



THIRTY-EIGHTH PARLIAMENT

REPORT 23

**STANDING COMMITTEE ON ENVIRONMENT AND
PUBLIC AFFAIRS**

**INQUIRY INTO THE TRANSPORTATION OF
DETAINED PERSONS:**

**THE IMPLEMENTATION OF THE CORONER'S
RECOMMENDATIONS IN RELATION TO THE DEATH OF
MR WARD AND RELATED MATTERS**

Presented by Hon Brian Ellis MLC (Chair)

July 2011

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Environment and Public Affairs Committee

- 1.1 *An Environment and Public Affairs Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to inquire into and report on -
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House; and
 - (c) petitions.
- 1.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 1.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 1.6 In this order “environment” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

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This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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INTRODUCTION, FINDINGS AND RECOMMENDATIONS

INTRODUCTION

- 1 The Standing Committee on Environment and Public Affairs is pleased to report its findings and recommendations arising out of its inquiry into the Transportation of Detained Persons.
- 2 The Committee self referred the inquiry following its review of a petition tabled in the Legislative Council.
- 3 The inquiry focused on the implementation of the recommendations made by the State Coroner in relation to the death of Mr Ward.
- 4 Mr Ward, a respected Aboriginal Elder, suffered a tragic and unnecessary death while in custody on 27 January 2008. The Committee extends its condolences to Mr Ward's family and his community.
- 5 The tragic death of Mr Ward has been a catalyst for a number of fundamental and long overdue systemic changes in the criminal justice system. In particular, the Department of Corrective Services' custodial transport fleet has been replaced and the new fleet must comply with specified standards. The Coroner's recommendations were wide-ranging and traversed a number of important systemic issues for Government action. Action taken to implement the Coroner's recommendation and the Committee's findings and recommendations in relation to the implementation of each Coroner recommendation are noted in Chapters 2 and 3 of this report.
- 6 The *Coroners Act 1996* does not require the Government to respond to recommendations made by the Coroner. Whether the *Coroners Act 1996* should be amended to legislate a response is canvassed in Chapter 4 of this report.
- 7 Aboriginal people are grossly overrepresented in the criminal justice system and are therefore more likely to be detained in custody. The Committee took the opportunity presented by this inquiry to broadly consider strategies and views on action required to address the gross overrepresentation of Aboriginal people in the criminal justice system. These issues are canvassed in Chapter 5 of this report.
- 8 The Committee extends its appreciation to the departments, organisations, groups and individuals who assisted the Committee during the course of this inquiry.

FINDINGS AND RECOMMENDATIONS

9 Findings and Recommendations are grouped as they appear in the text at the page number indicated:

Page 10

Finding 1: The Committee found that the Government chose not to implement Coroner Recommendation 2 in the manner proposed by the Coroner. The Attorney General advised the Committee that the most practical way to implement this recommendation is to legislate to enhance the Inspector of Custodial Services' role through proposed amendments to the *Inspector of Custodial Services Act 2003* that will provide the Inspector with the power to issue a show cause notice and audit powers.

Page 10

Recommendation 1: The Committee recommends that the Attorney General as a matter of urgency tables the bill to amend the *Inspector of Custodial Services Act 2003* to provide the Inspector of Custodial Services with the power to issue a show cause notice and audit powers.

Page 10

Recommendation 2: The Committee recommends that the *Inspector of Custodial Services Act 2003* be amended to provide that show cause notices and audit reports shall be tabled in both Houses of Parliament and referred to a Parliamentary Committee for its consideration.

Page 14

Finding 2: The Committee is of the view that Western Australia Police have not adequately addressed the Coroner's concerns about police officers having an adequate understanding of the *Bail Act 1982*.

Page 14

Recommendation 3: The Committee recommends that the Minister for Police conducts a review into Western Australia Police's implementation of Coroner Recommendation 3 and tables the review in both Houses of Parliament.

Page 17

Finding 3: The Committee finds that the Department of the Attorney General and Western Australia Police have implemented processes and practices to ensure that police officers with the powers of a deputy registrar have an understanding of the powers and responsibilities of a deputy registrar. However, a Department of the Attorney General review revealed that there is still room for improvement, particularly when a police officer takes leave on short notice and another deputy registrar needs to be appointed.

Page 17

Recommendation 4: The Committee recommends that the Department of the Attorney General and Western Australia Police ensure that issues identified in the Department of the Attorney General's review of police officers undertaking the role of a deputy register are addressed. Also, that they continue to implement procedures and practices that ensure that all police officers appointed as a deputy registrar have an ongoing understanding of the powers and responsibilities of a deputy registrar.

Page 22

Finding 4: The Committee finds that while training for justices of the peace has been developed, it is not satisfied that all justices of the peace with judicial functions have received training on their duties and responsibilities, have successfully completed assignments after training and/or are monitored regularly to ensure that they are performing their duties appropriately as recommended in Coroner Recommendations 5 and 6.

Page 22

Finding 5: The Attorney General is considering whether a two-tier justice of the peace model, separating judicial functions and administrative functions, should be implemented in Western Australia. A range of stakeholders have expressed the view that justices of the peace should not undertake any judicial functions, including court duties and presiding at bail applications.

Page 23

Recommendation 5: If the Attorney General determines that justices of the peace shall retain judicial functions (including court duties), the Committee recommends that the Attorney General implements a two-tier justice of the peace model, separating judicial functions and administrative functions, and ensures that justices of the peace with judicial duties receive adequate training as outlined in the Coroner Recommendations 5 and 6.

Page 23

Recommendation 6: If the Attorney General determines that justices of the peace shall retain judicial functions (including court duties), the Committee recommends that all justices of the peace undergo an annual audit process that assesses their skill levels and understanding of their duties and responsibilities.

Page 29

Finding 6: The Committee finds that there have been significant improvements to the transport vehicle fleet to ensure the safe and humane transportation of detained persons, including the replacement of the custodial transportation fleet.

Page 29

Finding 7: The Department of Corrective Services considers that the recurrent funds allocated to replace vehicles are sufficient to ensure that in the future vehicles are replaced on a regular basis and there are no old or unsafe vehicles in use as recommended in Coroner Recommendation 10.

Page 37

Recommendation 7: The Committee recommends that the Department of Corrective Services continues to engage an independent consultant to review the CSCS contractor's training on an annual basis.

Page 38

Recommendation 8: The Committee recommends that the responsible Minister directs that the Contract for the Provision of Court Security and Custodial Services annual report tabled in Parliament each year include details of CSCS training, which should include detail of the training provided to contractor employees, the auditing and monitoring of employees' demonstrated competence, their compliance with contract training provisions and the independent consultant's review of the contractor's training.

Page 41

Finding 8: The Committee finds that there has been action to implement the Coroner's Recommendations but further action to fully implement a few recommendations is required.

Page 44

Recommendation 9: The Committee recommends that Government departments and agencies establish processes to appropriately inform family, stakeholders and the public of the progress of Government action taken to implement coronial recommendations on a regular basis.

Page 49

Finding 9: The Committee finds that there is strong support for continuing to use air transportation to transport persons in custody.

Page 49

Recommendation 10: The Committee recommends that the Minister for Corrective Services continues to provide adequate funding to enable persons in custody to be transported by air.

Page 55

Finding 10: The Committee finds that video link has been successfully implemented in various courts and is frequently used for Court appearances of persons in custody.

Page 55

Finding 11: The Committee finds that court video link facilities must be matched by equivalent facilities in the custodial institutions to increase the use of video link for court appearances of persons in custody.

Page 55

Recommendation 11: The Committee recommends that the responsible Minister/s commit funds and resources to upgrade audio visual conferencing facilities in custodial institutions, as well as police stations and courts, as required to enable the increased use of video link for court appearances.

Page 56

Recommendation 12: The Committee recommends that the Minister for Corrective Services commits funds and resources to expand and implement the use of Skype and other similar technologies in custodial institutions throughout Western Australia to enable persons in custody to communicate with family, friends and legal counsel.

Page 57

Recommendation 13: The Committee recommends that the Department of the Attorney General continues to explore options to use Skype and other similar technologies to enable persons in custody to appear in Court, particularly in regional and remote Western Australia.

Page 58

Finding 12: The Committee encourages the use of audio link (telephone) to conduct court appearances, particularly bail hearings where the accused is located in remote locations, where appropriate and where video link is not an option.

Page 58

Recommendation 14: The Committee recommends that the Department of the Attorney General establishes infrastructure and arrangements in courts to enable legal counsel to conduct confidential conversations with persons in custody.

Page 61

Recommendation 15: The Committee recommends that the Attorney General commits funding and resources to establish an extended bail service available to all persons in custody throughout Western Australia, which will enable bail to be considered by Magistrates outside standard business hours.

Page 67

Recommendation 16: The Committee recommends that the *Coroners Act 1996* be amended to require the Government to respond to coronial recommendations within three months. The Committee recommends that the amending legislation provides that the Government response shall be tabled in both Houses of Parliament.

Page 79

Recommendation 17: The Committee recommends that the Premier and his department coordinate the whole of Government approach to address the underlying causes of the gross overrepresentation of Aboriginal people in the criminal justice system. The Committee recommends the setting of objectives and targets that are monitored, measured against and reported to Parliament.

Page 80

Finding 13: While the Committee was made aware of a number of intervention programs implemented to address issues relating to the gross overrepresentation of Aboriginal people in the criminal justice system, the Committee finds that there is no comprehensive list of all intervention programs available in Western Australia which indicates a lack of a whole of government approach.

Page 81

Recommendation 18: The Committee recommends that the Department of Corrective Services develops and implements a suite of intervention programs for juveniles and young adults in custody as a matter of high priority.

Page 82

Finding 14: The Committee finds that the Regional Youth Justice Service in Geraldton and Kalgoorlie has been widely praised by stakeholders.

Page 84

Recommendation 19: The Committee recommends that the Government undertakes an audit to identify the programs and services that are effective in reducing Aboriginal offending and recidivism, and takes action to ensure that effective programs are developed and delivered.

Page 89

Recommendation 20: The Committee supports the principles of justice reinvestment and recommends that the Government focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Western Australia.

ABBREVIATIONS AND ACRONYMS

AIMS	Australian Integration Management Services Corporation Ltd
ALS	Aboriginal Legal Service of Western Australia
Chief Justice of Western Australia	Hon Wayne Martin, Chief Justice of Western Australia
Committee	Parliament of Western Australia, Legislative Council Standing Committee on Environment and Public Affairs
Coroner	Mr Alasdair Hope, State Coroner, Western Australia
Coroner's Report	<i>Coroners Act 1996 Record of Investigation into Death</i> , Ref No: 9/09. Delivered on 12 June 2009.
CSCS Contract	Court Security and Custodial Services Contract. The 'new CSCS Contract' refers to the contract signed on 14 June 2011.
DCS	Department of Corrective Services
DICWC	Deaths in Custody Watch Committee
DotAG	Department of the Attorney General
Former Inspector	Emeritus Professor Richard Harding, Inspector of Custodial Services (2000-2008)
G4S	G4S Custodial Services Pty Ltd/G4S Australia Pty Ltd (formerly Group4Securicor)
GSL	GSL Custodial Services Pty Ltd
House of Representatives ATSIA Committee report <i>Doing Time – Time for Doing</i>	Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' report <i>Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System</i> , June 2011
Inquiry	The Committee's Inquiry into the Transportation of Detained Persons
Inspector	The Inspector of Custodial Services (Professor Neil Morgan since 2009)
Legal Aid	Legal Aid Western Australia
Legislative Assembly CDJ Committee	Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice
OICS	Office of the Inspector of Custodial Services
Person in custody/prisoner	A person on remand (an accused) or sentenced prisoner in custody
Public Administration Committee	Parliament of Western Australia, Legislative Council Standing Committee on Public Administration
The JP	Mr Barrye Thompson, Justice of the Peace
The vehicle	Mazda E2500 van (1APR-049)
WA Police	Western Australia Police
WorkSafe	WorkSafe Division, Department of Commerce
Wyatt Report	Committee to Explore the Effect of Motor Driver's Licence and Driving Laws on Remote Communities, <i>Indigenous Licensing and Fine Default: A Clean Slate</i> , September 2007

CHAPTER 1

INQUIRY INTO THE TRANSPORTATION OF DETAINED PERSONS

- 1.1 In April 2010, the Standing Committee on Environment and Public Affairs commenced an inquiry into the Transportation of Detained Persons following its consideration of a petition.
- 1.2 Hon Giz Watson MLC tabled the petition containing 4 950 signatures on 16 September 2009.¹ A copy of the petition is attached at Appendix 1.
- 1.3 The inquiry's terms of reference are:

The Committee is to inquire into and report on:

- 1. progress in relation to the implementation of the Coroner's Findings in relation to the death of Mr Ward;*
 - 2. the feasibility of air transport or video conferencing instead of long haul vehicle transport;*
 - 3. the scope and efficacy of government action to reduce indigenous incarceration and recidivism rates to prevent further indigenous deaths in custody;*
 - 4. whether the Coroners Act 1996 should be amended to require the Government to respond to coronial recommendations within a set time frame; and*
 - 5. any other relevant matter.*
- 1.4 The Committee advertised the inquiry in *The West Australian*, issued a State-wide Media Release and invited stakeholders to provide a submission.
- 1.5 The Committee received the 33 submissions listed at Appendix 2.
- 1.6 Hearings conducted during the inquiry are noted at Appendix 3.

