lease (BLL): The main construction contractor, they were responsible for delivering a complete working facility.
- Chubb Australasia: A sub-contractor of BLL, their role was designing and building the security system for BLL.

## **FINDING 4**

- 2.52 **The Strategic Procurement Plan and the relationship between ACT Corrective Services, Procurement Solutions and Sinclair Knight Merz created a confusing model for management of the contract. The allocation of responsibilities lacked clarity and the lines of communication and control were unclear.**



### **3 ACT CORRECTIONAL FACILITIES AND HUMAN RIGHTS**

- 3.1 This chapter examines the ACT's correctional facilities as they were at the beginning of this inquiry, before the commencement of operations at the AMC. This draws on evidence given to the Committee and the Committee's visit to those facilities on 11 March 2009. It then looks at the human rights concerns evident at those facilities and the steps the Government took to address them.

#### **Belconnen Remand Centre**

- 3.2 The Belconnen Remand Centre (BRC) was established in 1976 by converting existing police cells. Initially designed to house 16 remandees it was gradually expanded over the years to a 69 bed capacity. It is generally agreed that the BRC was not fit for the purpose of housing remandees. It was old, poorly laid out, enclosed, claustrophobic and has significant problems with airflow.
- 3.3 At the time the Committee visited, the BRC held 63 inmates including 35 sentenced prisoners and nine appellants. This was within the BRC's capacity but previously the centre had been suffering from considerable overcrowding. Fold out beds had been added to cells and for a period the activities room was housing up to nine men on fold-out beds.

#### **Symonston facilities**

- 3.4 The Symonston site contained three separate facilities; the Symonston Temporary Remand Centre (STRC); the Periodic Detention Centre (PDC) and the Symonston Correctional Centre (Quamby). The STRC and PDC were the responsibility of ACT Corrections while Quamby was part of the Juvenile Justice system.

- 3.5 The STRC was opened in 2002 and was intended to relieve the pressure on the BRC. It had a capacity of 30 beds. When the Committee visited it held 34 people (including the Periodic Detention Centre, see below). The STRC was a more modern facility than the BRC and free from the worst aspects of cramped and claustrophobic spaces, though lack of open space at the STRC was an issue.
- 3.6 The Committee was told that as recently as October 2008 overcrowding in the STRC had involved the use of a mattress on the floor of cells already containing double bunks so that the cell could hold three people.<sup>57</sup>
- 3.7 The STRC was closed following the transfer of prisoners to the AMC. It was subsequently decommissioned, although the site has been retained by ACT Corrective Services and, following some refurbishment will become part of an enhanced Periodic Detention Centre at the Symonston site.
- 3.8 Part of the Periodic Detention Centre had been converted to act as a remand facility for female remandees. Generally the ACT corrections system holds very few females. There was a period when females were being held in the STRC during the week and then bussed to the BRC for the weekend when the STRC was used to accommodate overflow from the PDC. The conversion of one of the PDC units into a women's facility ended this practice.<sup>58</sup>

## Symonston Correctional Centre (Quamby)

- 3.9 The Symonston Correctional Centre is better known to the Canberra public as Quamby. With the construction and opening of the Bimberi youth facility at Mitchell, Quamby became available in late December 2008 for use by ACT Corrective Services to relieve pressure on its other facilities pending the opening of the AMC.
- 3.10 The Committee understands that the decision to use Quamby for adult detainees was not taken until late-January or early February 2009. However following that decision the transfer of remandees from the BRC followed

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<sup>57</sup> Transcript of Evidence, 27 February 2009, p 101

<sup>58</sup> Transcript of Evidence, 27 February 2009, p 103



very quickly.<sup>59</sup> Quamby had a 30 bed capacity and 26 beds were occupied when the Committee visited the facility in March 2009.

- 3.11 Quamby was superior to the other two correctional facilities in terms of the amount of space, amount of useable outdoor areas and, particularly with the demountable unit, the modern amenities available. However it was a less secure facility and only suitable for prisoners and remandees assessed as low risk. With the opening of the AMC, Quamby was returned to the Department of Housing and Community Services.

## ACT Prisoners in the NSW system

- 3.12 There has long been an agreement between NSW and the ACT, for ACT prisoners to be housed within the NSW prison system. ACT prisoners make up a very small proportion of the total NSW prison muster, about 100 out of 10,000. NSW faces significant overcrowding issues within its facilities and has experienced difficulty in accepting prisoners from the ACT in the past.
- 3.13 The Committee received conflicting advice with regard to the continuing willingness of New South Wales to receive ACT prisoners. The Chief Executive of ACT Corrective Services told the Committee:

Since around Christmas, the ability of New South Wales to take any ACT prisoners seems to have ceased. We have been negotiating with them on a regular basis—for a while there, daily—but it is quite clear that their situation is desperate. They do not have beds for their own prisoners and if we insisted that they go off to New South Wales they would probably go off to New South Wales to reside in unacceptable conditions, perhaps in police cells and so on.<sup>60</sup>

- 3.14 While ACT Corrective Services formed the impression that NSW was unwilling (or unable) to take ACT prisoners from about Christmas 2008 the Committee was advised in April 2009 by the NSW Commissioner of Corrective Services that NSW “...will continue to accept inmates from the

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<sup>59</sup> Transcript of Evidence, 27 February 2009, p 109

ACT subject to the availability of accommodation...". He also described delays in receiving ACT prisoners as "short term".<sup>61</sup>

3.15 It appears that there was a failure to clarify either the continuing ability of NSW to accept ACT prisoners or the expectations of NSW with regard to the return of ACT prisoners particularly having regard to the delays in commissioning the AMC.

3.16 This has not only caused overcrowding problems but made it difficult for ACT Corrections staff to maintain a separation between remandees and sentenced prisoners. The Chief Executive of ACT Corrective Services told the Committee:

We have simply not been able to be successful, consistently, in that regard. There is always an attempt to keep remand and sentenced separate, and clearly we are not able to do that right now. The more important separation is men from women, and in that we have been more successful, although they are, for our liking, far too close to where the men are, say, in the BRC. That has been a problem we have had for years.<sup>62</sup>

## FINDING 5

3.17 **The cessation of transfers of prisoners to NSW was never satisfactorily explained to the Committee.**

## FINDING 6

3.18 **The cessation of transfers of prisoners to NSW in December 2008 added to the pressure on ACT remand facilities and contributed further to their failure to be human rights compliant.**

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<sup>60</sup> Transcript of Evidence, 18 February 2009, p 6

<sup>61</sup> Letter from the Commissioner of Corrective Services NSW, 8 April 2009

<sup>62</sup> Transcript of Evidence, 18 February 2009, p 14

## Human rights concerns

- 3.19 The ACT's correctional facilities, and particularly the BRC, have long been acknowledged as inadequate. Ministers were clear that '...the longstanding inadequate conditions at the existing remand centres were a significant factor in the decision to build the AMC'.<sup>63</sup> Remandees and staff have been struggling with inadequate facilities and the associated heightened tensions.
- 3.20 The Human Rights Commissioner and the Ombudsman have both been active over the last few years in auditing the compliance of the ACT's correctional facilities with human rights norms. The Human Rights Commission released a comprehensive audit in July 2007 that advanced recommendations across many areas including:
- mental health facilities;
  - time out of cells;
  - shared cells and privacy;
  - education;
  - the treatment of women prisoners;
  - health care;
  - corrections culture; and
  - oversight.
- 3.21 The Human Rights Commissioner was aware that some of her recommendations would have to wait until the AMC commenced operations before they could be fully implemented but others were recommended for immediate action. The Human Rights Commissioner and the Minister for Corrections exchanged correspondence for the period December 2008 to March 2009 regarding a number of issues at the centres particularly the lack of ventilation and air conditioning during some severe heat in summer and the failure to keep sentenced prisoners separate from remandees.

