

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO THE TRANSPORT OF PERSONS IN CUSTODY IN WESTERN AUSTRALIA

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

SESSION ONE

Members

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

Hearing commenced at 9.45 am**Ms ROSALIND RUSSELL-SMITH****Managing Solicitor, South Hedland Office, Aboriginal Legal Service, sworn and examined:**

The CHAIRMAN: I am Liz Behjat, the Chairman of the committee; I represent the North Metropolitan Region. Also in the room are the Deputy Chair of this committee, Hon Darren West, who represents the Agricultural Region; Hon Amber-Jade Sanderson, who represents the East Metropolitan Region; Hon Jacqui Boyde, who represents the Mining and Pastoral Region; and Hon Nigel Hallett, who represents the South West Region. They are the members of the committee. We also have with us our advisory officer, Dr Julia Lawrinson. Hansard is here taking down notes. We also have our advisory officer, Felicity Mackie, and our committee clerk, Tracey Sharpe. Do you have anyone with you or are you on your own?

Ms Russell-Smith: I am on my own.

The CHAIRMAN: Thank you very much for taking the time to do this hearing with us today. I must ask you to take an affirmation.

[Witness took the affirmation.]

The CHAIRMAN: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Ms Russell-Smith: I have.

The CHAIRMAN: The proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, especially as we do not have you in front of us, could you please quote the full title of any document you refer to during the course of this hearing for the record. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request the evidence be taken in closed session. At the moment we do not have anyone in the public gallery, but if we did and you wanted to say something in private, you would have to ask us to do that and we would make a decision on it and let you know if we grant your request and then we would exclude from the hearing anyone who was from the public.

Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

They are the formalities out of the way and we can now start with the hearing. You are the first witness to give evidence in this hearing, so it is nice to know that you are first cab off the rank, as it were. Do you want to make an opening statement or would you like us to ask you questions related to your submission?

Ms Russell-Smith: I do have an opening statement if you want to hear that.

The CHAIRMAN: Yes, that would be terrific.

Ms Russell-Smith: I will begin perhaps by thanking the committee for taking the time to hear from me this morning. I certainly appreciate the committee facilitating my appearance today by way of phone link. Briefly, if I can take a moment perhaps to set out my own background and experience, it will, I think, become apparent that the evidence I can usefully give today will be that of an on-the-ground perspective as to how the arrangements that are currently in place in relation to court

security and custodial services play out in practice, with the focus very much on the regional and remote experience. I am not really in a position to give evidence in relation to matters associated with the court security and custodial services contract itself, or memorandums of understanding that may sit between different agencies. Those things are simply beyond my knowledge.

In terms of my background, from 2007 to 2009, I was the coordinator of the Indigenous justice taskforce for the Aboriginal Legal Service. This taskforce was established to eventually deal with the large number of sexually based charges flowing from the Kimberley region. This necessarily involved the movement of large numbers of accused persons, in many cases Aboriginal people from remote and isolated communities between those communities, remand facilities throughout the state and the Broome, Derby and Kununurra court precincts. I then spent a period of around 12 months working in the North Australian Aboriginal Justice Agency based in the Katherine region, servicing some of the most remote Aboriginal communities in the country, including the likes of Lajamanu and Borroloola. I returned to Western Australia as managing solicitor of the South Hedland office of the Aboriginal Legal Service in late 2010. I have now been in this role for almost five years. The South Hedland office provides criminal law services for the whole of the Pilbara region, including the townships of South Hedland, Port Hedland, Roebourne, Karratha, Newman and Marble Bar, and the Aboriginal communities of Jigalong, Nullagine and Yandeyarra. My recent experience then is the Pilbara. The Pilbara provides what can be useful case studies because it is an exceptionally busy jurisdiction where the distance that accused persons travel in custody is significant and cooperation between service providers is rigorously tested in an environment that is remote and under-resourced and where facilities are often inadequate.