¹ Parliament of Western Australia, Legislative Council, 16 September 2009, Tabled Paper No 1164.

CHAPTER 2

IMPLEMENTATION OF THE CORONER'S RECOMMENDATIONS IN RELATION TO THE DEATH OF MR WARD

- 2.1 On 27 January 2008, Mr Ward,² a respected Aboriginal Elder, suffered a tragic and preventable death as a result of his being transported in a custodial vehicle in conditions of grossly excessive heat over an extended period of time. As the Coroner noted, it is clear that Mr Ward suffered a terrible death which was '*wholly unnecessary and avoidable*' and '*easily foreseeable*'.³
- 2.2 There was understandable public anger, disbelief and concern following the death of Mr Ward. Questions were raised as to how in 2008 such a death could occur in Western Australia.
- 2.3 In March and May 2009, Mr Alistair Hope, State Coroner, conducted an inquest into the death of Mr Ward. In June 2009, the Coroner delivered his *Record of Investigation into Death*.
- 2.4 This Committee report is to be read with the Coroner's Report, which can be accessed on the Committee's website.⁴

The Coroner's Report

- 2.5 The Coroner's Report includes a number of findings including that the vehicle Mr Ward was transported in was in a '*disgraceful condition*' and '*effectively beyond repair*'.⁵ The Coroner also found that the quality of supervision, treatment and care of Mr Ward while in the care of DCS⁶ was '*disgracefully bad*' and the quality of his supervision, treatment and care while in the vehicle's pod '*could hardly have been worse*'.⁷

² For cultural reasons, Mr Ward is referred to only by his family name in this report.

³ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp5, 128.

⁴ www.parliament.wa.gov.au - choose Committees, Current Committees, Environment and Public Affairs Committee.

⁵ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp24, 25.

⁶ A person is in the custody of the Department of Corrective Services after Western Australia Police formally hand the person over to the department or court security and custodial services (CSCS) contractor.

⁷ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp117, 118.

2.6 The Coroner raised the following important questions:

A question which is raised by the case is how a society which would like to think of itself as being civilised, could allow a human being to be transported in such circumstances.

A further question arises as to how a government department, in this case the Department of Corrective Services, could have ever allowed such a situation to arise, particularly when that department owned the prisoner transportation fleet including the vehicle in question.⁸

2.7 The Coroner observed that a ‘*litany of errors*’ culminated in the death of Mr Ward.⁹ The Coroner commented on a number of systemic issues that contributed to the death of Mr Ward and made 14 wide-ranging recommendations.

2.8 The recommendations relate to a number of important issues, including the powers of the Inspector of Custodial Services, police procedures and police officers’ understanding of the *Bail Act 1982* and deputy registrar responsibilities, the training and role of justices of the peace, the custodial transportation fleet, custodial transport services and the services provided by GSL (now G4S), alternative transport options for persons in custody, the use of video link and audio link, and other action to limit the unnecessary transportation of persons in custody.

INSPECTOR OF CUSTODIAL SERVICES’ POWERS

2.9 The Coroner recommended:

Recommendation No. 1

I recommend that a statutory system be put in place which would enable the Inspector of Custodial Services to issue the Department of Corrective Services with a “Show Cause” Notice in cases where the Inspector is aware of issues relating to the human rights and safety of persons in custody.

Recommendation No. 2

I recommend that the terms of sections 34 and 39 of the Terrorism (Preventative Detention) Act 2006 be inserted in relevant legislation dealing with the Inspector’s powers so that those protections be extended to all persons in custody and to all areas of the Inspector’s jurisdiction.

⁸ Ibid, p123.

⁹ Ibid, p10.

Background

- 2.10 The Coroner concluded that it would be ‘*helpful*’¹⁰ if the Inspector could provide DCS or the contractor with a written show cause notice that would require DCS to respond to particular questions and allow the Inspector to set a timeframe in which responses were to be received. The Coroner considered that for the show cause notice to work the Inspector should be authorised to require a response to specific questions as to plans, project timeframes and other matters.
- 2.11 The Coroner commented that the notices would be useful given the circumstances surrounding the death of Mr Ward, including the state of the vehicle in which Mr Ward was transported and the number of warnings the former Inspector had made about the transportation fleet which were not acted on.
- 2.12 The Coroner considered that if a show cause notice was issued by the Inspector in 2001, to reflect concerns raised in the OICS *Report of an Announced Inspection of Adult Prisoner Transport Services*,¹¹ the OICS and Minister for Corrective Services would have been better informed and better able to monitor progress. Further, the Coroner noted that if the Inspector could have issued a show cause notice in 2007 in respect of journeys of more than 2½ hours duration not being undertaken in vehicles such as the vehicle Mr Ward was transported in (as recommended in the OICS *Thematic Review of Custodial Transport Services in Western Australia*),¹² and if DCS had acted on this notice Mr Ward would not have died when he did.¹³
- 2.13 In relation to Coroner Recommendation 2, the *Terrorism (Preventative Detention) Act 2006* gives the Inspector jurisdiction with respect to detained persons under that Act. Section 34 of the *Terrorism (Preventative Detention) Act 2006* provides that the Inspector must be notified as soon as practicable after a person is taken into custody under a preventative detention order. Section 39 provides that the detainee must be treated with humanity and with respect for human dignity and must not be subject to cruel, inhuman or degrading treatment, that the Inspector may at any time review the detainees’ detention to determine whether the above is being complied with, and may on any matter report, provide advice or make a recommendation to the police. A copy of sections 34 and 39 of the *Terrorism (Preventative Detention) Act 2006* is attached at Appendix 4.

¹⁰ Ibid, p132.

¹¹ Office of the Inspector of Custodial Services, Report No 3, *Report of an Announced Inspection of Adult Prisoner Transport Services*, November 2001.

¹² Office of the Inspector of Custodial Services, Report No 43, *Thematic Review of Custodial Transport Services in Western Australia*, May 2007.

¹³ Coroner’s Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp32-33.

- 2.14 The Inspector does not have a similar power of review over detained persons who are not suspected terrorists. The Coroner considered that it is unfortunate that there is less protection for a person detained in respect of relatively minor traffic charges (such as Mr Ward), than there is for suspected terrorists. The Coroner considered that the power of review contained in the *Terrorism (Preventative Detention) Act 2006* would provide a mechanism for monitoring the State's compliance with Australia's international legal obligations.¹⁴

Implementation

- 2.15 The Government proposes to give the Inspector the power to issue the DCS a show cause notice '*in cases where the Inspector is aware of issues relating to the human rights and safety of persons in custody*'.¹⁵ Legislation is required to authorise the Inspector to issue a show cause notice. This is an enhancement of the 'Risk Notices' Inspectors have on occasions issued to the Minister for Corrective Services.
- 2.16 The Inspector and former Inspector support this development. The former Inspector advised that show cause notices will be '*extremely useful*' and the ability to subject the notice to Parliamentary scrutiny and public comment is important.¹⁶
- 2.17 The Government does not propose to implement Coroner Recommendation 2 by inserting sections 34 and 39 of the *Terrorism (Preventative Detention) Act 2006* into the *Inspector of Custodial Services Act 2003*. However, the Attorney General advised that the '*most practical way*' to implement this recommendation is to legislate to enhance the Inspector's role through audit powers and show cause notices.¹⁷ The Inspector does not currently have any audit powers. Legislation is required to provide the proposed audit powers.
- 2.18 The Attorney General is of the view that without proper resourcing inserting the proposed sections into the *Inspector of Custodial Services Act 2003* remains an impractical way to implement Coroner Recommendation 2. The Attorney General considers that the powers in the *Terrorism (Preventative Detention) Act 2006* were drafted in the context that only a few persons would be subject to preventative detention, not the approximate 10 000 people that go through detention in Western Australia each year. In his view, by merely inserting these sections in the *Inspector of Custodial Services Act 2003*, the Inspector, once notified that a person had come into

¹⁴ Ibid, p134.

¹⁵ Letter from Hon Christian Porter MLA, Attorney General, 16 September 2010, pl.

¹⁶ Emeritus Professor Richard Harding, Consultant, *Transcript of Evidence*, 17 November 2010, pp1, 3-4. Risk notices are not subject to Parliamentary scrutiny.

¹⁷ Letter from Hon Christian Porter MLA, Attorney General, 16 September 2010, p2.

custody, would not be obliged to do anything with the person or provided with investigatory powers or additional resources.¹⁸

- 2.19 The Attorney General advised that the audit powers will allow the Inspector to undertake audits or reviews of a certain proportion of the population in custody every year and this will '*ensure that persons are treated safely and humanely at every stage of their contact with the custodial aspects of the criminal justice system*'.¹⁹ In 2010-2011, \$594 000 was assigned to OICS to implement the audit function.²⁰
- 2.20 The Inspector considers the proposed audit powers a welcome development and '*really important initiative*'.²¹ The proposed legislation will also clarify the Inspector's powers. The Inspector's jurisdiction is presently largely site-based with the Minister for Corrective Services having limited power to direct a review. The proposed audit function, depending on the terms of the proposed legislation, could be exercised to audit the passage of a group of prisoners or individual cases through the custodial system, or conduct thematic audits such as auditing a group of mentally ill prisoners or pregnant women in prisons or auditing double bunking in prisons.²² The Inspector considers that the audit power could provide a valuable tool to drive changes in the system.²³ The powers also have the potential to create difficulties in that they change the nature of the OICS (from being a Parliamentary inspectorate) and place the office in a more adversarial role.²⁴
- 2.21 The Attorney General is of the view that the Government proposal to legislate audit powers and show cause notices will extend protections to all persons in custody and to all areas of the Inspector's jurisdiction. By implementing these measures, the Attorney General considers that that Government will meet and '*indeed go further*' than the Coroner's recommendations.²⁵
- 2.22 Depending on the terms of the proposed legislation, the show cause notices and audit function may give the Inspector the power to alert Parliament and policy makers about important issues. Members of Parliament could be informed about show cause notices

¹⁸ Ibid.

¹⁹ Ibid, p1.

²⁰ Ibid, p2.

²¹ Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p5.

²² Ibid, pp7, 8.

²³ Ibid, p7.

²⁴ Ibid, p12.

²⁵ Letter from Hon Christian Porter MLA, Attorney General, 16 September 2010, p2.

and audit reports by legislating that they be tabled in Parliament²⁶ and referred to a Parliamentary Committee. The Equal Opportunity Commission receive regular correspondence from prisoners who in some cases identify matters that are fundamental breaches of human rights, such as a lack of access to urgent or appropriate medical care.²⁷ Depending on the terms of the legislation, such issues may form the basis of a show cause notice or audit report.

- 2.23 The Attorney General has advised that the required amendments to the *Inspector of Custodial Services Act 2003* are progressing as a matter of high priority.²⁸ As at 2 May 2011, a submission had been presented to Cabinet for approval to print amendments to the *Inspector of Custodial Services Act 2003* and would be considered ‘shortly’.²⁹
- 2.24 The Inspector advised the Committee that he had held ongoing and positive discussions with the Attorney General and Minister for Corrective Services in relation to Coroner Recommendations 1 and 2. The Inspector was consulted in drafting the proposed amendments to the *Inspector of Custodial Services Act 2003*.³⁰
- 2.25 It is difficult for the Committee to comment in detail on the Government’s implementation of Coroner Recommendations 1 and 2 as the Attorney General has not yet tabled the bill to amend the *Inspector of Custodial Services Act 2003*. The Committee is not aware of the detail of the proposed amendments to the Act which will authorise the Inspector to issue show cause notices and prescribe audit powers.
- 2.26 The Committee is concerned about the delay in tabling the bill.

