

**MEDIA RELEASE****31 March 2021****Court Transport Unit vehicle**

Today the Speaker tabled the **Court Transport Unit vehicle – Romeo 5** performance audit report from the Auditor-General, Mr Michael Harris, in the ACT Legislative Assembly. Romeo 5 is an ACT Corrective Services vehicle that was intended to transport up to eight detainees and two custodial officers. Due to the vehicle not complying with weight requirements when loaded to its full capacity it can now only be used to carry a maximum of four detainees and two custodial officers. The audit considered ACT Corrective Services' procurement processes and subsequent management arrangements for the vehicle.

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

The report identified that ACT Corrective Services engaged a preferred supplier (the Byron Group) without testing the market or seeking alternative quotes. Mr Harris says 'This was not appropriate for a complex and high-risk procurement such as this and shows a predetermined outcome was being sought without consideration of alternative solutions or suppliers'. The audit found a fundamental failure is that ACT Corrective Services did not have a contract with the Byron Group, which adequately documented the specifications and requirements for the vehicle and timeframes for its delivery.

The audit found that as a result of the procurement failures, the Court Transport Unit vehicle that was commissioned is not fit for purpose and is now largely redundant. Mr Harris says 'Romeo 5 has not been effectively used as a detainee transport vehicle since its commissioning in 2018. Prior to the identification of workplace health and safety risks associated with its carrying capacity in November 2019, the vehicle was seldom used and was out of service for extended periods of time for repairs and maintenance'.

The audit report made two recommendations for improvement. The recommendations are aimed at ACT Corrective Services improving its procurement framework, reviewing its need for, and use of, the vehicle and outlining a clear vision of what its expectations are for the use of Romeo 5 for the duration of its lease.

The summary of the **Court Transport Unit vehicle** audit, with audit conclusions, key findings and recommendations is attached to this media release.

Copies of **Court Transport Unit vehicle – Romeo 5: Report No. 03/2021** are available from the ACT Audit Office's website [www.audit.act.gov.au](http://www.audit.act.gov.au). If you need assistance accessing the report please phone 6207 0833.

## SUMMARY

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

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

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

## Conclusions

### PROCUREMENT OF ROMEO 5

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

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

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

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

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

### MANAGEMENT OF ROMEO 5

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

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

## Key findings

### PROCUREMENT OF ROMEO 5

#### Paragraph

ACTCS did not prepare a business case to inform the procurement of a large multi-detainee transport vehicle. This was a missed opportunity to assess the operational and technical requirements, potential suppliers’ likely costs (including whole-of-life costs) and any potential implementation issues and risks of proceeding with a procurement. The lack of a business case, and the good governance and sound decision-making that it would foster, hampered the procurement and its decision-making processes.

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

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

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procurement risk management hampered the procurement and its decision-making processes.

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

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

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

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

There is evidence that ACTCS considered the financial implications of a range of options for the procurement including: purchase and own the vehicle and detainee module (Option 1); fully lease the vehicle and detainee module through SG Fleet (Option 2); and lease the vehicle and purchase the detainee module (Option 3). The analysis showed Option 2 was the most cost-effective for a five year scenario 2.57

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

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

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

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inappropriate that ACTCS relied on SG Fleet to engage with the Byron Group for the construction and delivery of the eight-seater detainee transport vehicle.

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

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

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

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

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

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

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

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licenses with an upgraded cab chassis. In this instance, the SEVA representative advised that it erred on the side of caution by not proceeding with the build.

## MANAGEMENT OF ROMEO 5

Paragraph

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

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

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

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

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Following the implementation of the mandatory Operating Procedure in December 2019, there was no evidence of occurrences where Romeo 5 was loaded with more

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than four detainees on one journey. There was one occurrence (30 January 2020) where Romeo 5 transported the maximum permitted number of four detainees in one journey.

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

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## Recommendations

### RECOMMENDATION 1 ACT CORRECTIVE SERVICES PROCUREMENT FRAMEWORK

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

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

### RECOMMENDATION 2 FUTURE USE OF ROMEO 5

ACT Corrective Services should:

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

## Response from entities

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

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

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

No comments were provided for inclusion in this Summary Chapter.