[9.50 am]

The committee has received two written submissions that I am able to speak to. The first is a general submission from the Aboriginal Legal Service. The second is a submission from the Pilbara offices of the Aboriginal Legal Service and the Legal Aid Commission, with an intentional focus very much on that region. The submissions address a number of issues, some of those perhaps being more relevant to the committee's current inquiry. Today I want to draw the committee's focus particularly to those issues raised in the two submissions that are perhaps the most pressing and the most relevant. The first of those issues is the complete lack of security at regional and remote court houses across the state. In relation to the Karratha Court House, the situation is at crisis point. As a lawyer who provides services at that court precinct, I can say without doubt that the current arrangement is not capable of achieving a safe environment for victims, accused persons or for those who work within the court precinct. The Karratha Court House continues to operate as a circuit court. It should not. It is commonplace for a daily court list in Karratha to have somewhere in the vicinity of 140 matters listed. There are generally fresh arrests that come through the court on top of any existing listings, and the court is often required to link into up to five separate remand facilities to conduct video-link appearances with accused persons who have previously been refused bail. It follows that accused persons can wait within the court precinct from the early hours of the morning until the early evening, only to find that their matter has been administratively adjourned to a later date because there simply was not time to deal with them as such.

The court facilities are old and inadequate, with only one waiting area and one interview room where lawyers can take instructions. Ordinarily a lawyer from the South Hedland offices of both the Aboriginal Legal Service and also the Legal Aid Commission attend, and together they will appear in relation to the great majority of listed matters. There is a volatile mix of people in the waiting area—fly in, fly out workers, often frustrated with the long delays; drug and alcohol affected persons; people with significant mental health issues and cognitive impairment, together with young people who have matters with the Children's Court; victims and applicants seeking protection of violence restraining orders. There is no adequate court facility. Serco is not contracted to provide these services. It is submitted that it is completely unrealistic to expect the police prosecutor and police officer acting as orderlies or those who are working within the confines of the courtroom to

be able to provide any degree of security services to be sufficient to provide a safe environment. There have already been numerous security incidents within the Karratha Court precinct, and certainly it is the view of the lawyers who work within the Karratha Court that a serious incident is an inevitability, if there is no change.

For accused persons appearing in court, the use of a police officer in the role of court orderly raises issues of its own. These are very much addressed in detail in a written submission from a group of similar law services, but in essence the unavoidable perception is that police officers run the Karratha courthouse. The importance of a court being visibly independent of the police is always fundamental, but never more so than in a region where a large percentage of the accused persons are Aboriginal people, many of whom live in a society that distrusts the police. Although I have used the example of Karratha here, I have no doubt that this scenario plays out to a degree at numerous regional and remote courts across the state on almost a daily basis. Within the Pilbara alone, Newman and Roebourne immediately come to mind.

The second issue I just briefly wanted to touch on is the use of video-link appearances as a means of limiting the need to transport accused persons at all from remand facilities at courthouses across the state. In recent years, the increased use of video links has been successful in seeing a decrease in the number of movements between courts and prison, where video-link facilities can be used in a manner such that justice is to be done and seen to be done without the need for transportation of a person in custody. It is appropriate that such facilities be utilised. At present, video-link appearances are rare for sentencing proceedings in superior courts. It is submitted that there may well be scope for video links to be used more regularly in sentencing proceedings in superior courts where the accused person is not wishing to appear in the court in person and where the court is satisfied that justice still will be done. Equally, it is vital that all players in the system remain cautious about video links. Although it is a useful tool that can remove the need for prisoner transport, it is not always appropriate, and certainly it would not always facilitate justice. For many of the clients of the Aboriginal Legal Service, English is a second or even third language. This is often complicated by mental health or cognitive impairment; and for clients from a more traditional background, particularly those from very remote communities, the entire criminal justice system can be a foreign and intimidating experience. It is not uncommon for clients who appear by video link to believe that their matter is being broadcast on television. They fail to appreciate that that video link in fact was dealing with their matter at all, or report a feeling that they were excluded or marginalised from the proceeding. Poor quality video links certainly add to these issues, but the reality is that no matter how good the technology, it will never replace an accused person coming face to face with a judicial officer with the ability to engage fully in the process, and with access to their legal representative throughout and also immediately following the proceeding. Video links certainly have an important role to play within the criminal justice system, and arguably there is scope for an increased role, particularly in the superior courts. But the convenience of video links should never be prioritised over ensuring that accused persons understand the proceedings and are given an opportunity to participate fully in them.