Oversight of the Office of the Inspector of Custodial Services

- 2.27 Whether there is a need to enhance Parliamentary oversight of OICS was raised during the course of the inquiry in the context of considering the implementation of Coroner Recommendations 1 and 2.
- 2.28 A few years ago, the former Inspector sought to have a Parliamentary standing committee meet with the OICS on a regular basis.³¹ Mr Barry Cram, Acting Inspector of Custodial Services, advised the Committee that in his view the current level of

²⁶ The Inspector of Custodial Services reports directly to Parliament. Office of the Inspector of Custodial Services reports are tabled in both Houses of Parliament: Sections 34 and 35 of the *Inspector of Custodial Services Act 2003*.

²⁷ Submission No 32 from Equal Opportunity Commission, 31 May 2010, p3.

²⁸ Letter from Hon Christian Porter MLA, Attorney General, 16 September 2010, p2.

²⁹ Letter from Hon Christian Porter MLA, Attorney General, 2 May 2011, p1.

³⁰ Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p4.

³¹ Emeritus Professor Richard Harding, Consultant, *Transcript of Evidence*, 17 November 2010, p4.

Parliamentary oversight of the OICS is '*appropriate and adequate to assure scrutiny of the work and findings of the Office, and to support the role of the Inspector*'.³²

- 2.29 The Committee understands that a degree of parliamentary oversight is currently provided by the Legislative Council Standing Committee on Public Administration who conduct hearings or briefings with the Inspector of Custodial Services on an regular or intermittent basis. The Public Administration Committee's terms of reference enable it to consult with a number of statutory office holders (but does not specifically refer to the Inspector). The Committee understands that its capacity to consult with statutory office holders may be dependent on its inquiry workload. The Public Administration Committee has the power to summons DCS to answer questions. The Committee understands that historically, the Public Administration Committee looked at all OICS reports and the Committee would decide to either write to Ministers or the Inspector about particular matters.
- 2.30 The Parliament of Western Australia has established a joint Standing Committee on the Commissioner for Children and Young People (as required by section 51 of the *Commissioner for Children and Young People Act 2006*) and a Joint Standing Committee on the Corruption and Crime Commission (as required by section 216A of the *Corruption and Crime Commission Act 2003*).
- 2.31 The Legislative Assembly Public Accounts Committee consults with the Auditor General on a regular basis and provides oversight of agencies implementation of the recommendations of the Office of the Auditor General reports. The Legislative Council Standing Committee on Estimates and Financial Operations also consults regularly with the Auditor General (as required by its terms of reference) and reports to the Legislative Council each year on the Office of the Auditor General's budget.
- 2.32 The above Parliamentary Committees appear to provide a more targeted and robust Parliamentary oversight of these statutory office holders and agencies than that currently provided to the Inspector.
- 2.33 Given the important role of the Inspector and the real impact the work of the OICS has on reducing risks to prisoners and persons in custody, the Committee is of the view that Parliament should consider mechanisms that provide the Inspector with greater access to Parliament and Members of Parliament.

³² Letter from Mr Barry Cram, Acting Inspector, Office of the Inspector of Custodial Services, 27 June 2011, p1.

Finding 1: The Committee found that the Government chose not to implement Coroner Recommendation 2 in the manner proposed by the Coroner. The Attorney General advised the Committee that the most practical way to implement this recommendation is to legislate to enhance the Inspector of Custodial Services' role through proposed amendments to the *Inspector of Custodial Services Act 2003* that will provide the Inspector with the power to issue a show cause notice and audit powers.

Recommendation 1: The Committee recommends that the Attorney General as a matter of urgency tables the bill to amend the *Inspector of Custodial Services Act 2003* to provide the Inspector of Custodial Services with the power to issue a show cause notice and audit powers.

Recommendation 2: The Committee recommends that the *Inspector of Custodial Services Act 2003* be amended to provide that show cause notices and audit reports shall be tabled in both Houses of Parliament and referred to a Parliamentary Committee for its consideration.

WA POLICE TRAINING PROCEDURES TO ENSURE A BETTER UNDERSTANDING OF THE *BAIL ACT 1982*

2.34 The Coroner recommended:

Recommendation No. 3

I recommend that WA Police review its training procedures to ensure that police officers have a better understanding of the Bail Act 1982.

Background

2.35 Granting bail to an accused and summoning them to appear in Court obviates the need to keep the person in custody (assuming bail conditions are met) and the need to transport the person to court, which in remote areas may be hundreds of kilometres from where the accused is arrested.

2.36 A number of stakeholders, including the Indigenous Implementation Board, Equal Opportunity Commission and ALS expressed a strong view that police should avoid arresting and detaining an accused prior to court proceedings and should charge by summons where possible.³³ ALS advised that juveniles being arrested and denied bail, or unnecessarily onerous bail conditions being set, is '*particularly commonplace and*

³³ For example, the Indigenous Implementation Board, chaired by Lt General John Sanderson AC, submitted that police should consider avoiding detention unless a person poses a threat to the safety of others: Submission No 28 from Indigenous Implementation Board, 21 May 2010, p1.

alarming'.³⁴ ALS strongly recommends that police training reflect the notion that arrest is an option of last resort.³⁵

- 2.37 On the evening of 26 January 2008, Mr Ward was arrested by police officers (rather than summonsed to appear at court) in relation to traffic offences (a driving under the influence offence and driving contrary to the conditions of an extraordinary licence offence).³⁶ Sergeant Martin Timmers of the Laverton Police Station refused bail. Sergeant Timmers advised the Coroner that he refused bail for three reasons — Mr Ward's prior record in relation to breaches of the *Bail Act 1982* (the most recent had been six years prior), Mr Ward was currently subject to a suspended sentence in respect of driving without a licence, and Mr Ward's prior history of driving offences.³⁷ The police remanded Mr Ward to appear in Laverton Magistrates Court on 27 January 2008.
- 2.38 The Coroner found that the evidence revealed systemic problems with the police understanding of bail demonstrated by Sergeant Denness and Senior Constable Chamings (officers at Laverton Police Station) appearing to believe that Mr Ward was ineligible for bail as a result of having breached a suspended sentence. The Coroner also found that Sergeant Timmers considering a previous decision not to prefer breach of bail charges against Mr Ward, which the Sergeant admitted he had taken into account, was an inappropriate matter to take into account when considering bail (the reason for the breach charge not being preferred was unknown).³⁸ Sergeant Timmers did not provide Mr Ward with the 'prescribed information' in writing required by section 8(1) of the *Bail Act 1982*.³⁹
- 2.39 The Coroner also found that none of the other police officers who gave evidence at the coronial inquiry were familiar with the relevant procedural obligations under the *Bail Act 1982*.⁴⁰
- 2.40 On the evening of 26 January 2008, Sergeant Timmers called GSL to arrange the transportation of Mr Ward to Kalgoorlie *before* calling the JP (the next morning), who

³⁴ Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, p8.

³⁵ Ibid. Aboriginal Legal Service of Western Australia also recommend that the *Bail Act 1982* be amended to require that arrest is an option of last resort.

³⁶ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p40.

³⁷ At hearing Sergeant Timmers added that he relied on a number of factors including the very high reading on the breathalyser: Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p41.

³⁸ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p42.

³⁹ Ibid.

⁴⁰ Ibid, p136.

was to consider bail the next day. As the Coroner noted *‘it would appear to have been taken for granted that [Mr Ward] would not be granted bail’* by the JP.⁴¹

Implementation

2.41 WA Police and DotAG are responsible for implementing Coroner Recommendation 3.

2.42 A review of police bail training procedures was conducted by Police Academy staff in June 2009. WA Police advised that *‘[the] review’s outcome recommended that WAPol [WA Police] provide the appropriate training on Bail to recruits’*.⁴² WA Police added at a hearing:

*Specifically in relation to recommendation 3, we have conducted a review of training procedures in terms of content. That was done by the police academy staff in June. The review’s outcome recommends that WAPOL provide adequate training on bail for recruits and that is also reinforced at senior constable or subsequent training, so we did not have any problems with the training packages in relation to the Bail Act.*⁴³

2.43 Given the events of January 2008 and adverse comments on the police understanding of the *Bail Act 1982* in the Coroner’s Report, Committee members sought clarification of this decision at a hearing. The WA Police response follows:

Hon Col Holt: So where is the gap between what you guys think and what the coroner thinks? Because he thinks there is less understanding than is required and you guys think it is okay or you think the training is adequate to give a good understanding of the Bail Act. Can you see what I think Hon Lynn MacLaren is getting at? The Coroner thinks there is not enough understanding of the Bail Act from police officers, you guys are saying you are providing the training and it is working okay—there is a gap there, isn’t there?

Mr Gregson: I am not so sure that there is a gap. I do not actually see the divergence of views. I think my reading of what the coroner is asking for is for us to check our training manuals to see if you can make improvements to give a better understanding. I did not read that the coroner is saying that there is an inadequate understanding of the Bail Act in the police service as a whole. In either event, we have looked at the training and the way in which that is delivered, what the

⁴¹ Ibid, p51.

⁴² Answers to Questions on Notice, Western Australia Police, 26 July 2010, p2.

⁴³ Mr Wayne Gregson, Assistant Commissioner, Western Australia Police, *Transcript of Evidence*, 26 July 2010, p5.

*modules are, what they encompass, and the academy assures me that they are adequate and appropriate.*⁴⁴

- 2.44 WA Police consider that Coroner Recommendation 3 has been implemented.⁴⁵
- 2.45 DotAG's implementation of Coroner Recommendation 3 revolves around their 'fairly procedural' review of the *Bail Act 1982*.⁴⁶ The review has the following terms of reference:
- Whether there is need to provide additional or clearer guidance or direction to bail decision makers to ensure a consistent approach in line with the intention of the *Bail Act 1982*.
 - Whether any provisions of the *Bail Act 1982* or current procedures may unintentionally disadvantage particular groups of people.
 - What might be done to mitigate any such disadvantage, looking at issues such as the availability of bail decision makers, the information provided to accused persons, the appropriateness of bail conditions and the availability of bail support service, among others.⁴⁷
- 2.46 This review is not a full review of the *Bail Act 1982* and is more likely to result in changes to procedures rather than changes in substantive legislation. To ensure that there are no gaps in bail training, WA Police are involved in the review and the review will go towards updating the Police Training Manual.⁴⁸
- 2.47 In early April 2011, the Committee was advised that the report on DotAG's review of the *Bail Act 1982*, which contains around 57 recommendations, is with the Director General of DotAG and would shortly be with the Attorney General.⁴⁹ WA Police have been consulted in relation to preparing the final recommendations. When the outcome of the review is known, DotAG will commence discussions with WA Police on training implications.⁵⁰

⁴⁴ Ibid, p7.

⁴⁵ Answers to Questions on Notice, Western Australia Police, 26 July 2010, p3.

⁴⁶ Mr Andrew Marshall, Manager, Research and Analysis, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p3.

⁴⁷ Ibid, p2.

⁴⁸ Ibid, p3.

⁴⁹ Mr Andrew Marshall, Manager, Research and Analysis, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p2 and letter from Mr Andrew Marshall, 8 April 2011, p1.

⁵⁰ Mr Andrew Marshall, Manager, Research and Analysis, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p2.

- 2.48 DotAG advised that the implementation of Coroner Recommendation 3 will not be completed until outcomes of the *Bail Act 1982* review are implemented, including outcomes relating to WA Police training.⁵¹

Finding 2: The Committee is of the view that Western Australia Police have not adequately addressed the Coroner's concerns about police officers having an adequate understanding of the *Bail Act 1982*.

- 2.49 The Committee is of the view that updating the Police Training Manual is not enough to ensure that the *Bail Act 1982* is administered fairly.

Recommendation 3: The Committee recommends that the Minister for Police conducts a review into Western Australia Police's implementation of Coroner Recommendation 3 and tables the review in both Houses of Parliament.