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<sup>63</sup> Transcript of Evidence, 18 February 2009, p 6

## FINDING 7

- 3.22 **While the ACT's remand facilities have always given rise to serious human rights concerns these concerns were exacerbated during the period between the official opening of the AMC in September 2008 and the commencement of the transfer of remandees to the AMC on 30 March 2009. ACT remand facilities were not human rights compliant during this period.**

### Effects of delays upon prisoners

- 3.23 While it is difficult to quantify what effect the delay in the commencement of operations at the AMC had upon prisoners, it is clear that prisoners and remandees suffered during the period between the official opening and the commencement of operations of the AMC.
- 3.24 Prisoners, remandees and their families received the impression that they would shortly be shifted to better facilities only for delays to continue. This meant that prisoners were subject to overcrowded and inadequate conditions for approximately six months longer than was originally envisaged. The Human Rights Commissioner said that in interviews with prisoners '...frustration was the number one experience and people hanging on and not knowing how long they could hang on, waiting for something'.<sup>64</sup>
- 3.25 There were a number of incidents at the BRC that were reported by the media around the time of the scheduled opening of the AMC. These varied in severity but included a rooftop protest. It is worth noting that these incidents coincided with unusually hot weather in Canberra which made the BRC even more unpleasant than usual.
- 3.26 Corrections officials note that incidents are part of any correctional facility and that increases and decreases are not always easily attributable to any particular factors. The statistics supplied by ACT Correctional Services suggest that the period of the delays, post-September 2008, did not see a rise in the number of serious incidents at the BRC.

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<sup>64</sup> Transcript of Evidence, 27 February 2009, p 107

- 3.27 In addition to prisoners housed in the ACT there are sentenced ACT prisoners housed within the NSW correctional system. Given the overcrowding in the NSW system, and the reputation of the nearest facility to Canberra, Goulburn, as a particularly tough prison, the early return of ACT prisoners to the Territory would have improved the conditions in which they were housed and would also have made it much easier for family and other visitors to provide support to the prisoner.
- 3.28 It should be noted, that there are apparently some ACT prisoners within the NSW system who would prefer to finish their sentences there because they have an established place within the prison hierarchy where they are and would have to go through a settling in period in the AMC.<sup>65</sup>

## **FINDING 8**

- 3.29 **Between September 2008 and March 2009 the remand facilities, and particularly the BRC, were overcrowded and grossly inadequate. This may have contributed to a number of incidents at remand facilities.**

## **FINDING 9**

- 3.30 **The Human Rights Commissioner and the Ombudsman were vigilant in raising human rights concerns and encouraging the Government to maintain standards even in adverse conditions.**

## **FINDING 10**

- 3.31 **During the period from September 2008 to March 2009 human rights standards, such as in keeping sentenced and remanded prisoners separated, were not met.**

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<sup>65</sup> Transcript of Evidence, 4 March 2009, p 150



## 4 THE OFFICIAL OPENING

- 4.1 On 11 September 2008 the ACT Government held an official opening ceremony at the AMC. There was a smoking ceremony, a chaplain's blessing, and speeches by the Chief Minister, the Attorney-General and the Chief Executive of Corrective Services. The Chief Minister and the Attorney-General unveiled a plaque. Guests were invited to have a light lunch and tour the facility. The Chief Minister issued a press release and the opening was reported in the media.<sup>66</sup>
- 4.2 The first prisoners were moved to the AMC on 30 March 2009, over six months after the AMC was officially opened. Media and public comment on the delays in the AMC project have tended to note that the prison was open but had yet to receive inmates.

### Deciding on the opening date

- 4.3 The Attorney-General told the Committee that JACS officials had been planning for an early September opening from as early as May-June 2008. On 13 August 2008 the final decision was made to hold the opening on 11 September 2008.<sup>67</sup> On 13 August 2008 the agreed project completion date was 22 August 2008 with prisoner intake to beginning on 23 October 2008.<sup>68</sup>

### Briefing of the Minister

- 4.4 JACS provided the Attorney-General with a brief on 9 September 2008.<sup>69</sup> This brief advised that the prison was likely to be handed over in early November with the first inmates being housed about a month after that. The Chief Executive of JACS told the Committee that the brief was not

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<sup>66</sup> For example see <http://www.canberratimes.com.au/news/local/news/general/act-prison-is-justice-blended-with-mercy/1270010.aspx>

<sup>67</sup> Transcript of Evidence, 18 February 2009, p 4

<sup>68</sup> SKM, Monitoring and Management Report, July 2008, Appendix B, Master Control Program

considered urgent and did not “ring alarm bells”.<sup>70</sup> The Attorney-General read and dated the brief on 15 September 2008, seven days after receipt; a timeframe the Attorney-General told the Committee was not uncommon in his office for routine correspondence.<sup>71</sup>

- 4.5 It may be that the content seemed routine because there were constant delays in the building schedule for the AMC. The Committee believes that if the content of the brief did not ‘ring alarm bells’ there was a failure to understand the importance of the information to the community.
- 4.6 The Monitoring and Management Reports referred to in chapter 2 show that the completion date was constantly shifting by small amounts throughout 2007-2008. The Attorney-General drew this to the Committee’s attention noting that at a site meeting on 13 March 2008 BLL advised that the 28 day period could begin at the end of April. Subsequent dates provided were early May, late May, early June, mid-June, early July, mid July, 25 August or 9 September, late September and further dates after the opening. The Attorney-General said ‘...[t]hat has, regrettably, been the pattern of advice that the Territory has continued to receive from BLL’.<sup>72</sup>
- 4.7 The Attorney-General said that this demonstrated that they were ‘...entirely in the hands of the contractor’ and that there ‘...was a continued indication, a formal indication, from the contractor that commissioning was imminent’.<sup>73</sup> When asked if he believed this demonstrated a pattern of behaviour that may need attention the Attorney-General said:

It was frustrating, but I had no choice as the minister except to rely on the advice I was receiving from the people responsible for the project. It is important to remember that the people responsible for the completion of this project were the head contractor, Bovis Lend Lease. If Bovis Lend Lease are advising the Territory’s agents that they are ready to go at a

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<sup>69</sup> This brief was dated 9 September 2008 and received by the Minister’s office on that day. See Transcript of Evidence, 18 February 2009, p 43

<sup>70</sup> Transcript of Evidence, 18 February 2009, p 47

<sup>71</sup> Transcript of Evidence, 18 February 2009, p 44

<sup>72</sup> Transcript of Evidence, 18 February 2009, p 36

<sup>73</sup> Transcript of Evidence, 18 February 2009, pp 36-37



particular point in time, that advice then is relayed by the Territory's agents to me. I rely on that advice in the information that I give to the public and otherwise, and I am not in a position to make any other assessment as to whether or not that is accurate. I can only go on the latest advice available to me at the time.<sup>74</sup>

- 4.8 The Committee finds it difficult to understand why, after at least eight changes of advised delivery date in the six months leading up to the decision to hold the opening, the Attorney-General still considered himself bound to accept BLL's advice as the only relevant factor. The Committee believes it would not have been unreasonable for the Attorney-General and officials to conclude that, as the previous eight advised dates had proven incorrect, it was not unlikely that there could be further changes to this date.
- 4.9 Reliance on the contractor's advice might well have been necessary for matters related to the completion of the contract. However, it appears that briefing on a range of issues contingent on the completion of the AMC, for example, the official opening, transfer of prisoners to the AMC and pressure on existing facilities was not adequate.
- 4.10 The apparent failure to brief the Minister on the progress of the project and the broader implications of the increasing delays is a significant shortcoming. In an environment where the Territory is engaged in an expanded program of public works it is imperative that responsible ministers are well briefed on the progress or otherwise of projects.