I hope that brief overview is of some assistance to the committee. That is really all that I had to say by way of an opening statement.

The CHAIRMAN: Thank you, yes. That certainly fills out the joint submission here from Legal Aid and the Aboriginal Legal Service that outlined some of those things. Your concern regarding the videoconferencing, I guess, if of particular interest to the committee. In an ideal world, though, how would you say that it should be managed? I mean, you recognise that there is a benefit to videoconferencing but then there is a caution as to when it is used. So, if it was to be your design, what would you do?

Ms Russell-Smith: I think the reality is that it needs to be managed on a case-by-case basis. Video links can be very useful, particularly for administrative appearances where it may be that

there is not much substantial achieved. It is also the case that some accused persons prefer a video link and very much have the capacity to understand the proceedings over a video link. Equally, there are other accused who struggle with video links but who wish to appear in person. So, I suppose, in terms of the ideal balance, it is probably a situation where the accused, upon application, can nominate to have their matter heard by video link, but that right to appear in person in court should never be removed.

The CHAIRMAN: Do you have any experience of people who have arranged for an appearance by video link, they commence the hearing that way and then it becomes apparent during that time that that person is not actually very cognisant of what is happening or they do not have a good understanding, and then the hearing has been adjourned because of that; or do they just keep on continuing to do that regardless?

Ms Russell-Smith: It is certainly an issue that we experience up here in the Pilbara, and I think part of that is because of the long distances between the remand facilities [inaudible] and the courts.

The CHAIRMAN: The what system? I am sorry; you just faded then.

Ms Russell-Smith: I think it has to do with the very long distances between the remand facilities and the courts here in the Pilbara. A person even remanded in the Roebourne Regional Prison has often a two-hour trip to the courthouse and then two hours for the return. That, obviously, I suppose, encourages people to look at video links as an option for their appearances, sometimes in circumstances where they ultimately do struggle to understand the proceedings when they are captured on video link, either because of their difficulties with English or the fact that they no longer have a legal representative on the ground to assist them. In terms of how matters are dealt with when it becomes apparent that the person cannot understand the proceedings, where they are able to make that known, I would say ordinarily proceedings are adjourned and the person is subsequently brought up to the court for their matter to be dealt with. I think the issue, though, as a legal representative working in the Pilbara, I would notice that often the people who most struggle to understand the proceedings are also the people who are least likely to make it known to the court that they are not following them. They will often sit silently, nod their head. It appears to all intents and purposes that they are following the proceedings. It is only when you visit them in prison after their sentencing that it becomes apparent that they have either completely failed to understand that the matter being dealt with in court is in fact their own, or, equally, they have completely failed to understand the sentencing outcome and therefore have really missed the opportunity to understand the words that the judicial officer has spoken to them. And that is important and it means that they really have not engaged with the proceeding at all.

[10.00 am]

The CHAIRMAN: In appearances done by videoconferencing, does the Aboriginal Legal Service officer have an opportunity prior to that videoconference? If they have to give advice to the accused, is that done in person or is that also done via the video link?

Ms Russell-Smith: It varies. In an ideal world, the Aboriginal Legal Service would always provide advice in person. In the Pilbara region that can be difficult because the prison is two hours away from our office. The prison is obviously located in Roebourne and our office is based in South Hedland. But certainly the Aboriginal Legal Service attends the prison generally once a week and we will try to speak to people prior to their appearance. In saying that, there would certainly be a case where a person is spoken to only on the telephone prior to their appearance. That can create real difficulties because with the prison facilities, particularly down in Perth, it can be difficult to facilitate communication with people, so you either only get a very short amount of time to speak with people prior to their appearance in court, but sometimes, for various reasons, they may not have been spoken to prior to their appearance in court. Those obviously are things that impact on the understanding of proceedings.

The CHAIRMAN: I just want to move to a different area now. What is your understanding and your experience of how Aboriginal people with health conditions are managed during transport to and from the courts, the lockups and the prison?