DEPUTY REGISTRAR POWERS

- 2.50 The Coroner recommended:

Recommendation No. 4

I recommend that the Department of the Attorney General not delegate to police officers the powers of a Deputy Registrar of the Magistrates Court of Western Australia under section 26 of the Magistrates Court Act 2004 unless the Department can be satisfied that those police officers do have an understanding of the powers and responsibilities of a Deputy Registrar.

Background

- 2.51 The bail hearing of Mr Ward conducted by the JP at the Laverton Police Station was not a properly constituted court bail hearing.
- 2.52 Section 26 of the *Magistrates Court Act 2004* provides that the Minister (or a delegate) may appoint a person who is a member of the police force as a deputy registrar of the Magistrates Court of Western Australia. Further, Regulation 8 of the *Magistrates Court Regulations 2005* provides that a justice of the peace must not constitute a country court unless required to do so by a deputy registrar. In Mr Ward's case, the police did not comply with Regulation 8 as the police officer who requested the JP to convene a court was not a deputy registrar.⁵² Police officers undertake the role of deputy registrar in regional and remote areas of Western Australia.

⁵¹ Ibid.

⁵² Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p43.

- 2.53 Senior Sergeant Denness, the appointed deputy registrar at Laverton Police Station, advised the Coroner that he was never officially told that he had been appointed as a deputy registrar despite this being advised in a letter in August 2007. Senior Sergeant Denness had no appreciation of the limits of his powers as a deputy registrar and received no training in the role of a deputy registrar.⁵³
- 2.54 Further, the bail hearing being conducted on a Sunday (27 January 2008) was not consistent with a direction given by the local magistrate.⁵⁴ Senior Sergeant Denness had no knowledge of the magistrate's direction that the court was not to sit on a Sunday.⁵⁵ The previous officer in charge of the Laverton Police Station departed before Senior Sergeant Denness commenced and there was no direct handover.
- 2.55 As previously noted, the Coroner concluded that Mr Ward's transfer of custody (from police to DCS) '*would not have happened at all if police and the JP, Mr Thompson, had complied with relevant legislation*'.⁵⁶
- 2.56 The Coroner was of the view that the evidence in Mr Ward's case displayed:

*a disappointing lack of concern on the part of the police officers involved in ensuring that they complied with their duties and responsibilities in respect of the convening of courts.*⁵⁷

Implementation

- 2.57 After the Coroner's Report was released, DotAG initiated a review of the process of appointing police officers as deputy registrars.
- 2.58 As part of this process all appointments were revoked and new appointments of deputy registrars made. The new appointments provide for a police officer to be appointed to a particular location (rather than State-wide).⁵⁸ A *Magistrates Court Information Bulletin: Appointment of Deputy Registrars (Non DotAG)* outlining the process to be undertaken in appointing deputy registrars was issued in September 2009.

⁵³ Ibid, pp44, 49.

⁵⁴ The Magistrate based in Kalgoorlie, Magistrate S Sharrett, under an *Instrument of Delegation* had directed that the Registrar and Deputy Registrars in the Kalgoorlie Magisterial District (which includes Laverton) may constitute of court between Monday and Saturday (at named hours) but not on a Sunday. The *Instrument of Delegation* was forwarded to the Laverton Police Station: Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp48, 49.

⁵⁵ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p49.

⁵⁶ Ibid, p117.

⁵⁷ Ibid, p136.

⁵⁸ Department of the Attorney General, *Magistrates Court Information Bulletin, Appointment of Deputy Registrars (Non DotAG)*, No 10 of 2009, p1.

- 2.59 Upon being appointed a deputy registrar, police officers were provided with revised appointment documents, *Deputy Registrar Guidelines* and extracts from the Magistrate Court Regulations 2005. Signed certification must be returned to the registrar/clerk of the local court.⁵⁹ The clerk of the local (nearest) court is responsible for confirming contact with the deputy registrar, providing the officer with an overview of their role and responsibilities as deputy registrar and providing guidance on complying with Regulation 8 of the Magistrates Court Regulations 2005. With this personal contact, the registrar/clerk tests the knowledge of the police officer and forms a relationship with that deputy registrar.
- 2.60 DotAG keeps a centralised record and maintains a register of who has been appointed and certified as having read and understood the requirements of a deputy registrar. DotAG monitors compliance by following up where certification has not been attained. There is now a check list for each location where there is a deputy registrar.⁶⁰ Another compliance check is performed by the manager of regional courts who cyclically undertakes a ‘*quality audit*’ of the court systems which now includes checking that the local court is up to date with their compliance checking of deputy registrars.⁶¹
- 2.61 DotAG considers that the processes they have put in place adequately address Coroner Recommendation 4 and that centralising and following up that local court processes have been followed ensures that there is no complacency.⁶² DotAG have found that the system appears to be operating reasonably well.⁶³
- 2.62 However, DotAG’s review of the process of appointing deputy registrars has revealed that there is still room for some improvement, particularly when a police officer goes on leave at short notice and another deputy registrar needs to be appointed. In these circumstances, Mr Michael Johnson, Director, Magistrates Court and Tribunal Services, DotAG, has the authority to appoint deputy registrars and does so. Sometimes notice of leave, such as holiday and sick leave, is not given to DotAG in Perth in time. DotAG is introducing a check list for the registrar/clerk of the court to ensure that when they are notified of leave this is followed up with WA Police.⁶⁴

⁵⁹ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p4 and Department of the Attorney General, *Magistrates Court Information Bulletin, Appointment of Deputy Registrars (Non DotAG)*, No 10 of 2009, 1 September 2009, p1.

⁶⁰ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p4.

⁶¹ Ibid, p5.

⁶² Ibid.

⁶³ Mr Michael Johnson, Director, Magistrates Court and Tribunal, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p5.

⁶⁴ Ibid, pp4-5.

- 2.63 To ensure continuity of the deputy registrar function and knowledge by the police officer designated as a deputy registrar, WA Police have included the requirement to acknowledge this responsibility in their handover statements (a document drafted when one officer hands over to another officer). WA Police audit these documents during their business area management review.⁶⁵

Finding 3: The Committee finds that the Department of the Attorney General and Western Australia Police have implemented processes and practices to ensure that police officers with the powers of a deputy registrar have an understanding of the powers and responsibilities of a deputy registrar. However, a Department of the Attorney General review revealed that there is still room for improvement, particularly when a police officer takes leave on short notice and another deputy registrar needs to be appointed.

Recommendation 4: The Committee recommends that the Department of the Attorney General and Western Australia Police ensure that issues identified in the Department of the Attorney General's review of police officers undertaking the role of a deputy registrar are addressed. Also, that they continue to implement procedures and practices that ensure that all police officers appointed as a deputy registrar have an ongoing understanding of the powers and responsibilities of a deputy registrar.

REVIEW AND MONITORING OF JUSTICES OF THE PEACE

- 2.64 The Coroner recommended:

Recommendation No. 5

I recommend that the Department of the Attorney General review the use of Justices of the Peace, particularly in remote locations, to ensure that Justices performing court duties have received training in their duties and responsibilities and have successfully completed assessments after such training.

Recommendation No. 6

I recommend that the Department of the Attorney General ensures that JPs who perform court duties are monitored regularly to ensure that they are performing their duties appropriately.

Background

- 2.65 On the morning of 27 January 2008 the JP conducted a brief bail hearing at Mr Ward's cell door.

⁶⁵ Answers to Questions on Notice, Western Australia Police, 26 July 2010, p4.

- 2.66 The JP did not consider the question of bail at all. The JP informed the Coroner that he did not appreciate that he was required to consider the question of bail and his function was limited to ensuring that the charges were not ‘trivial’ and, if they were not ‘trivial’, he was to sign the remand warrant.⁶⁶ The JP also believed that unless a defendant specifically asked for bail a justice of the peace did not have to decide whether bail should be given. This approach was contrary to the provisions of section 7(1) of the *Bail Act 1982*, which required the JP to consider bail, whether or not an application was made.⁶⁷
- 2.67 The JP knew nothing about Mr Ward other than the fact he lived in Warburton. The JP knew nothing about Mr Ward’s employment, work commitments, family commitments and his ties with Warburton and made no enquiries as to whether Mr Ward was likely to abscond if given bail, an important bail consideration.
- 2.68 The Coroner concluded that ‘[it] is clear that Mr Thompson had a very poor understanding of his role and responsibilities as a JP, particularly in respect of considerations of bail’.⁶⁸ The Coroner further commented that:
- [the] way in which the bail proceedings wre (sic) conducted is ... very concerning. It would appear that the JP had received a considerable amount of information about the matter in the absence of the deceased ... [who] was not in any position to refute any arguments put forward or to challenge any of the statement of facts or other comments made in his absence by police to the JP. The fact the final proceedings, such as they were, took place at the door of the lockup is likely to have contributed to a perception that police were effectively running the proceedings.⁶⁹
- 2.69 The Coroner considered that Mr Ward’s case raised serious concerns about the use of justices of the peace in country areas and DotAG’s monitoring of the performance of justices of the peace, and highlighted a need for change. The Coroner was of the view that there should have been some form of audit of justices of the peace to identify the fact the JP had little understanding of his role.⁷⁰
- 2.70 The Coroner expressed the view that no justice of the peace should constitute a country court, alone or with another justice of the peace, unless they had satisfactorily completed an adequate training course.

⁶⁶ Coroner’s Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p46.

⁶⁷ Ibid.

⁶⁸ Ibid, p52.

⁶⁹ Ibid, p51.

⁷⁰ Ibid, p140.

- 2.71 The Chief Justice of Western Australia agrees that training is required. The Chief Justice advised the Committee:

[the] proposition is that if you are going to sit in court, then you need a further level of training than is presently available. That seems to me to be highly desirable.⁷¹

Implementation

- 2.72 As part of the Government response to Coroner Recommendation 6, DotAG has investigated the feasibility of introducing a two-tier model of justices of the peace appointments by separating judicial functions from administrative functions. (DotAG advised that judicial duties are where justices of the peace have to make a judicial decision such as authorising a warrant or presiding in court).⁷² As part of this review DotAG has considered interstate and overseas justice of the peace models.⁷³
- 2.73 A discussion paper seeking public comment on reviewing the system of Western Australia's justices of the peace and, in particular, whether a two-tier model should be adopted, was released for community consultation in October 2010. As at March 2011, the Attorney General had been provided with a report to consider feedback obtained and recommendations.⁷⁴ As at June 2011, DotAG was preparing costings and business cases of the models proposed for the Attorney General in order to assess the most effective allocation of resources.⁷⁵
- 2.74 In response to the Coroner's recommendations, DotAG conducted a justice of the peace survey to update contact details, gauge activity levels and provide an indication of the current responsibilities they perform.⁷⁶ Survey results include that 82 per cent witness/certify documents at least once a week, 4 per cent assess bail/surety on a

⁷¹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p13.

⁷² Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p11.

⁷³ South Australia has a two-tier justices of the peace model (general justices who perform more administrative functions and special justices who do court work). Queensland has a three-tier model (Commissioners for declarations, justices of the peace (qualified) and justices of the peace (Magistrates Court)). Victoria has general justices of the peace and bail justices of the peace. Other states and territories have justices of the peace with varying responsibilities. The Department of the Attorney General review also considered the models used in New Zealand and the United Kingdom: Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p8.

⁷⁴ The Department of the Attorney General review received submissions from a number of stakeholders including the judiciary, Aboriginal Legal Service of Western Australia, Law Society of Western Australia, Western Australia Police and the Royal Society for Justices of the Peace: Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p3.

⁷⁵ Letter from Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, 13 June 2011, p2.