## RECOMMENDATION 1

- 4.11 **That client agencies monitor the cumulative effect of delays in capital works projects and ensure that responsible Ministers are regularly and adequately briefed on the overall impact of those delays on the progress of capital works projects.**

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<sup>74</sup> Transcript of Evidence, 18 February 2009, p 37

## RECOMMENDATION 2

- 4.12 **That the Department of Justice and Community Safety review its procedures for ministerial briefing and ensure that ministers receive appropriate and timely briefings.**

### The decision to proceed with the official opening

- 4.13 The Attorney-General stated that had he read the 9 September 2009 brief prior to the opening ‘...the government would still have proceeded with the official opening. There was no way of cancelling the official opening with less than 48 hours notice’.<sup>75</sup> The Committee is satisfied that this is the case and that that brief alone, as written, would not have changed the decision to hold the opening.
- 4.14 The Committee does not believe it is a claim made purely with the benefit of hindsight to say that rather than relying on the latest in a long line of unreliable dates to schedule the official opening, the government could reasonably be expected to have delayed the official opening until it was more certain of the date on which the AMC would begin operations.
- 4.15 The Committee is concerned that the decision was made to hold an opening against a background of consistently altering completion dates and that the Minister was so poorly briefed on delays.
- 4.16 The Committee notes that while a number of reports referred to briefings to ministers, the documents provided to the Committee included few briefings. There were some briefings provided to Mr Hansen as part of his FOI request. Despite repeated requests for a schedule of briefings to ministers on the progress of the AMC project, it was not forthcoming.

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<sup>75</sup> Transcript of Evidence, 18 February 2009, p 44

## **FINDING 11**

- 4.17 **At the time of the official opening, the Minister for Corrective Services was not well briefed on delays in completing the AMC and the impact that this would have on the transfer of prisoners.**

## **FINDING 12**

- 4.18 **The failure to brief the Minister in a timely way led to the inappropriate raising of expectations about the commencement of the operation of the AMC.**

## **FINDING 13**

- 4.19 **The Minister and ACT Corrective Services decided on and proceeded with an official opening on 11 September 2008 despite at least eight changes over the previous six months to the completion date of the AMC.**

## **FINDING 14**

- 4.20 **At the time of the opening, as the Minister was not appropriately briefed on the delays, the community was not adequately informed about the delays to the commencement of operation of the AMC.**

## **Effects of the official opening**

- 4.21 The Government's premature opening of the AMC was unfortunate. It raised the expectation of ACT prisoners and remandees in the ACT and New South Wales that they would soon be moving to a more modern and spacious facility. The subsequent delays and uncertainty are likely to have aggravated the pressure on inmates and Corrections Officers caused by the inadequate facilities outlined in chapter 3. Media and public comment about the delays was no doubt heightened by the fact that the AMC had been officially opened but had failed to begin operations.
- 4.22 The NSW Corrections Service had been informed of the likely opening date of the AMC. NSW ceased to take sentenced ACT prisoners towards the end of 2008. It has been suggested that this may have been because NSW

expected the AMC to be open and so refused to take any prisoners after this point. The Committee has no evidence before it to support this claim.

- 4.23 The Committee believes that the date chosen for the opening was a poor one given the history of the project to that time but will not comment on why the government may have chosen it regardless.

## 5 DELAYS IN THE PROJECT

- 5.1 This chapter sets out the various reasons that have been advanced for why the commencement of operations at the AMC was delayed. The Committee acknowledges that issues around the security system were key factors and this area is examined in detail below. There were other factors suggested as important contributors and the Committee has considered these. This chapter begins by looking at some areas that were suggested as contributing to delays that the Committee is satisfied were not significant. It then examines some areas that may have contributed to delays before examining delays related to the security system.

### Areas not contributing to delays

#### Deletion of Radio Frequency Identification System

- 5.2 The deletion of the Radio Frequency Identification (RFID) system from the contract with BLL was the only major post-contract variation. The RFID system is a bracelet system that allows Corrective Services to know the location of inmates and staff throughout the complex.
- 5.3 The Committee understands that the RFID system was part of the contract signed with BLL and, as it was part of the security system, was the responsibility of Chubb to deliver. Chubb demonstrated their chosen RFID product to ACTCS who decided that they were unhappy with its performance. Chubb claimed that the performance was within the specifications. The parties agreed to remove the RFID system from the contract.<sup>76</sup>
- 5.4 ACTCS undertook to install an RFID system separately from the contract and this installation was underway when the Committee visited the AMC on 4 February 2009. The Committee understands that negotiations over this

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<sup>76</sup> Transcript of Evidence, 3 March 2009, p 147

item occurred early in the process and were not prolonged. The Committee does not consider that the deletion of the RFID system contributed significantly to delays, although it should be noted that BLL were awarded an extension of time in relation to delays caused by giving ACTCS access to the site so that they could install an RFID system. It is also relevant that the original project design included a working RFID system prior to project completion whereas now RFID became a post-completion addition.

- 5.5 The Committee notes that at its hearing to consider ACT Corrections' Annual Report on 28 October 2009 the installation of the RFID system was still not complete. The Minister stated at that hearing that his most recent advice was that the system would be functioning by mid-November 2009.

## **FINDING 15**

- 5.6 **The RFID system was not completely operational at the time that prisoner and remandees were transferred into the AMC.**

## **FINDING 16**

- 5.7 **The lack of the RFID at the time of the transfer of prisoners and remandees meant that the AMC security system, as envisaged, was not fully functional.**

## **RECOMMENDATION 3**

- 5.8 **The Committee recommends that the Minister for Corrective Services report to the Assembly on the installation of the RFID system.<sup>77</sup>**

## **Early Works and Bulk Earthworks**

- 5.9 The Committee had no evidence before it that there were any significant delays caused during the early works or bulk earthworks phases of construction.

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<sup>77</sup> Transcript of Evidence, 28 October 2009, p 29

## Contract negotiations

- 5.10 The Committee understands that contract negotiations were reasonably lengthy but does not consider this unusual given the size of the project. Pre-signature contract negotiations do not appear to have contributed to delays, although disputes about specifications during the construction period did.

## Areas contributing to delays

### Pre-construction planning and design delays

- 5.11 This inquiry has largely focussed on the construction phase of this project and why this was not complete around the end of the third quarter of 2008. The Committee notes, however, that this project had a history before the construction phase and that there were various 'delays' in this period too. As the Minister for Corrections noted '...we took an awfully long time as a Labor government to get the detail down'.<sup>78</sup>
- 5.12 Planning and site selection was a long process and the design phase also took considerable time. The Committee does not see this as necessarily an area deserving criticism. Public consultation and careful thought was needed in the site selection phase and, given that the AMC was intended to be different from existing prisons, it was important that the design was worked through carefully to ensure that it met Corrective Services needs. It is important to remember, however, that the largest delays in this project were not in the construction phase. In 2005 the Government was talking about a completed prison in mid-2007.<sup>79</sup> Given that BLL only had its contract awarded in October 2006, for a project estimated at over 600 days, it can not be held responsible for the construction phase beginning at a much later date than initially planned.

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<sup>78</sup> Transcript of Evidence, 27 February 2009, p 93

<sup>79</sup> See page 9 above.

## Early contract variations

- 5.13 The original brief for the AMC envisioned a larger prison. Economic conditions around the middle of this decade led to sharp rises in construction costs across Australia, driven both by the increased cost of building materials such as steel due to international demand and by increased demand on building contractors by sectors such as the mining industry. In reaction to this, the Government opted to scale back the original AMC project size to try and stay within budget.
- 5.14 The scaling back of the project involved reducing the number of beds from 374 to 300, included downsizing the Transitional Release Centre from 60 beds to 45. The chapel, gymnasium and dog squad were also deleted at this stage. The Committee understands that the footprint and underground services for these buildings were retained so that they could be added at a later date and has been told that construction of the chapel will go ahead within the next twelve months.
- 5.15 The Attorney-General told the Committee that:
- The design variations . . . had no bearing on the contract completion time frames, as these variations occurred before the BLL contract was signed on 11 October 2006.<sup>80</sup>
- 5.16 The Committee agrees that these deletions were made before the contract was signed but notes that these deletions meant that the existing drawings and plans became inaccurate and required redrafting at the beginning of construction.<sup>81</sup> This led to a successful extension of time claim by BLL, as detailed below.