Ms Russell-Smith: In general, I think there is a fair degree of effort and focus put upon managing health issues. I think there have certainly been some improvements in relation to how that is done since 2010. There are some difficulties that have emerged, particularly in the Pilbara region, which is my area of experience. Those problems seem to arise for two reasons really. The first is that people who are in remand at Roebourne have, as I have already indicated, to make very long journeys to the court. As a consequence of that, people leave Roebourne prison very early in the morning. The experience that we have had is that [inaudible] medical facilities are not open for them in the morning at that time before they leave. As a consequence, we have had people in custody who just have not received support and daily medical treatment before they set off for the court. This can be really problematic; once they are at court, obviously, they are there for the entire day. The second problem arises, I think, as a result of an uncertainty as to who has responsibility for those people in custody. I think you will find in the written submission from the Pilbara criminal law services reference to a particular example that occurred where a lady who had a matter for sentence in the District Court attended without being provided with her medication. There was then confusion over whether it was the police or Serco officers who had responsibility for transporting the person to South Hedland hospital for the purposes of providing her with her medication. The result of that uncertainty or lack of cooperation meant that there was a very significant delay in, first, her being transported to the hospital but, secondly, in her being provided with her medication. On that occasion, obviously, it did lead not to any significant consequences for her, but certainly it is concerning that a person in custody could find herself in a position where they had not received medication because of the early start, then only to find that because of a dispute or a lack of cooperation, there was that very significant delay in the provision of what was very important medication for her to be provided with.

The CHAIRMAN: Rosalind, I am now handing over to Hon Amber-Jade Sanderson who has some questions she would like to ask you.

Hon AMBER-JADE SANDERSON: The Inspector of Custodial Services has highlighted in his submission that the department, as a cost-saving measure, has reduced funeral visits based on distance and that in his view this has become a bit of a disqualifier for Aboriginal people. Is that something that your clients are experiencing, or do you have any comments on that?

Ms Russell-Smith: I would say that that is definitely the case in the Pilbara. It creates a number of issues. Obviously, in the Pilbara we have some very remote communities. For our clients, funerals are extremely important events for them to attend, and there are often consequences for them if they fail to attend. It is certainly my experience that increasingly people in custody are finding it very difficult to be transported out to those kinds of events. The consequence, I suppose, of that can include pleas of guilty by way of convenience simply to try and get out to those events, but also a great deal of distress being in custody and away from family. A lot of times for our clients being in custody means being away from country. Additional pressures are added because they are not given leave to attend funerals and other events of that nature, which creates great psychological harm and great distress.

Hon AMBER-JADE SANDERSON: Just, I suppose, a more general question: you have raised a couple of issues. Those aside, are you satisfied that enough has been done with regards to this contract in terms of making the improvements that were highlighted out of the inquiry into the death of Mr Ward and the transport of people regionally?

Ms Russell-Smith: I think there have been really significant improvements since that time, certainly in terms of the vehicles that are used and in terms of, obviously, the increased use of video link. I do think that there is a need for there to be a continuous awareness about the dangers of

generally transporting people in custody. Obviously, they are very [inaudible] and extremely vulnerable, and that always needs to be at the forefront of service providers' minds. I think where there is perhaps an ongoing issue, as I have already outlined, is where there is confusion as to who has responsibility for people in custody. I think it is a real danger time. Where it is most relevant is in regions where people who are in the custody of Serco spend time within police cells. That obviously is not something that would generally happen in the metropolitan area, but it is certainly the experience in a number of regional towns. What that means is that people in custody are effectively spending time in police custody, but there seems to be a real confusion, and I am not sure where it arises, between Serco and police officers, particularly in South Hedland, as to who has responsibility for welfare of people at various times. Where there is confusion as to who has responsibility, really we think that, firstly, there is that immediate concern that the needs and welfare concerns of the person in custody might not be met; but, secondly, it means that where issues do arise for people in custody, there is a real lack of accountability because there is a lack of certainty as to which organisation perhaps has not met expectations.

The CHAIRMAN: Rosalind, I think that brings us to the end of our questions for you. The submissions that we received from you was quite fulsome as well and you have now added to that. Thank you very much for taking the time today. A copy of your transcript will be sent through to you as soon as it is available.

Ms Russell-Smith: Thank you for your time.

Hearing concluded at 10.09 am