⁷⁶ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p2.

weekly basis with 15 per cent doing so on a monthly basis and 12 per cent preside in court on a monthly basis (the majority of these are in the regions).⁷⁷

- 2.75 In response to the justice of the peace survey, 248 justices of the peace were removed from the justice of the peace register, either resigning due to inactivity, ill health, age or names were removed because the person had passed away, and 79 new justices of the peace were appointed, with 29 of these appointments in regional locations.⁷⁸
- 2.76 As at February 2011, there are 2 797 justices of the peace in Western Australia, 395 of whom preside in court.⁷⁹ The majority are used in regional and remote areas.⁸⁰ Generally, the majority of justices of the peace sit on a Saturday morning.⁸¹
- 2.77 Justices of the peace in regions remain important and are largely dedicated to their role.⁸² However, over the last five years the use of the justices of the peace has declined by approximately 30 per cent. This has occurred for a number of reasons including the appointment of additional magistrates and the increased use of video link.⁸³
- 2.78 DotAG is developing an enhanced training program and implementing targeted training for justices of the peace.⁸⁴ Training will be provided through adequate completion of a justice of the peace training model assessment or attendance and participation at annual training seminars with other justices of the peace, local magistrates and/or guest speakers, with a greater use of role plays and case studies.⁸⁵
- 2.79 A new training committee chaired by the deputy chief magistrate approves the calendar and training material provided to justices of the peace and is involved in approving material provided by the Central Institute of Technology (formerly TAFE), which provides the initial training for justices of the peace.⁸⁶ A cultural awareness

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Tabled Document, 'Total Active JPs', Department of the Attorney General, 29 March 2011 and Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p4.

⁸⁰ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p8.

⁸¹ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p6.

⁸² Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p10.

⁸³ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, pp5-6.

⁸⁴ Ibid, pp3, 5.

⁸⁵ Submission No 31 from Department of the Attorney General, 28 May 2010, p3.

⁸⁶ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p3.

- model had been included in the initial Central Institute of Technology training. DotAG strongly encourages all new justices of the peace to meet with Aboriginal elders and community leaders.⁸⁷
- 2.80 Since July 2010, DotAG has implemented a training calendar published on a dedicated website page and has advised justices of the peace of this calendar.⁸⁸ DotAG advised that checks and balances are being put in place to ‘*encourage*’ justices of the peace to attend training sessions and they are targeting, in particular, the 395 justices of the peace who preside in court.⁸⁹
- 2.81 All justices of the peace are contacted by their local clerk of court or regional manager when a local conference is scheduled and they are encouraged to attend. In March 2011 DotAG advised that since 1 July 2010 18 seminars have been conducted (13 in regional areas), attended by 517 justices of the peace (155 being court rostered justices of the peace in regional areas).⁹⁰
- 2.82 DotAG, with the Central Institute of Technology, has also developed two on-line training modules on bail surety and violence restraining orders. These will be made available to justices of the peace who are unable to attend seminars.⁹¹ Where justices of the peace are unable to attend training sessions, the local magistrate when on circuit will, when appropriate, invite them to sit with him or her to receive one-on-one training.⁹²
- 2.83 DotAG advised that ‘*eventually we want to get to a stage where we say that if they do not attend updated training with the next 12 months, we will not court roster them*’.⁹³
- 2.84 The *Handbook for Justices of the Peace* has also been updated. The new handbook is described as current, clear, concise and an easy to read ready reference for justices of the peace.⁹⁴ The handbook includes a new chapter outlining the concepts and importance of cultural awareness when dealing with matters involving Aboriginal and

⁸⁷ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p6.

⁸⁸ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p3.

⁸⁹ *Ibid*, p4.

⁹⁰ *Ibid*, p3. Of the 29 seminars to be held in the 2010-2011 financial year, 18 will be held in regional Western Australia.

⁹¹ *Ibid*.

⁹² Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p3.

⁹³ Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p3.

⁹⁴ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p2.

other diverse groups, and enhanced digital cross referencing and hyperlinks to legislation and relevant reference material.⁹⁵

- 2.85 DotAG was allocated \$803 000 in the 2010-2011 budget over four years to the implement enhanced training for justices of the peace performing judicial functions.⁹⁶
- 2.86 DotAG advised that the implementation of Coroner Recommendations 5 and 6 is ongoing.⁹⁷ Mr Ray Warnes, Executive Director, Court and Tribunal Services, DotAG, advised that he is confident but not complacent that the series of errors that occurred in Mr Ward's case will not happen again, and DotAG's risk approach, checks and active management will help ensure that it is not complacent or overconfident in the future.⁹⁸
- 2.87 A range of stakeholders are of the view that justices of the peace should not perform judicial duties. The Commissioner for Children and Young People considers that justices of the peace should be excluded from performing judicial duties in relation to juveniles, including bail applications. The Law Society of Western Australia is of the view that justices of the peace should be relieved of all judicial duties, including bail applications involving adults. Further, Hon Giz Watson MLC submitted that justices of the peace should undertake administrative functions only.⁹⁹ ALS is of the view that lawyers should take over performing justice of the peace judicial functions.¹⁰⁰

Finding 4: The Committee finds that while training for justices of the peace has been developed, it is not satisfied that all justices of the peace with judicial functions have received training on their duties and responsibilities, have successfully completed assignments after training and/or are monitored regularly to ensure that they are performing their duties appropriately as recommended in Coroner Recommendations 5 and 6.

Finding 5: The Attorney General is considering whether a two-tier justice of the peace model, separating judicial functions and administrative functions, should be implemented in Western Australia. A range of stakeholders have expressed the view that justices of the peace should not undertake any judicial functions, including court duties and presiding at bail applications.

⁹⁵ Ibid.

⁹⁶ With these funds, an Appointments Officer commenced employment in July 2010 releasing the training coordinator to do more organising and training. The funds are also directed at updating the justice of the peace database and the *Handbook for Justices of the Peace: Answers to Questions on Notice*, Department of the Attorney General, 29 March 2011, p3.

⁹⁷ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p3.

⁹⁸ Mr Ray Warnes, Executive Director, Court and Tribunal, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p12.

⁹⁹ Submission No 22 from Hon Giz Watson MLC, 14 May 2010, p6.

¹⁰⁰ Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, p12.

Recommendation 5: If the Attorney General determines that justices of the peace shall retain judicial functions (including court duties), the Committee recommends that the Attorney General implements a two-tier justice of the peace model, separating judicial functions and administrative functions, and ensures that justices of the peace with judicial duties receive adequate training as outlined in the Coroner Recommendations 5 and 6.

Recommendation 6: If the Attorney General determines that justices of the peace shall retain judicial functions (including court duties), the Committee recommends that all justices of the peace undergo an annual audit process that assesses their skill levels and understanding of their duties and responsibilities.

INCREASING THE USE OF VIDEO LINK AND AUDIO LINK AND REVIEWING COURT PROCEDURES TO LIMIT THE UNNECESSARY TRANSPORTATION OF ACCUSED PERSONS

- 2.88 Coroner Recommendations 7 and 8 are dealt with in Chapter 3 of this report as these recommendations relate to issues raised under the inquiry's term of reference 2.

PRISONER TRANSPORTATION VEHICLES

- 2.89 The Coroner recommended:

Recommendation No. 9

I recommend that the Department of the Corrective Services replace the current fleet of prisoner transportation vehicles with vehicles which are both safe and humane.

Recommendation No. 10

I recommend that the Department of Corrective Services ensure that there is in place a replacement strategy and budget to ensure that in future, vehicles are replaced on a regular basis and there are no old or unsafe vehicles in use.

Background

- 2.90 In January 2008, the same fleet that was introduced when then CSCS contractor AIMS commenced providing privatised prisoner services in August 2000 was still in operation.
- 2.91 The Department of Justice (now DCS and DotAG) purchased the prisoner transportation fleet in May 2005.¹⁰¹ When AIMS owned the fleet, it was planned that

¹⁰¹ AIMS previously owned the prisoner transportation fleet.

the fleet would be phased out over five years. However, when the Department of Justice took over fleet ownership, budget arrangements were not put in place to allow for the recurrent cost of replacement vehicles.¹⁰²

- 2.92 At the time of Mr Ward's death, the fleet had outlived its lifespan.¹⁰³ The Coroner found that there '*can be no doubt that the Department was well aware that use of these vehicles was becoming increasingly hazardous and difficult to manage*'.¹⁰⁴
- 2.93 The custodial transport fleet is a relatively small fleet currently consisting of 43 vehicles. The CSCS contractor (currently G4S) operates this fleet, which is owned by DCS. DCS engage a fleet manager (Easifleet) to ensure that vehicles are serviced.¹⁰⁵ (DCS also owns the smaller prison transport and juvenile transport fleets).¹⁰⁶
- 2.94 The Coroner found that the air conditioning to the pod was not working throughout Mr Ward's trip to Kalgoorlie. This journey took appropriately three hours and 45 minutes on a day when temperatures outside were over 40 degrees Celsius.¹⁰⁷ A re-enactment of the journey on a slightly *cooler* day recorded that the temperature in the pod on reaching Kalgoorlie was over 50 degrees Celsius and surface temperatures within the pod were as high as over 56 degrees Celsius.¹⁰⁸ The Coroner considered that it was a '*disgrace*' that a prisoner was transported for a long distance in high temperatures in the pod.¹⁰⁹

¹⁰² The fleet replacement process commenced shortly after the Cabinet decision to acquire the prisoner transport fleet in 2003 but did not result in funding for the replacement of the fleet being requested until the 2006-2007 and 2007-2008 budgets. These requests were not approved. The 2009 budget allocated funds to replace the fleet: Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp96-97.

¹⁰³ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp97-98.

¹⁰⁴ At the Coronial inquest the Department of Corrective Services denied having any knowledge of any systemic or ongoing issues with air-conditioning failure in the fleet. The Coroner did not accept this: Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp100-101.

¹⁰⁵ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p3.

¹⁰⁶ The custodial transport fleet is the focus of this section of the report as this is the fleet used by the contractor to transport persons in custody. The prison transport fleet consists of 12 vehicles used by public prisons. As at 29 March 2011, the prison transport fleet was '*currently being updated as many of the vehicles are approaching the end of their intended life of 5 years*'. The juvenile transport fleet consists of five vehicles in metropolitan Perth: Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p2.

¹⁰⁷ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p4. The air conditioning to the cabin of the vehicle worked off another system. This was working on 27 January 2008: *Ibid*, p21.

¹⁰⁸ Mr Ward's presence in the vehicle would slightly increase temperatures: *Ibid*, pp34-35, 37.

¹⁰⁹ *Ibid*, p14.

- 2.95 GSL was aware of the state of the custodial vehicles. In 2006 AIMS had clearly alerted DCS to its concerns when an AIMS manager (later a GSL manager) wrote to DCS attaching a 'Risk Register' that recorded that it was quite possible that there would be a death in custody and a catastrophe as a result of custodial (CSCS contract) transport. AIMS advised DCS that the identified risks are '*real and current and present themselves every time a vehicle is in use*'.¹¹⁰ GSL staff had raised concerns about the vehicles with senior officers.
- 2.96 In the Coroner's view the unsafe vehicles, owned by DCS, used to transport Mr Ward were a major factor in the death of Mr Ward. The Coroner considered that the Government's failure to ensure that the Mazda vans were replaced by a more humane system of transport following the 2001 OICS *Report of an Announced Inspection of Adult Prisoner Transport Services*¹¹¹ constituted a failure to comply with its duty of care and the ongoing failure to address the issues associated with the vehicle over the next seven years was '*inexcusable*'.¹¹²
- 2.97 The combination of any unsafe vehicle with poor monitoring ability of prisoners constituted a very serious hazard. The Coroner also found that the actions of DCS in providing an unsafe vehicles and its failure to put in place procedures to reduce the hazards associated with use of those vehicles clearly contributed to Mr Ward's death.¹¹³
- 2.98 The Coroner considered that a number of failings culminated in the death of Mr Ward including the Government not implementing the recommendations in the OICS report *Thematic Review of Custodial Transport Services in Western Australia* (May 2007) in a timely manner. The Coroner noted that the former Inspector had in '*unambiguous language*' stressed the need for urgent action.¹¹⁴ The former Inspector had also raised concerns about vehicle design and movement procedures six years prior to Mr Ward's death in the OICS *Report of an Announced Inspection of Adult Prisoner Transport Services*.

¹¹⁰ The Risk Register recorded against '*Death in Custody CSCS - Transport*' a '*moderate*' likelihood (defined as '*quite possible*'), against '*consequence*' the word '*catastrophic*' and against '*risk level*' the words '*Urgent executive attention and intervention required. Develop risk minimisation strategies. Treatment plan required*': Ibid, p109.

¹¹¹ Office of the Inspector of Custodial Services, Report No 3, *Report of an Announced Inspection of Adult Prisoner Transport Services*, November 2001.

¹¹² Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p106.

¹¹³ Ibid, pp107-108.

¹¹⁴ Ibid, p131.