## Agreed extensions of time

- 5.17 In any project the size of the AMC there will be delays caused by events outside the control of the contractor. The method for resolving these delays under BLL's contract is an Extensions of Time (EOT) process.

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<sup>80</sup> Transcript of Evidence, 18 February 2009, p 5

<sup>81</sup> Transcript of Evidence, 8 April 2009, p 259 (in camera)



- 5.18 Following an event which caused a delay BLL submitted an EOT request to the project manager (SKM). The EOT request set out the reason for the delay and the number of days BLL believed it would be delayed. The request was considered by the Territory and either accepted, in full or in part, or rejected. If accepted the contract completion date was moved back by the number of days agreed in the EOT. If rejected BLL had the option to take its request to expert determination, an independent expert who could rule on the validity of the claim.
- 5.19 By the end of 2008 the Territory had agreed to (or had imposed by expert determination) 92 additional days through EOT. Of these, 47 were due to delays caused by wet or windy weather. Expert determination awarded 28 days to BLL due to delays in the Territory supplying some relevant documentation at the beginning of construction. Errors in some drawings added another seven days and the final 10 days related to delays caused by giving ACTCS access to the site to install the RFID system.
- 5.20 These EOTs led to an overall completion date of 2 September 2008.

### **Delays without agreed Extensions of Time**

- 5.21 As noted above, by December 2008 an additional 92 days had been awarded to BLL. At that time BLL had requested more than 256 additional days through the EOT process. BLL had made a number of claims but had not specified the number of additional days they were seeking. The most significant claims are set out below, along with some claimed delays where requests for EOTs had not been submitted at the time of the Committee's hearings.
- 5.22 The Committee make no findings as to whether these disputed EOTs were related to errors on the part of the Territory or the contractor. The Committee understands that these claims are likely to go to expert determination and the experts are best placed to make that determination. The Committee notes, however, that regardless of who is found to be 'at fault' these issues did contribute to delays.

### Doors and windows

- 5.23 SKM noted a BLL request for 75 days in relation to the retrofitting of secure doors and window frames.<sup>82</sup> No witness raised this with the Committee and so it is unclear if this is a live claim but is included here given the number of days claimed. This appears to have been an issue in late 2006 or early 2007.

### Fans

- 5.24 The smoke exhaust fans in the AMC are intended to remove smoke from the building in the event of a fire, allowing occupants to evacuate safely before the fire services arrive. The type of fans installed had to meet particular specifications but it was discovered upon installation that the selected fans would not extract the required amount of smoke and had to be replaced. This issue was being worked on from June to December 2008. This issue has been referred for expert determination.<sup>83</sup>

### Building Management System

- 5.25 The Committee was informed that the Building Management System, which includes systems such as air conditioning and lighting, was not specified as being linked to the Uninterruptible Power Supply (UPS) which activates when mains power is lost. This issue was raised in 2008 but instructions were not issued until March 2009 and the problem was not fixed at the time the prison was handed over.<sup>84</sup> The Committee is unaware whether any EOT request was, or will be, made.

## FINDING 17

- 5.26 **At the time of the commencement of operation of the AMC there was no uninterrupted power supply for the building management system.**

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<sup>82</sup> SKM, Monitoring and Management Report, March 2008, p 9

<sup>83</sup> Transcript of Evidence, 8 April 2009, p 260 (in-camera)

<sup>84</sup> Transcript of Evidence, 8 April 2009, pp 262-263 (in-camera)

## RECOMMENDATION 4

- 5.27 **That the Minister for Corrective Services report to the Assembly on progress with the installation of an uninterrupted power supply for the AMC's building management system**

### **Locks**

- 5.28 The Committee understands that locks were due to be installed by March 2008 but were not finally installed until June 2008 and problems related to this installation were still occurring as late as September 2008. This impacted upon the security system installation.<sup>85</sup>

## **The security system**

- 5.29 Problems with the security system were much publicised and a significant contributor to delays. The paragraphs below explore the issue in greater detail although for reasons of public safety this report avoids discussing the detailed workings of the system.

### **What is the security system?**

- 5.30 The AMC security system has physical and software components. The physical components include fences, alarms, cameras, intercoms and door access controls. Chubb was not responsible for the installation of locks in the AMC as BLL awarded this work to a different sub-contractor.
- 5.31 The key software component of the system is the Security System Integrator (SSI). The function of the SSI is to take the data coming from the various components and present it to the user in a clear and useable fashion. For example if someone pressed an intercom button the SSI might take that information and use it to present on screen a map of the facility with the location of the intercom highlighted.

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<sup>85</sup> Transcript of Evidence 27 March 2009, p 207 (in-camera)

- 5.32 The SSI that Chubb chose to use was manufactured by the US company Lenel. Lenel's parent company is UTC, which is also Chubb's parent company. The Lenel system is well known in security circles and is in use in other Australian correctional facilities.<sup>86</sup>
- 5.33 The security system suffered problems with both physical components and software. The problems can be broadly divided into three types: system 'instability', the 1200 defects and six 'showstopper' defects reported by Webb in November 2008, and a 'catastrophic failure' reported in January 2009.<sup>87</sup> Each of these problems is examined in the following paragraphs.

## FINDING 18

- 5.34 **Problems with the security system were a significant but not the sole contributor to delays in the commencement of the operation of the AMC.**

### System instability

- 5.35 The Committee was advised that at various times the system was "unstable" or "experiencing instability". This appears to have meant that, rather than the whole system shutting down, elements would not work reliably. This description appears to be particularly relevant to the last quarter of 2008 as the system neared and then passed its intended completion date.
- 5.36 As noted earlier, the security system was a "design and build" system. The main area of design for Chubb was in writing the software for the SSI. The Committee was told that all the parts of the security system had been used before and were effectively "off the shelf":

**Ms Hunter:** The main part of the system is not unique; it has been done elsewhere?

**Mr Harlow:** Absolutely.<sup>88</sup>

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<sup>86</sup> Transcript of Evidence, 3 March 2009, p 126

<sup>87</sup> Transcript of Evidence, 27 February 2009, p 58 & p 72

<sup>88</sup> Transcript of Evidence, 18 February 2009, p 29

- 5.37 It became clear, however, that what was novel was the way in which the systems had to interact. The SSI software in its 'off the shelf' state provided the framework for the security system but it had to be customised to address the particular configuration of the AMC. This was a significant software development task. In order to design and build the system Chubb had to implement a 250 page written brief.<sup>89</sup>
- 5.38 The first test of the security system came in the form of a Factory Acceptance Test (FAT). A FAT involves setting up a scaled-down version of the final system in which all the elements and system connections are replicated. The FAT is a demonstration that the SSI is working as it is supposed to and delivering to specification. It is an early opportunity for the client to check that the security system is developing according to their expectation.
- 5.39 The FAT for the AMC system was scheduled for October 2007. Webb cancelled the FAT after they examined the system and determined that it was not sufficiently developed to make a FAT worthwhile. The Committee was advised that it was not unusual for there to be multiple FATs and for the first FAT to be substandard.<sup>90</sup> The FAT was rescheduled to February 2008 and was held with Webb and ACTCS in attendance.
- 5.40 There is some apparent dispute about the result of that FAT. Webb have suggested that it went through "with a caveat on it" and that they would have preferred to have conducted at least one more FAT.<sup>91</sup>
- 5.41 Mr Philip Harlow the principal project manager for SKM noted that there had been problems with the FAT that took "a while" to be resolved and that the test had to be redone but that SKM were, ultimately, "reasonably happy" with the results of the FAT. It was only much later that SKM "became concerned" about a failure to meet the completion date with regard to the security system.<sup>92</sup>

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<sup>89</sup> Transcript of Evidence, 8 April 2009, p 244 (in camera)

<sup>90</sup> Transcript of Evidence, 20 March 2009, p. 175 (in camera)

<sup>91</sup> Transcript of Evidence, 20 March 2009, p. 176 (in camera)

<sup>92</sup> Transcript of Evidence, 3 March 2009, p 134 & p 138

- 5.42 The Committee has examined what appears to be the only documentation that Chubb received about the FAT. This document simply indicated that key features had been demonstrated satisfactorily and that the SSI required finetuning.<sup>93</sup> The following chapter discusses issues around communication in more detail.