Implementation

- 2.99 DCS have made significant improvements to the prisoner transportation fleet since the death of Mr Ward to ensure the safe and humane transportation of prisoners and have replaced the custodial transport fleet.
- 2.100 Following the death of Mr Ward, a number of actions were taken to improve the fleet (and transport services) including actions arising out of the review of prisoner transport services initiated by Hon Margaret Quirk MLA, then Minister for Corrective Services.¹¹⁵ Immediately following the death of Mr Ward, DCS initiated reviews of the entire secure vehicle fleet used by GSL, upgraded safety features on vehicles and, where necessary, removed vehicles from service.¹¹⁶ Safety changes to the custodial transport fleet, such as duress alarms, CCTV, air conditioners and air temperature monitors, were completed in June 2008. By August 2008, temperature control systems had been installed in all secure vehicles (at a cost of only \$600 per vehicle). Safety changes to the other fleets were completed in June 2010.¹¹⁷
- 2.101 In August 2008, DCS hosted an inaugural National Custodial Transport Forum attended by interstate and international delegates, which focused on identifying strategies to improve the safe and humane transportation of persons in custody and possible development of transport policies and vehicle design policy. DCS advised that Western Australia took the lead role in developing appropriate guidelines for custodial transport by initiating a review of the *Standard Guidelines for Corrections in Australia*, which resulted in changes to these guidelines that apply to all jurisdictions.¹¹⁸
- 2.102 DCS has developed *Minimum Standards for Secure Escort Vehicles*. All new vehicles operated by DCS or by any service contracted by DCS must meet these specifications and standards. The *Minimum Standards for Secure Escort Vehicles* are attached at Appendix 5.
- 2.103 To implement Coroner Recommendation 9, DCS entered into a supply contract with SVM Queensland¹¹⁹ to design and construct the new vehicles and secured Government funding to replace the current fleet. Vehicles were progressively

¹¹⁵ Department of Corrective Services, *Review of Prisoner Transport Services*, February 2008.

¹¹⁶ Submission No 29 from Department of Corrective Services, 24 May 2010, p1.

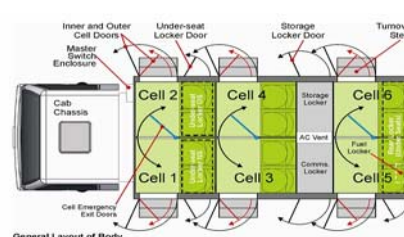
¹¹⁷ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p4.

¹¹⁸ Submission No 29 from Department of Corrective Services, 24 May 2010, p10.

¹¹⁹ The Office of the Inspector of Custodial Services is familiar with the vehicles built by SVM for Queensland Corrections which, in their view, appear to be the most sophisticated, safe and secure prison transport vehicles in the nation: Office of the Inspector of Custodial Services, Report No 43, *Thematic Review of Custodial Transport Services in Western Australia*, May 2007, p89.

decommissioned and replaced by new vehicles.¹²⁰ While vehicles are designed for long haul journeys, air and coach travel are now preferred for long haul journeys.¹²¹

- 2.104 The replacement of the new custodial transport fleet was completed in December 2010. As at March 2011, the custodial transport fleet consists of 41 operational vehicles,¹²² consisting of one 20 seat coach, 14 12 seat Isuzu vehicles located in the metropolitan area, 12 eight seat Isuzu vehicles located in metropolitan and regional areas (including Kalgoorlie), seven 14 seat Isuzu vehicles located in metropolitan and regional areas, five eight seat Isuzu dual cab vehicles located in metropolitan and regional areas (including Kalgoorlie) and two nine seat VW Crafter vehicles located in Albany and Bunbury. Photographs of a 12 seat Isuzu transport vehicle (and its internal layout), the 14 seat and 8 seat Isuzu vehicles follow:



- 2.105 All secure vehicles (in all vehicle fleets) are fully air-conditioned and have GPS tracking, temperature monitoring systems in each cell, duress alarms, closed-circuit television, audio visual recording, and mobile and satellite phones.¹²³
- 2.106 In relation to Coroner Recommendation 10, DCS advised that the Government has approved sufficient funding to ensure that the vehicles are replaced on a regular replacement cycle of five years (for cab chassis) and pods are replaced every ten years

¹²⁰ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p3.

¹²¹ The Department of Corrective Services advised that a long haul journey is one that takes longer than four hours to complete: Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p10. (However, the *Minimum Standards for Secure Escort Vehicles* defines a long haul journey as a journey that takes over three hours in duration. See Appendix 5).

¹²² As at March 2011, 2 of the 43 vehicles in the custodial transport fleet were consider non-viable to update to current standards and were being de-commissioned: Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, pp1-2.

¹²³ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p3.

(this is specified in the new CSCS contract), with the pods being transferred to a new vehicle after five years.¹²⁴

- 2.107 A preventative maintenance regime has been introduced. All operating vehicle parts are regularly reviewed and maintained to specified standards. Truck chassis are serviced every 10 000 kilometres as recommended by the manufacturer, air conditioning inspections occur quarterly and a full service is conducted annually, and audio visual equipment is inspected and maintained monthly. Also, prior to every journey escort officers must undertake a complete vehicle check.¹²⁵
- 2.108 DCS advised that Coroner Recommendations 9 and 10 have been implemented. In relation to Recommendation 10, DCS advised that processes and funding is in place to meet the ongoing nature of this recommendation. In March 2011 the Commissioner of Corrective Services advised the Committee that DCS has been allocated \$3.3 million per annum for leasing and operating costs.¹²⁶
- 2.109 The Inspector recognises that there have been improvements in the custodial transport fleet. The Chief Justice of Western Australia noted that the standard of the transport vehicles arriving at court has improved immeasurably.¹²⁷
- 2.110 In relation to police transportation, after the Coroner's Report was released WA Police conducted a comprehensive review and risk assessment of its custodial transport policy, procedures and practices. As a result, WA Police have issued a *Transport of Persons in Custody Manual*. The manual notes that police vehicles are only suitable for short haul prisoner transport which is defined (at most) as two consecutive periods of two and a half hours with a required comfort break between those periods.¹²⁸
- 2.111 Further, WA Police continue to progress its replacement of vehicles. In regional Western Australia all caged vehicles are being replaced by vehicles with new moulded prisoner modules (varley pods) as part of the normal fleet replacement cycle. In July 2010, WA Police advised that they had sourced funding of \$2.5 million over the next two financial years to provide 93 secure vehicles with varley pods.¹²⁹

¹²⁴ Mr Ian Johnston, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 26 July 2010, p14.

¹²⁵ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p5.

¹²⁶ Mr Ian Johnston, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p2.

¹²⁷ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p8.

¹²⁸ Western Australia Police, *Transport of Persons in Custody Manual*, 10 September 2009, p5.

¹²⁹ Answers to Questions on Notice, Western Australia Police, 26 July 2010, p5. Western Australia Police described the varley pods as the best secure transportation available. They have no 'contact points' inside, are air conditioned and have camera intercom: Mr Greg Italiano, Executive Director, Western Australia Police, *Transcript of Evidence*, 26 July 2010, p9.

Finding 6: The Committee finds that there have been significant improvements to the transport vehicle fleet to ensure the safe and humane transportation of detained persons, including the replacement of the custodial transportation fleet.

Finding 7: The Department of Corrective Services considers that the recurrent funds allocated to replace vehicles are sufficient to ensure that in the future vehicles are replaced on a regular basis and there are no old or unsafe vehicles in use as recommended in Coroner Recommendation 10.

Transport provisions in the new CSCS contract

- 2.112 The new CSCS contract¹³⁰ contains guidelines as to when specific modes of transport will be used to transport persons in custody, including aircraft, coach vehicle, secure escort vehicle or standard vehicle. (Air and coach transportation, which have been introduced in Western Australia, are discussed in Chapter 3 of this report).
- 2.113 The new CSCS contract provides that the contractor will acquire vehicles from DCS and the contractor shall be responsible for acquiring, maintaining (in a good operating condition in accordance with best industry practice), replacing and disposing of transport vehicles. The contractor is also required to ensure that an appropriate fleet management system is established (which DCS may view on request).¹³¹
- 2.114 The contractor will determine the mode of transport most suitable for the movement of a person in custody. General standards the contractor must consider when determining the mode of transport (which the contract manager may approve variations of in certain circumstances) include that a person in custody shall not be transported in a vehicle/craft without a toilet for greater than two hours, shall not be transported in a vehicle/craft without the opportunity to alight from the vehicle for greater than four hours, and shall not be transported in a vehicle/craft for greater than eight hours during a 24 hour period.¹³²
- 2.115 DCS noted that the new CSCS contract provides that secure escort vehicles meet the DCS *Minimum Standards for the Provision of Secure Escort Vehicles* (see Appendix 5 of this report) and any standards related to custodial transport in the *National Guidelines for Corrections in Australia 2004*. The contractor must not use a secure

¹³⁰ Court Security and Custodial Services Contract between the Commissioner for the Department of Corrective Services (for and on behalf of the State of Western Australia) and Serco Australia Pty Ltd, 14 June 2011. Contractor services commence on 31 July 2011.

¹³¹ Ibid, Part 26.

¹³² Letter from Ms Heather Harker, Acting Commissioner, Department of Corrective Services, 21 June 2011, Attachment B.

escort vehicle chassis older than five years or greater than the manufacturers warranty period or a secure escort vehicle pod older than ten years.¹³³

DCS AND G4S POLICIES AND PROCEDURES, MONITORING THE COURT SECURITY AND CUSTODIAL SERVICES (CSCS) CONTRACT AND G4S TRAINING

2.116 The Coroner recommended:

Recommendation No. 11

I recommend that the Department of Corrective Services conduct ongoing review of all G4S policies and procedures relating to the welfare of detainees and duty of care to ensure that procedures in place are sufficiently comprehensive and address the known risks.

Recommendation No. 12

I recommend that the Department of Corrective Services ensure that there are sufficient contract monitors to regularly review operations in regional locations so as to ensure that the prisoner transportation fleet is maintained in a safe manner and that G4S staff are complying with the company's policies and procedures.

Recommendation No. 13

I recommend that all G4S staff should be provided with appropriately detailed practical training in respect of duty of care obligations and that such training be refreshed on a regular basis for all staff.

Recommendation No. 14

I recommend that G4S arrange training specific to the role of the site supervisors in regional locations in respect of management skills and duties in respect of monitoring staff compliance with policies and procedures relating to the welfare of detainees and duty of care.

Background

2.117 Coroner Recommendations 11 to 14 relate to the quality of the service provided by G4S, DCS' overview of this service and GSL training to ensure the welfare of detainees being transported.

2.118 Outsourcing of prisoner transportation commenced in 2000 and was effected by the passing of the *Court Security and Custodial Services Act 1999* and the subsequent CSCS Contract to provide the service.¹³⁴

¹³³

Letter from Ms Heather Harker, Acting Commissioner, Department of Corrective Services, 21 June 2011, Attachment B and Court Security and Custodial Services Contract between the Commissioner for the Department of Corrective Services (for and on behalf of the State of Western Australia) and Serco Australia Pty Ltd, 14 June 2011, Part 26.

- 2.119 The State's duty under common law and international law to transport persons in custody in safe conditions and provide adequate care to persons deprived of their liberty is non-delegable.¹³⁵ As the Australian Human Rights Commission submitted, under international law a citizen's right to life engages a number of positive obligations on the State including a duty to carefully regulate and train personnel to minimise the chance of a violation of the right to life and a duty to protect people held in any form of detention, including ensuring appropriate monitoring and supervision of detainees.¹³⁶
- 2.120 AIMS provided transport services under the CSCS Contract until July 2007 when GSL became the service provider. Essentially, the service provider provided staff to conduct custodial services and was paid through a 'cost plus' contract.¹³⁷ GSL was taken over by G4S in May 2008. G4S conducted about 50 000 prisoner escorts a year. The G4S CSCS contract is due to expire on 30 July 2011.
- 2.121 On 5 May 2011, the Government announced that Serco Australia Pty Ltd had been selected as the preferred provider for the next CSCS contract.¹³⁸ The new CSCS was signed on 14 June 2011, with contractor services to commence on 31 July 2011. (See below for further on the new CSCS contract).
- 2.122 In relation to the events on January 2008, the Coroner concluded that '*the quality of [Mr Ward's] supervision, treatment and care was disgracefully bad*' and the quality of Mr Ward's treatment, supervision and care in the pod '*could hardly have been worse*'.¹³⁹
- 2.123 The Coroner found that GSL staff had limited staff training. The staff at the Kalgoorlie office of GSL came from a wide a variety of backgrounds and some had no

¹³⁴ The CSCS contract covers prisoner transportation services and other services delivered to the Department of Corrective Services, Department of the Attorney General and Western Australia Police.

¹³⁵ Emeritus Professor Richard Harding, the former Inspector of Custodial Services, advised that the Department of Corrective Services' previous defensive response to the 'Sandfire incident' in 2006 (when a transport vehicle broke down in 40 degree Celsius heat and prisoners, who reached their destination 20 hours after departing, were confined to the vehicle) was essentially '*don't blame us, this is the responsibility of the contractor*'. The former Inspector added that there was the feeling that the department had contracted out their responsibility: Emeritus Professor Richard Harding, Consultant, *Transcript of Evidence*, 17 November 2010, p2.

¹³⁶ Submission No 8 from Australian Human Rights Commission, 14 May 2010, p4 citing S Joseph, J Schultz, M Castan, *The International Covenant on Civil and Political Rights: Cases, Commentary and Material*, 2nd edition, 2004, Chapter 8.

¹³⁷ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p93. The WA Prison Union describes G4S Australia Pty Ltd as '*only a labor hire firm with the apparent purpose of cutting costs by reducing the conditions of the staff they employ*': Submission No 24 from WA Prison Officers' Union, 19 May 2010, p2.

¹³⁸ Hon Terry Redman MLA, Minister for Corrective Services, *Ministerial Media Statement*, 'Court security and custodial services preferred provider', 5 May 2011, p1.

¹³⁹ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp118, 130.

prior security or custodial experience. Most staff had received some training when they commenced which they described as mostly involving reading materials and subsequently being tested on what they had read. The only practical training was in the use of restraints and the use of force. Some employees had received training in 2001 but no refresher courses since then.¹⁴⁰ There was a wide variance in practice between officers in performing everyday duties.

- 2.124 The Coroner found that it appears that there was no specific training provided for supervisors apart from their attending an annual supervisors' conference. The supervisor at the time had received limited management training.¹⁴¹
- 2.125 The Coroner noted that the DCS contract monitors were well aware of the widespread deficiencies with the transport fleet. The Coroner added that it is important that the contract monitors are able to review operations to ensure that the contractor's staff are complying with policies and procedures and have the ability to effect changes in the vehicle fleet when prisoner safety is compromised.¹⁴²
- 2.126 Despite GSL and DCS being aware of the risks presented by the vehicles, and despite the warnings of the former Inspector, no effective action was taken to ensure that the duty of care owed to prisoners could be complied with. GSL had no written policies, nor were they required by DCS, to address risks. The Coroner found that failures by DCS and GSL reflected a lack of concern for the safety and welfare of prisoners.¹⁴³ The Coroner found that the failure by GSL to manage known hazards contributed to Mr Ward's death.¹⁴⁴
- 2.127 It is alarming given the circumstances of Mr Ward's death that when asked at the Coronerial inquiry why GSL/G4S had not taken any action against Ms Stokoe and Mr Powell, the company representative advised:

*I believe the view was formed that they hadn't formally breached any company policies or procedures.*¹⁴⁵

Implementation

- 2.128 Coroner Recommendations 11 and 12 are directed at DCS and recommendations 13 and 14 are directed at G4S.

¹⁴⁰ Ibid, p54.

¹⁴¹ Ibid, p53.

¹⁴² Ibid, p144.

¹⁴³ Ibid, p121.

¹⁴⁴ Ibid, p84.

¹⁴⁵ Australian Broadcasting Corporation, Four Corners, 'Who Killed Mr Ward', 15 June 2009, Program transcript quoting the evidence of Mr John Hughes, General Manager, GSL Custodial Services Pty Ltd: <http://www.abc.net.au/4corners/content/2009/s2598796.htm> (viewed on 6 March 2011).

- 2.129 In relation to Coroner Recommendation 11, DCS reviewed all G4S policies and procedures between July 2008 and April 2010.¹⁴⁶ DCS now formally review the contractor's policies annually.¹⁴⁷
- 2.130 Following the death of Mr Ward, GSL was issued with a *Performance Improvement Request* for an improved method of providing the service of escorting prisoners. GSL agreed to a number of actions, including a review of all existing policies and procedures relating to the management of prisoners transported in secure vehicles. GSL introduced a number of new G4S operational procedures specifically relating to how long haul prisoner escorts operate including a long haul secure vehicles movement compliance checklist and revised approved vehicle sign out report form.¹⁴⁸ In September 2009, G4S introduced an Escort Booklet which consolidates previous forms and in their view '*ensures that all policies and procedures are met*'.¹⁴⁹
- 2.131 There have been a number of changes to policies and procedures since the death of Mr Ward. The *Minimum Standards for Secure Escort Vehicles* (see Appendix 5) are based on duty of care principles including the principles that the transport of persons in custody should take place only when absolutely necessary and persons in custody will be monitored at all times during escort with welfare checks being conducted by staff at least every two hours. A face to face check with the prisoner to confirm that all is well is now required.¹⁵⁰
- 2.132 In relation to Coroner Recommendation 12, DCS have employed three additional contract monitoring officers, bringing the unit monitoring the CSCS contract to six officers. DCS consider this sufficient to monitor contractual obligations.¹⁵¹ DCS advised that it has a comprehensive Monitoring Plan/Schedule that provides for the regular review of metropolitan and regional locations. The officers monitor that the operating procedures in the CSCS contract are complied with and conduct vehicle inspections at regular intervals.¹⁵² Mr James Bryden, Inspections and Research Officer, OICS, acknowledged improvements in DCS monitoring noting that monitors

¹⁴⁶ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p5.

¹⁴⁷ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p3.

¹⁴⁸ A G4S long haul prisoner escort is a journey of over two hours one way: Letter from Mr Keith Badham, Managing Director, G4S Custodial Services Pty Ltd, 19 April 2011, p2.

¹⁴⁹ Mr Keith Badham, Managing Director, G4S Australia Pty Ltd, *Transcript of Evidence*, 6 April 2011, p5.

¹⁵⁰ Mr Graeme Doyle, Assistant Commissioner Corporate Support, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p3.

¹⁵¹ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p4.

¹⁵² The Department of Corrective Services advised that between August 2010 and 29 March 2011 monitoring officers completed 344 standard vehicle checks and 1 196 compliance tests involving the movement of persons in custody: Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p4 and Mr Graeme Doyle, Assistant Commissioner Corporate Support, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p6.

now have the opportunity to travel to regional areas more often (rather than focussing mainly on Acacia Prison).¹⁵³

2.133 DCS consider that it has implemented Coroner Recommendations 11 and 12.¹⁵⁴

CSCS Contractor training

2.134 The events of January 2008 demonstrated that the training the CSCS contractor provides to contract employees is critical to ensure that persons in custody are transported in a safe and humane manner and risks are minimised.

2.135 G4S, the CSCS service providers until July 2011, advised the Committee that they are meeting all their obligations under the CSCS contract and in relation to Coroner Recommendations 13 and 14.

2.136 G4S advised that since the tragic death of Mr Ward, training programs have been reviewed, upgraded and rewritten. They have introduced a new stand-alone duty of care module as well as teaching duty of care outside this stand-alone module. Duty of care training is refreshed annually to all operational staff. In April 2011, G4S advised the Committee that 263 staff had completed duty of care refresher training since August 2010 and they expect that all (approximately 300) staff will complete the annual refresher training within the 12 month period. G4S employees attended six weeks of training before going into the field to commence their duties. A cultural awareness module is included as a standard training module.¹⁵⁵

2.137 In relation to supervisor training, G4S advised that the training programs for all site supervisors has been reviewed and upgraded and all 18 supervisors had completed a two day intensive training course.¹⁵⁶

2.138 G4S advised that their training is conducted by an in-house training manager. The competency of trainees is measured through a written assessment.¹⁵⁷ In 2009-2010 a total of over 24 000 hours of training was provided.¹⁵⁸ G4S' training budget for 2011 was \$270 000.¹⁵⁹ G4S carries out psychometric testing of staff before they are employed.¹⁶⁰

¹⁵³ Mr James Bryden, Inspections and Research Officer, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p13.

¹⁵⁴ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, pp6, 7.

¹⁵⁵ Letter from Mr Keith Badman, Managing Director, G4S Custodial Services Pty Ltd, 15 April 2011, p1.

¹⁵⁶ Tabled Document, G4S Australia Pty Ltd, 6 April 2011, p3.

¹⁵⁷ Mr Keith Badham, Managing Director, G4S Australia Pty Ltd, *Transcript of Evidence*, 6 April 2011, p3.

¹⁵⁸ Tabled Document, G4S Australia Pty Ltd, 6 April 2011, p2.

¹⁵⁹ Letter from Mr Keith Badman, Managing Director, G4S Custodial Services Pty Ltd, 19 April 2011, p1.

¹⁶⁰ Ibid, p2.

2.139 DCS engaged an independent training consultant to review and report on G4S training in 2009, 2010 and 2010-2011. While the training consultant's reports identified improvements in G4S training, they have also noted deficiencies in G4S training.

2.140 A chronology of action DCS has taken in relation to G4S training and a summary of the reviews of training follows:

- Following the death of Mr Ward, DCS issued a direction to G4S to comply with the recommendations in the Coroner's Report. G4S submit an Action Plan to address the training requirements, including a specific duty of care model.
- Review of training 2009. Following a review of G4S training the consultant produces a '*scathing*' report.¹⁶¹ The training of regional officers is raised as an issue. G4S agrees that there are shortfalls and takes action to address issues identified.
- Review of training 2010. The consultant reviews GSL training against the findings of the earlier review. The consultant found that while G4S has developed and implemented initial and refresher training on duty of care, the training '*does not have a practical focus as recommended by the Coroner*'. The duty of care module does not focus on the practical application of duty of care as recommended and the test is flawed.¹⁶² Further, supervisor training '*is yet to be fully developed and implemented by G4S in response to the recommendations of the Coroner*'.¹⁶³ While G4S has introduced supervisor training it does not provide for monitoring staff compliance with policies and procedures relating the welfare of detainees and duty of care.¹⁶⁴

DCS issue a Performance Improvement Request against G4S to address the deficiencies identified in the report. G4S provide an Action Plan (July 2010) in response to the request. In November 2010, G4S indicate that they believe they have completed the requirements of the Action Plan.

- Review of training 2010-2011. The consultant reviewed the implementation of previous recommendations and the skill gap and transition needed to move G4S to a nationally recognised qualification (Certificate III in Correctional Practice). The report on the review, conducted in December 2010 and January

¹⁶¹ Professor Neil Morgan, Inspector of Custodial Services described this report as '*scathing*': Office of the Inspector of Custodial Services, Report No 65, *Thematic Review of Court Security and Custodial Services in Western Australia*: May 2010, pp v, 75, 128.

¹⁶² Applic8 Pty Ltd, *An Audit of the Training Provided by G4S for the Court Security and Custodial Services Contract*, 19 June 2010, p18.

¹⁶³ Ibid, p19.

¹⁶⁴ Ibid.

2011, is delivered in February 2011. The review finds that G4S had made progress towards meeting the requirement of national training benchmarks but there remain areas of concern that need to be rectified.¹⁶⁵

In relation to Coroner Recommendation 13, the report states that ‘*G4S has implemented and improved duty of care training but it still lacks the practical focus recommended by the Ward Coronial Report*’.¹⁶⁶ In relation to Coroner Recommendation 14, the report states that ‘*G4S has yet to complete the development and implementation of supervisor training as recommended by the Ward Coronial Report*’.¹⁶⁷ Following this review, 18 supervisors attend a two day training program.¹⁶⁸ DCS issue a Performance Improvement Request in May 2011.¹⁶⁹

- 2.141 The Commissioner for Corrective Services advised that although each review report has highlighted issues to be addressed, the reports have also indicated that significant improvements have taken place.¹⁷⁰
- 2.142 G4S advised that there have been improvements in G4S procedures and training since the death of Mr Ward and this is reflected in the reduction in the number of ‘critical incidents’ since they became the contractor — from 43 critical incidents during their first year as contractor to six critical incidents between August 2009 and July 2010.¹⁷¹
- 2.143 The Committee is concerned, however, that despite a number of reviews and action plans directed at G4S addressing Coroner Recommendations 13 and 14, in 2011, three years after the death of Mr Ward, a consultant review still identified that G4S training lacks a practical focus and G4S had yet to develop and implement the supervisor training as recommended by the Coroner.
- 2.144 The Commissioner for Corrective Services advised that DCS were trying to take contractor training to a Certificate III and Certificate IV in Correctional Services. The Commissioner considers that this requirement in the new CSCS contract and the

¹⁶⁵ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p5.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Mr Keith Badham, Managing Director, G4S Australia Pty Ltd, *Transcript of Evidence*, 6 April 2011, p3.