## FINDING 19

- 5.43 **Only one Factory Acceptance Test (FAT) was undertaken (in February 2008) on the security system despite some concerns that more work was needed. The FAT was not repeated because of concern about slipping deadlines.**
- 5.44 Following the FAT, development of the system continued. Chubb began completing the Site Testing Acceptance Manual (STAM). The STAM consists of all the procedures for how each element of the security system worked. This was progressively completed as elements of the system were put in place and was regularly forwarded to Webb for their comment.<sup>94</sup>
- 5.45 The process while the STAM was being completed and as the project dragged on appears to be one of consistent patching of the SSI software. As a problem was found a patch was written by Chubb or by Lenel software engineers based in the US.<sup>95</sup> BLL supplied SKM with a set of 'test and inspection plans'. These were intended to indicate that Chubb and BLL had checked the systems and believed that they met specification and were ready for hand over. SKM said that '...it is fair to say that we have never been totally happy with those inspection and test plans'.<sup>96</sup>
- 5.46 The system was not ready for the scheduled contract completion date in September 2008. Chubb continued to work on the system to try and get it working smoothly but at this stage it was agreed to get Webb to do an inspection for defects, a process normally undertaken by the contractor.<sup>97</sup>

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<sup>93</sup> Webb Australia, "Report on the AMC Factory Acceptance Test", 8 February 2008

<sup>94</sup> Transcript of Evidence, 8 April 2009, pp 246-7 (in camera)

<sup>95</sup> Transcript of Evidence, 8 April 2009, p 275 (in camera)

<sup>96</sup> Transcript of Evidence, 18 February 2009, p 17

<sup>97</sup> Transcript of Evidence, 20 March 2009, p 183 (in camera)

## Defects

- 5.47 In November 2008 Webb issued a report saying that they had inspected the security system and discovered 1200 defects including six ‘showstopper’ defects. It was explained to the Committee that a ‘defect’ could be very minor such as the incorrect label on a cable or piece of hardware or an icon on the screen being the wrong colour. Normally the contractor would inspect the system and discover these defects and correct them before the client inspected. The experts informed the Committee that they did not consider 1200 defects to be a particularly large number for a project of this size, although at that stage of the project it would be normal for the contractor to have already rectified them.<sup>98</sup> Chubb and BLL began to rectify those defects.
- 5.48 The Committee examined witnesses about the six “showstopper” defects. The Committee was initially told that “showstoppers” were “those defects which, without being fixed, will prevent the facility being handed over to the client.”<sup>99</sup> It was later clarified that some “showstoppers” would permit the operation of the centre but were considered significant deviations from the specification.<sup>100</sup>
- 5.49 The Committee will not give extensive detail of the six “showstoppers” defects individually. Of the six, which were numbered 2.1 through 2.6 in various documents and in evidence, five were software related and one was hardware related.<sup>101</sup>
- Defect 2.1 involved a difference in interpretation of the specifications and has been rectified to comply with Webb’s interpretation.
  - Defect 2.2 was a bug in software and it was eventually rectified.
  - Defect 2.3 required an easy mechanical fix.
  - Defect 2.4 involved a failure to comply with specification and it was fixed.

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<sup>98</sup> Transcript of Evidence, 20 March 2009, p 183 (in camera)

<sup>99</sup> Transcript of Evidence, 27 February 2009, p 59

<sup>100</sup> Transcript of Evidence, 20 March 2009, p 184 (in camera)

<sup>101</sup> Transcript of Evidence, 3 March 2009, p 143

- Defect 2.5 involved the SSI and its general stability and was fixed through work by Chubb and Lenel.
- Defect 2.6 involved the hierarchy of the security system and at the time of commencement of operations was unresolved.

5.50 ACTCS undertook to correct Defect 2.6 in the course of the first year of operation of the AMC. The Minister for Corrections told the Committee:

...the nature of the defect is such that it will not prevent the operation of the prison. The client regards project delivery of this—with this defect—as acceptable as it poses minimal risk to the operation of the facility.<sup>102</sup>

5.51 Defect 2.6 involves the hierarchy of the system, how the master control room and other control points relate to each other.<sup>103</sup> There is a clear dispute here over the specification. Webb and the Territory claim that the system as currently set up does not meet the specification. Chubb and BLL say that the system does meet the specification and that Lenel cannot manage the hierarchy issue in the way Webb wants, and does not do so in the other secure facilities in which it is installed.

5.52 The dispute over this specification was significant and aspects of it are discussed in the following chapter regarding communication. It has currently been resolved by changing the operational guidelines by which controllers operate in the prison. Chubb gave the Territory two options for making the system work the way they wanted it to: one a quick software patch and one a more comprehensive solution involving a Lenel update. The Territory opted for the latter but until the specification dispute is settled it is unclear who will pay for this work.

## FINDING 20

5.53 **At the time of the commencement of operation of the AMC Defect 2.6 was unresolved.**

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<sup>102</sup> Transcript of Evidence, 27 February 2009, p 70

<sup>103</sup> Transcript of Evidence, 3 March 2009, p 127



## RECOMMENDATION 5

- 5.54 **That the Minister for Corrective Services report regularly to the Assembly on progress to rectify Defect 2.6 ( involving the hierarchy of the security system and how the master control and subordinate control points relate to each other) which, at the time of commencement of operations, remained unresolved and that the Minister also advise the Assembly when the defect has been rectified.**
- 5.55 The Committee has looked at the specification and heard from all parties involved as to their interpretation. The Committee will not make a finding as to who is correct in their interpretation as this dispute has been referred to expert determination which will resolve interpretation will be accepted. The Committee notes, however, that this appears to be a genuine difference of opinion and is not the result of either party being intransigent, unreasonable or seeking tactical advantage. No specification is perfect and these kinds of disputes are not unusual in a project of this size and type.

### Catastrophic failure

- 5.56 When the Committee visited the AMC site on 4 February 2009 it was clear to the Committee that there were problems with the security system. The Committee was unable to enter certain buildings or go through some doors because the system could not open them. There appeared to be significant problems with the security system some months after the scheduled completion date. The minutes of site meeting held the day after that visit refer to these problems as “catastrophic system failures.”<sup>104</sup>
- 5.57 The Committee heard from all parties about this failure. It was caused by a comprehensive failure of a large number of components installed in the security system. The failure was due to a manufacturing fault in the entire batch of the particular component. Neither BLL nor Chubb were responsible for the manufacture of these components which were sourced from a reputable manufacturer.<sup>105</sup> The Committee is satisfied that this failure was so

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<sup>104</sup> Minutes of Site Meeting No 62, 5 February 2009, p 2

<sup>105</sup> Transcript of Evidence, 20 March 2009, pp 190-191 (in camera)

unusual and unforeseeable that there were no steps that either the Territory or the contractor could have been reasonably expected to take to prevent it.

- 5.58 While this failure was beyond the control of Chubb it had the unfortunate effect of introducing a difficult to diagnose hardware problem into the system just as Chubb was attempting to address the last of the software issues. This had the effect of making it more difficult to resolve the stability problems already identified. Some comfort can be drawn from the fact that had the AMC commenced operations on time, the prison may have been fully occupied when these components began to fail, so in this case the delay may have provided an unexpected benefit.

## Conclusion

- 5.59 It is clear that the security system is linked to significant delays in the project. It is also clear, however, that there were other issues. When the Committee visited the project site in February 2009 there was work going on at the site that was clearly not related to the security system.
- 5.60 In addition to the delays with the installation of windows and locks, the Committee is aware of a number of incidents where workers on the site working on other aspects of the project caused damage to the security system.<sup>106</sup> This damage then had to be diagnosed and repaired adding to delays and the difficulty of tracking down software problems. Part of testing the security system involves having a site where people are not constantly making use of it by, for example, opening and closing doors and it appeared that Chubb struggled to receive a clear site.

## FINDING 21

- 5.61 **The development of the security system for AMC was adversely affected by other delays such as delays in fitting of locks, general delays in other systems and damage to work already done.<sup>107</sup>**

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<sup>106</sup> Transcript of Evidence, 20 March 2009, p 209 (in camera)

<sup>107</sup> Transcript of Evidence, 20 March 2009, p 204 (in camera)

- 5.62 It was suggested to the Committee that Chubb could have “developed the security system integrator many months or years before and have it installed at any point in time.”<sup>108</sup> The Committee does not believe that this is an accurate assessment of the situation. While the SSI framework could be developed earlier, there was always going to be a need for working on the software once the physical components were all installed and connected to the SSI.
- 5.63 Chubb bear some responsibility for delays in the security system but it would be unfair to suggest, as the Attorney-General has, that they are the sole reason for delays in the project.<sup>109</sup> As this chapter has discussed there were various other factors involved, not all of which were in Chubb’s control.
- 5.64 While the parties are divided on the degree of Chubb’s responsibility for the delays, they are in general agreement that, as the delays continued, Chubb was doing everything it could to fix the problems. The Minister for Corrections told the Committee that:

There is absolutely no reason at all that I can think of—and I have been involved in the security game on and off for 40 years—and there is no way that if the name of Chubb as a subcontractor was put up that I would suspect that they could not deliver; full stop. I have, and continue to have, every confidence that they are an above-par and above-average contractor in this particular game.<sup>110</sup>

## FINDING 22

- 5.65 **While there were significant delays in installing the AMC security system not all the delays were due to the security system as the Attorney General has contended.**

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<sup>108</sup> Transcript of Evidence, 20 March 2009, p 172 (in camera)

<sup>109</sup> Transcript of Evidence, 18 February 2009, p 3

<sup>110</sup> Transcript of Evidence, 27 February 2009, p 86



## 6 RISK MANAGEMENT AND ADDRESSING THE DELAYS

- 6.1 It has been suggested to the Committee that the delays experienced by this project were not particularly unusual for a project of this size. There are various factors that can interfere with timely completion of a project with many different parties and a range of complex requirements. The Committee therefore thinks that it is appropriate to examine what steps the parties took to mitigate the risk of delays.

### Risk management

- 6.2 A comprehensive risk management plan appears to have been in place throughout the project and SKM reported on developments to risks in its Monitoring and Management Reports. From the beginning problems with the security system received the highest risk ranking. Under the plan's ranking, system security system problems were assessed as "likely" and the consequences of such problems as "major". Given the complexity of the security system compared to other elements of the project and its importance to the successful operation of the prison the ranking was clearly justified.
- 6.3 The risk management plan also contained 'Strategy / actions to reduce risk'. For the security system these were:
- ongoing communication with the client;
  - security Systems Design and construction interaction involving all parties; and
  - progressive design review including shop drawings.
- 6.4 These issues will be examined below as communication issues but there was an element of risk management prior to the construction phase and that involved the selection of the contractors and sub-contractors.

## Selection of sub-contractors

- 6.5 The ACT Government, unsurprisingly, did not have the expertise in-house to construct a \$110 million prison. It therefore went through a tender process to engage companies to design and construct the AMC. The process is detailed in chapter 2 but it is worth noting the approach taken regarding the provision of security system design and construction services.
- 6.6 The ACT Government did not directly contract Chubb. BLL had a contract with the Territory and it was their responsibility to engage a subcontractor capable of delivering the security system. BLL was not free to choose any subcontractor, however. The Territory provided, at the tender stage, a list of five companies it considered had the appropriate expertise to deliver the security system. This shortlist (Honeywell, Chubb, Sielox, TAC or SEME) was drawn up on advice from Webb and was one way in which the Territory sought to mitigate the risk of problems with the security system.<sup>111</sup> BLL opted to use Chubb as their subcontractor.
- 6.7 BLL's contract contained the following clause:
- When requested, before engaging any Subcontractors and at any other times, the Contractor must provide to the Principal unpriced copies of any Subcontracts, the names and addresses of proposed Subcontractors and, the names and addresses of Subcontractors. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must at its own cost propose another Subcontractor.<sup>112</sup>
- 6.8 It was therefore open to the Territory to object to the appointment of Chubb. Given that the Territory had shortlisted Chubb, however, this would have been an unusual response. There was no reason to suspect at the contract stage that Chubb would not be able to successfully deliver the security system. The Minister for Corrections told the Committee:

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<sup>111</sup> Transcript of Evidence, 3 March 2009, p 122

<sup>112</sup> Main Works Contract, clause 32.2.

...firstly, Bovis Lend Lease have got incredibly good credentials for doing projects of this size; and, secondly, so do Chubb in delivering security systems, both electronic and static, across the country and internationally. And there was absolutely no indication to us at the contract stage, contrary to the warning stage, that they could not deliver on the specifications.<sup>113</sup>

- 6.9 At the tender response/contract negotiation stage Chubb supplied a "Statement of Compliance". This document requires the contractor to go through the specification step by step and state that they are able to deliver it. In some areas they stated compliance, in other the ability to exceed the requirement, and in others only partial compliance. Partial compliance statements were then the subject of further negotiation finalise before the contract negotiations concluded.<sup>114</sup>

## Communication issues

- 6.10 The Committee noted at the first public hearing in this inquiry that the AMC project had a complex management structure and a large number of parties involved. The Committee believes that this complexity had, at times, a negative impact upon the parties' ability to clearly communicate with each other.
- 6.11 By way of example it is worth examining the communication lines that were involved when issues arose with regard to the security system. If Chubb had a problem with the system or question about the specifications they would contact the head contractor, BLL. BLL might then write to SKM who would have passed the correspondence on to CSMR who, in turn, would pass it to their security consultant Webb. Any response would then have been passed from Webb to CSMR to SKM. SKM had its own in-house security experts who might have become involved at this point. If the correspondence raised issues about the contract then Procurement Solutions would have become involved and they, in turn, might have consulted the client, ACT Corrective

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<sup>113</sup> Transcript of Evidence, 27 February 2009, p 91

<sup>114</sup> Transcript of Evidence, 3 March 2009, pp 122-123

Services. The response would then have been forwarded to BLL, where it might have been considered by their in-house security experts, before eventually getting to Chubb.

- 6.12 Mr Harlow of SKM told the Committee that his company's role was:
- ...to act as the go-between between the territory and the contractor. We issue instructions direct to the contractor; they pass them down to their subcontractors. Whilst we talk to the subcontractors, we do not give them direct information. It is through the contractor. Any instructions are always through the contractor.<sup>115</sup>
- 6.13 The Committee also heard that communications around the security system was more difficult and often more formal than for other parts of the project. This was put down to the pressures on the security consultant employed by Webb Australia.<sup>116</sup>
- 6.14 The Committee does not wish to suggest that the communication chain described above was the only way in which issues were dealt with or that there were not various ways in which shortcuts through the process were used as part of day to day workings on the project site. Having heard the evidence, however, the Committee concludes that the communication lines around the security system were less than ideal and that this has been acknowledged by both parties.<sup>117</sup>
- 6.15 Given that good communication around the security system was identified as the key to managing the highest ranked risk to the project, it is unfortunate that that communication often appears to have been subject to contradictions between formal and informal positions and a lack of a clear problem solving mechanism when delays became apparent. Despite problems in the security system being apparent from April-May of 2008,<sup>118</sup> communication in this area did not seem to improve.

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<sup>115</sup> Transcript of Evidence, 18 February 2009, p 22

<sup>116</sup> Transcript of Evidence, 8 April 2009 (in camera)

<sup>117</sup> Transcript of Evidence, 20 March 2009, p 177 (in camera)

<sup>118</sup> Transcript of Evidence, 18 February 2009, p 3



- 6.16 The Committee noted some occasions where Webb had a clear understanding of what it wanted or what it considered needed rectifying that was not reflected in the formal correspondence that made it to the contractors. On the somewhat infrequent occasions when the key players in the security system met and talked through issues the parties have different recollections of the conversations. The dispute over defect 2.6 highlighted the communication problems endemic in the project.
- 6.17 At a time when there was an expectation that the prison would be opening a lot of effort was going into a contractual dispute rather than rectifying the problem. Upon assuming the Corrections portfolio Mr Hargreaves brought the parties together and urged them to place the issue of who was responsible to one side for later resolution and to focus on the practical matter of establishing a working security system.
- 6.18 Mr Hargreaves described his intervention as follows:
- Then I became the minister and said: “Look, I just want this conversation to stop. What I want is for you to get on and do the software development that gets this thing up and running, and worry about all that other stuff later.” I do not care whether it is in the specifications or not for the purposes of this argument. The fact is that the system was not working. Somebody had to get to work and get it working. They did that. What was happening was that there was a contention between SKM and the contractor and subcontractor about whether the specifications had been delivered. That conversation was months, and continually, until I took over as minister and said that I had had enough. It was continual.<sup>119</sup>
- 6.19 The Committee acknowledges the value in this approach taken by the Minister and considers it unfortunate that it was not taken earlier.
- 6.20 This issue continued to generate confusion. For example when the parties involved in providing the solution to defect 2.6 appeared before the

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<sup>119</sup> Transcript of Evidence 27 February 2009, p 89

Committee, they still seemed to be waiting for a response from the other before proceeding.<sup>120</sup>

- 6.21 In conclusion the Committee considers a more streamlined management structure may have assisted with communication.

## FINDING 23

- 6.22 **The Committee finds that communications failures between the various parties – client, contractors and sub-contractors - contributed to delays in the finalisation of the AMC's security system.**

### Scheduling advice

- 6.23 As detailed in chapter 4, the Territory was receiving constantly shifting advice from BLL on the likely completion date and the readiness of the security system. BLL appears to have provided advice at times that the system was ready for testing but it became clear when testing started that there was still work to do. The Committee does not feel that it has received sufficient explanation from the contractor and subcontractor as to why this erroneous advice was delivered. Chubb and BLL held regular meetings where they discussed the dates that were then given to the Territory. This is a matter that must be addressed between BLL and Chubb. It is clear, however, that the Territory was given incorrect information about scheduling on numerous occasions and this doubtlessly did not make for a conducive working relationship between the Territory (and its agents) and the contractor (and subcontractors) and undermined trust in BLL's statements about the project.
- 6.24 The issues around scheduling were not assisted by a lack of checkpoints in the development of the security system other than the FAT. Software development is a fluid process and it appears that it was difficult to establish what point Chubb's work had reached. The Committee was struck by the lack of milestones or key dates in the contract or project timelines that

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<sup>120</sup> Transcript of Evidence 3 March 2009, p 143

related to the security system, a system identified as having the top risk ranking.<sup>121</sup>

## FINDING 24

- 6.25 **The Committee finds that there was insufficient time scheduled between the completion of the physical structures of the AMC and the overall completion date to allow the security contractors clear access to the building to complete their work.**

## RECOMMENDATION 6

- 6.26 **The Committee recommends that the ACT Government in negotiating contracts for future major projects make reasonable allowances for probable delays and adopt realistic construction schedules.**

### **Costs and liquidated damages**

- 6.27 When it became clear that the project would not be delivered on time the question arose as to who would pay for the delay. This question is not yet resolved as there are still expert determinations about extensions of time to be concluded and there may be other proceedings begun between the parties that will need to be resolved. There is, however, a clause within the contract allowing the levying of liquidated damages.
- 6.28 The Minister for Corrections explained that:
- In relation to the possible payment of liquidated damages under the prime building contract, the contract makes provision for the payment of liquidated damages at the rate of \$44,000 per day, capped at three per cent of the total value of the project. The total amount of liquidated damages that might be paid would be three per cent of the total contract price, once the project is completed.<sup>122</sup>
- 6.29 The Committee was advised that the contract was a 'standard, generally well used, New South Wales form of contract'<sup>123</sup> and that liquidated damages

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<sup>121</sup> Transcript of Evidence, 3 March 2009, pp 133-134

clauses had been applied in the Territory in the past.<sup>124</sup> Liquidated damages were originally presented to the ACT community as a *fait accompli* as in this statement by the Chief Minister:

As a result of the foresight and the good management of JACS officials, there were default clauses built into the contracts with Chubb, and all the costs of the delay have been met by Chubb.<sup>125</sup>

6.30 This statement was factually incorrect and the Chief Minister subsequently wrote to members of the Assembly to correct the record. The first problem is that the Territory does not have a contractual relationship with Chubb. The Territory has a contract with BLL and so any damages would need to be extracted from BLL not Chubb. The second problem is that it is not simply a case of passing the completion date and then knowing that the contractor will pay damages for each day after that.

6.31 By November 2008 SKM reported that work was:

...99% financially complete . . . No payments were made in September or October and only a small payment has been made in November as the contractual completion date has passed and the value of liquidated damages hence due exceeds the sum payable under the current progress payments.<sup>126</sup>

6.32 Officials explained that all matters around variations and EOTs had to be settled before any question of liquidated damages arose. As the CEO of JACS put it:

Ordinarily the outcome is settled more often by negotiation, in which case it is not necessarily possible to say that a particular clause has been the one that carried the day. It is a series of clauses in the contract, all of which are taken into account in the negotiated outcome.<sup>127</sup>

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<sup>122</sup> Transcript of Evidence, 27 February 2009, p 55

<sup>123</sup> Transcript of Evidence, 18 February 2009, p 39

<sup>124</sup> Transcript of Evidence, 18 February 2009, p 49

<sup>125</sup> Legislative Assembly Hansard 10 Dec 2008, p 205

<sup>126</sup> SKM Monitoring and Management Report, November 2008, p 8

<sup>127</sup> Transcript of Evidence, 18 February 2009, p 49

- 6.33 The Committee understands that the process of establishing what, if any, amount of liquidated damages will be applied is a matter for negotiation and settlement between the parties. It is worth noting, however, that were the contract completion date to remain unchanged at 2 September 2008 and the full \$44,000 per day to be charged, damages would reach the 3% of the contract cap before the end of 2008 and there would be no recompense for the delays in 2009.
- 6.34 The Minister for Corrections explained the cost to the Territory as follows:
- The main cost is associated with the delays in maintaining ACT sentenced prisoners in the New South Wales system longer than anticipated. Based on the assumption that all ACT prisoners would be accommodated in the AMC by the end of May 2009, this cost, with offsets associated with the AMC not being occupied sooner, is estimated to be in the order of \$2.333 million. Other costs, covering such items as reopening Quamby, storage, insurance and extension of fees to the project management consultants and design consultants have been estimated to be in the vicinity of \$1.05 million, making the total cost of delays to be an estimated \$3.383 million. This total amount can be accommodated either by the ACT Corrective Services recurrent budget or, in the case of the insurance and consultancy fees, the capital budget for the project.<sup>128</sup>
- 6.35 In a letter to the Committee on 26 October 2009 the Minister for Corrections provided a revised figure of \$3.516 million as the overall cost to the Territory of the delay in the construction of the AMC. The extra cost of maintaining prisoners in NSW had not changed while the other costs had increased to \$1.183m.
- 6.36 The final cost to the Territory will not be known until the contract negotiations are completed and determinations, mediations and other processes are finalised. It is clear, however, that the Territory is highly unlikely to fully recoup the costs caused by delays in the commencement of operations at the AMC.

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<sup>128</sup> Transcript of Evidence, 27 February 2009, pp 54-55

**FINDING 25**

- 6.37 **At the time of reporting the total cost to the ACT of delays in construction of the AMC is \$3.516 million.**

**RECOMMENDATION 7**

- 6.38 **That the Minister for Corrections report regularly to the Legislative Assembly about progress with the negotiations around liquidated damages relating to the AMC contracts.**

**RECOMMENDATION 8**

- 6.39 **That the Minister for Corrections, upon completion of the negotiations around liquidated damages, report the quantum of liquidated damages received by the ACT to the Legislative Assembly of the ACT within three sitting days.**

**Other issues**

- 6.40 The Committee notes that if there is one group that was looking forward to the arrival of the AMC as much as the prisoners it was the corrections officers. The working environment and inadequate facilities that the staff of ACT Corrective Services had had to work with have made an already difficult job tougher. The Committee hopes that corrections staff will embrace the opportunity that the AMC provides to leave behind the atmosphere of the BRC and create a new culture.
- 6.41 The Committee recognises the opportunities the AMC provides for an improvement in the provision of corrective services in the ACT. Throughout the course of this inquiry the Committee has encountered issues that are not relevant to this inquiry but to how the AMC will operate now it is open. These issues include the provision of drug and alcohol services within the AMC, in particular the absence of a detoxification facility, the interface between the AMC and mental health services and the funding of community groups to provide services to prisoners and post-release support. The Committee looks forward to discussing these issues with Minister and officials in the future.

## 7 CONCLUSION

- 7.1 While this report has examined the causes for the delays in the completion of the AMC this matter will not be finally settled until all expert determinations are concluded and any legal proceedings are finalised. The aim of this report has been to work through these issues in a clear manner for the benefit of an ACT community uncertain as to why it took six months for prisoners to enter a prison that had been officially open.
- 7.2 The Committee notes that the construction delays were part of a long history of delays in the progress towards an ACT prison. Almost every stage, from the political decision to have a prison, to site selection and design has taken longer than expected.
- 7.3 The Committee has noted many different contributions by different parties to the delays experienced by the project. Generally the Committee has not found behaviour that would attract serious condemnation. There were various minor mistakes and oversights that the Committee suggests are almost inevitable on a project of this size.
- 7.4 The security system was clearly a major contributor to the delays but, contrary to the assertions of the Attorney-General, the responsibility for these delays does not lie entirely with Chubb.
- 7.5 This report has largely focussed on the specific issues around the AMC project and so has made few recommendations. In concluding, however, the Committee would like to focus on some areas where improvements may assist future projects.

### **Project Management**

- 7.6 The management structure around this project was a complex one and this clearly resulted, at times, in less than ideal communications. The project governance and procurement structures shown in chapter 2 were overly complex with too many layers of responsibility between the client and the contractors. At the same time actual responsibilities for decision making and reporting were not clear.

- 7.7 The distance between the client and the contractors was exacerbated by the structure put in place. While it is inevitable that the management, design and construction of a large project will involve large numbers of contractors and sub-contractors, in this case the communication problems that such a complex structure necessarily presented were never satisfactorily resolved. This would seem to be particularly true in the latter stages of the project with regard to alerting the client and the Government to the implications of the accumulating delays.

## RECOMMENDATION 9

- 7.8 **The Committee recommends that for future large capital projects, the ACT Government seek to set up management structures that facilitate clear lines of communications and responsibility.**
- 7.9 The Committee was told that the CEO of JACS was the person ultimately responsible for the project,<sup>129</sup> but the CEO was very removed from the project itself. The involvement of Mr John Paget, who the Minister for Corrections described as ‘...one of the pre-eminent people in corrective services in Australia,’<sup>130</sup> was a sensible step in attempting to ensure that the client’s involvement in the project was effective. It was clearly a considerable loss to the project when he moved on.
- 7.10 In order to simplify this structure the project director’s role should be re-examined. One option would be for project management to be run from ACT Procurement Solutions. As Procurement Solutions is already acting as the Territory’s agent and managing contractual matters this would be a good fit.
- 7.11 The Committee acknowledges that Procurement Solutions did not believe that it had the requisite expertise to undertake the project management role on the AMC project. The question is whether it should seek to acquire that expertise and apply it to the various projects that are being considered, including transport projects, hospital expansion and the creation of a

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<sup>129</sup> Transcript of Evidence, 27 February 2009, pp 77-78

<sup>130</sup> Transcript of Evidence, 27 February 2009, p 94



forensic facility. This inquiry was not able to look at this issue in depth but believes it deserves closer examination.

## RECOMMENDATION 10

- 7.12 **The Committee recommends that the Standing Committee on Public Accounts, as part of its inquiry into ACT Government Procurement, review the contract management issues raised by the AMC project.**

## RECOMMENDATION 11

- 7.13 **The Committee further recommends that the Standing Committee on Public Accounts, as part of its inquiry into ACT Government Procurement, consider whether ACT Procurement Solutions should develop an in house project management capability.**
- 7.14 An alternative approach for the AMC project would have been to have the design consultant and project management roles undertaken by one company or joint venture. This is not an uncommon approach on large construction projects and has the advantage of having those people with the most direct contact to the on site workers also communicating the client's expectations.
- 7.15 The Committee would like to thank all those who contributed to this inquiry.

Vicki Dunne MLA

Chair

19 November 2009



## **APPENDIX A: List of Submissions**

1. Mr Rob King, Melba, ACT
2. Chubb Australasia
3. Commonwealth Public Sector Union



## APPENDIX B: List of Witnesses

### 18 February 2009, Canberra

Mr Simon Corbell MLA, Attorney-General

Ms Renee Leon, Chief Executive, Department of Justice and Community Safety

Mr Barry Folpp, Director, Prison Project, and Deputy Executive Director,  
ACT Corrective Services, Department of Justice and Community Safety

Mr James Ryan, Executive Director, ACT Corrective Services, Department of Justice  
and Community Safety

Ms Robyn Hardy, Executive Director, ACT Procurement Solutions,  
Department of Territory and Municipal Services

Mr Phil Harlow, Principal, Sinclair Knight Merz

### 27 February 2009, Canberra

Ms John Hargreaves MLA, Minister for Corrections

Ms Renee Leon, Chief Executive, Department of Justice and Community Safety

Mr Barry Folpp, Director, Prison Project, and Deputy Executive Director,  
ACT Corrective Services, Department of Justice and Community Safety

Mr James Ryan, Executive Director, ACT Corrective Services, Department of Justice  
and Community Safety

Ms Robyn Hardy, Executive Director, ACT Procurement Solutions,  
Department of Territory and Municipal Services

Dr Helen Watchirs, ACT Human Rights and Discrimination  
Commissioner

### 3 March 2009, Canberra

Ms Robyn Hardy, Executive Director, ACT Procurement Solutions,  
Department of Territory and Municipal Services

Ms Margaret Mialkowska, Acting Manager, Infrastructure  
Procurement Team, ACT Procurement Solutions

Mr Phil Harlow, Principal, Sinclair Knight Merz

**4 March 2009, Canberra**

Mr Hugh Smith, President, Prisoners Aid (ACT)

The Committee also conducted in-camera hearings on 20 & 27 March 2009 and 8 April 2009.