¹⁶⁹ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p5.

¹⁷⁰ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p5.

¹⁷¹ A ‘critical incident’ is ‘*an event that impacts on the requirements of the contractor to provide a safe and secure environment and a duty of care for persons in custody*’. Recent critical incidents were caused by building and infrastructure issues, prisoner medical issues and prisoner behaviour: Mr Keith Badham, Managing Director, G4S Australia Pty Ltd, *Transcript of Evidence*, 6 April 2011, p2.

requirement that training be conducted by a registered training organisation (see below), are key elements in addressing the gaps in training.¹⁷²

- 2.145 The Committee is of the view that DCS should demand and enforce the highest standards of training against the CSCS contractor. To ensure that a tragedy similar to what happened to Mr Ward does not occur again and that persons in custody are transported in a safe and humane manner, it is vital that every contractor employee is appropriately trained and contract employees' competence to perform their duties is monitored and audited. It only takes one employee to cause a tragic event. Stringent checks and balances are required.
- 2.146 It is notable that when the Committee asked G4S how the Government and public can know that G4S training is effective, G4S advised that they relied on evidence (outcomes) such as the number of critical incidents.¹⁷³ The Committee is concerned about this passive approach to monitoring employee performance. Skill deficiencies should be identified and addressed before an adverse event occurs.
- 2.147 The Committee is of the view that the CSCS contractor should proactively monitor and audit employees' competence, at the time of training and on an ongoing basis, to ensure that employees are implementing their training, and should report their monitoring and auditing results to DCS. Training requirements included in the new CSCS contract are noted at paragraph 2.159.
- 2.148 DCS initially advised the Committee that they will get an independent consultant to review the CSCS contractor's training on an annual basis, but there was no reason why DCS could not engage the consultant on a more regular basis to ensure that standards are met. In 2010, DCS also advised that they were, in consultation with the independent consultant, developing, tests and compliance modules that will measure training. The value of engaging an independent consultant to review the contractor's training has been demonstrated in the past few years.

Recommendation 7: The Committee recommends that the Department of Corrective Services continues to engage an independent consultant to review the CSCS contractor's training on an annual basis.

- 2.149 A Contract for the Provision of Court Security and Custodial Services annual report is tabled in Parliament each year pursuant to section 45 of the *Court Security and Custodial Services Act 1999*. This section also provides that the CSCS Contract, as amended from time to time, must be tabled in Parliament.

¹⁷² Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, pp5, 6.

¹⁷³ Mr Keith Badham, Managing Director, G4S Australia Pty Ltd, *Transcript of Evidence*, 6 April 2011, p5.

- 2.150 The Committee is of the view that the report should include details relating to CSCS contractor training in the preceding year.

Recommendation 8: The Committee recommends that the responsible Minister directs that the Contract for the Provision of Court Security and Custodial Services annual report tabled in Parliament each year include details of CSCS training, which should include detail of the training provided to contractor employees, the auditing and monitoring of employees' demonstrated competence, their compliance with contract training provisions and the independent consultant's review of the contractor's training.

- 2.151 As many submitters noted, transparency and accountability in government are important, particularly when the government contracts out services such as prisoner transport to private companies.
- 2.152 The Committee also noted that while the Contract for the Provision of Court Security and Custodial Services annual reports and the CSCS contract are posted on the DCS website, they are not posted or linked to the dedicated 'Prisoner Transport' page on the DCS website and are not easily located and accessible to the public.
- 2.153 The Committee is of the view that DCS should post, at a minimum, the CSCS contract, the Contract for the Provision of Court Security and Custodial Services annual reports, and the annual independent consultant's report on contractor training on the 'Prisoner Transport' page or another dedicated and easily identifiable webpage (perhaps a CSCS Contract page) on the DCS website.

The new CSCS contract

- 2.154 On 5 May 2011, Hon Terry Redman MLA, Minister for Corrective Services announced that Serco Australia Pty Ltd had been selected as the preferred provider for court security and custodial services, including prisoner transport, after the (then) current contract expired.
- 2.155 The new CSCS contract, which was signed on 14 June 2011 with contractor services to commence on 31 July 2011, was tabled in Parliament on 22 June 2011.¹⁷⁴ The new CSCS contract will be for an initial term of five years (to 30 June 2016) with two options to extend to a maximum of ten years.
- 2.156 The Minister for Corrective Services announced that the new arrangements will deliver an improved quality of service with a focus on duty of care and the delivery of

¹⁷⁴ Legislative Assembly Tabled Paper No 3498, 22 June 2011. The Court Security and Custodial Services contract between the Commissioner for the Department of Corrective Services (for and on behalf of the State of Western Australia) and Serco Australia Pty Ltd can be accessed at www.parliament.wa.gov.au, choose Parliamentary Business / Tabled Papers / Legislative Assembly, then search '3498'.

services in a safe, humane and decent manner. The Minister added that the arrangements will provide for improved training requirements for staff and improved contract performance measures to assess performance¹⁷⁵ and the new contract is '*much more stringent than the previous one; it includes terminations clauses*'.¹⁷⁶ The Minister expressed confidence that what happened to Mr Ward will not happen again when he said:

[I have] *every confidence that we've been through enough of a rigorous process to ensure that those services will be to the standard that the community expects and that we do not have a repeat of the Ward case.*¹⁷⁷

2.157 Serco Australia Pty Ltd has announced that they are '*particularly excited about the prospect of transforming Court Security and Custodial Services in Western Australia*'. They advise that measures to ensure the safety and wellbeing of persons in custody will include staff training accredited to a nationally recognised standard, '*new operational procedures with robust systems and processes to identify, analyse, manage and mitigate risks*' and '*regular internal and external audits across all locations*'.¹⁷⁸

2.158 The new CSCS contract includes the following:

- Work standards - The contractor warrants that the services will be executed in a proper manner and in accordance with best industry practice, and in a way that provides safe, secure and appropriate management of persons in custody.
- Service standards - The contractor will perform the services in a responsive and innovative manner to achieve quality outcomes: safely; by exercising a high level of duty of care in an ethical and humane manner; in a diligent, careful, skilful and competent manner; in accordance with the standards and level of care, skill, knowledge and judgement required or reasonably expected under best industry practice; by treating all persons fairly and will respect for the inherent dignity of the human person, having due consideration to differing, individual and cultural needs; and shall deliver progressive service solutions.
- Operating Manual - The contractor is to prepare, review and comply with an Operating Manual.

¹⁷⁵ Hon Terry Redman MLA, Minister for Corrective Services, Ministerial Media Statement, 'Court security and custodial services preferred provider', 5 May 2011, p1.

¹⁷⁶ Hon Terry Redman MLA, Minister for Corrective Services, Legislative Assembly Budget Estimates Hearing, 31 May 2011, p8.

¹⁷⁷ Channel 2 News, Perth, 'Prisoner Transport Contract', 5 May 2011.

¹⁷⁸ Serco Australia Pty Ltd, *Media Release*, 5 May 2011, p1.

- Reporting requirements - The contractor must report to DCS in relation to critical incidents (within 15 minutes), major incidents (within one hour) and provide situation reports, monthly reports, annual performance reports and independently audited annual accounts.
- Termination of contract - DCS 'may' terminate the contract if an 'Event of Default' occurs. 'Event of Default' is defined to include the death of a person in custody caused or materially contributed to by a breach of the contractor's obligations, the escape by two or more secure persons in custody in any service year caused or materially contributed to by a breach of the contractor's obligations, the occurrence of two or more other critical incidents caused or materially contributed to by the contractor in any one operating month, and the contractor failing to remedy any breach under this contract within ten days. Hon Simon O'Brien MLC advised that *'[i]n relation to the new CSCS contract, and differing from the previous one, ... I understand that just one incident of a prisoner dying is sufficient to trigger the process that might lead to termination of the contract'*.¹⁷⁹

2.159 The training provisions in the new CSCS contract, which DCS says address Coroner Recommendations 13 and 14, include:

- The contractor shall ensure that all training programmes are provided by a registered training organisation.
- The contractor must ensure that all contract workers are trained to a minimum level of Certificate III in Correctional Practice and are in possession of a Certificate III as soon as possible, however no longer than 12 months after commencing work in performing services.
- The contractor must ensure that all contract workers holding supervisor positions are trained to a minimum level of Certificate IV in Correctional Practice and are in possession of a Certificate IV as soon as possible, however no longer than 12 months after commencing work in performing services.
- The contractor must develop a Pre-Service Training Programme for contract workers addressing all matters that may be reasonably required for the purpose of training new workers and providing them with the skills required.
- The contractor must develop Specific Training Programmes which include other training programmes addressing all matters that may be reasonably required in respect of the specific duties or functions each contract worker is required to perform to the standard required by this contract.

¹⁷⁹ Hon Simon O'Brien MLC, Legislative Council Budget Estimates Hearing, Department of Corrective Services, *Transcript of Evidence*, 20 June 2011, p6.

- The contractor must develop Ongoing Training Programmes for the ongoing training and staff development of contract workers who have completed the Pre-Service Training Programme and/or Specific Training Programmes.
- The contractor must ensure that each contract worker has satisfactorily completed the Pre-Service Training Programme before they have any contact with persons in custody, all Specific Training Programmes before the worker commences performing duties and functions to which the programme relates, and any Ongoing Training Programmes. A contract worker is deemed to have satisfactorily completed a training programme if the worker has been formally assessed as having passed or, where no formal assessment is required, the worker has completed the scheduled class hours. The contractor must provide DCS with the information necessary to it to assess the contractor's compliance with the above.

2.160 Mr Johnson, Commissioner for Corrective Services, advised the Committee that DCS is doing all it possibly can to make sure that a death in custody in circumstances similar to Mr Ward's never happens again and advised the Committee that he was confident that similar tragedy will not occur again.¹⁸⁰

2.161 The Inspector is confident that the tragic death of Mr Ward has embedded in staff a much stronger commitment to duty of care but '*nobody can ever give a cast-iron guarantee that there will be no deaths in the back of transport vehicles*'.¹⁸¹

PROGRESS OF IMPLEMENTING THE CORONER'S RECOMMENDATIONS

Finding 8: The Committee finds that there has been action to implement the Coroner's Recommendations but further action to fully implement a few recommendations is required.

2.162 It is important that all Coroner Recommendations (except Coroner Recommendation 2) be fully implemented to avoid events similar to what happened to Mr Ward occurring again.

2.163 It is vital that progress made is sustained and the Government makes an ongoing commitment to implementing the recommendations in a real and practical way. It is hoped that the legacy of what happened to Mr Ward will serve to focus Government commitment to ensure that an injury or death in similar circumstances does not happen again.

¹⁸⁰ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 26 July 2010, p19.

¹⁸¹ Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p11.

- 2.164 The Committee is of the view that it is important that the departments in the future do not adopt a process oriented ‘tick the box’ approach to implementing required action to progress the continued implementation of the Coroner’s recommendations and they ensure that employees have a real understanding of their duties and what is required. DCS, DotAG, WA Police and the CSCS contractor need to commit to continually improving services.

PRIVATISATION OF PRISONER TRANSPORT SERVICES

- 2.165 Whether the prisoner transport fleet should be privatised was raised during the course of the inquiry. The Committee did not consider this issue in detail as it is outside the scope of the inquiry.
- 2.166 DICWC recommends that the CSCS Contract be immediately terminated, the State resume the control and management of custodial transport and that the privatisation of prisons and custodial services should cease.¹⁸² The WA Prison Officers’ Union also supports terminating the privatisation of prisoner transport services.¹⁸³ Two Members of the Committee (Hons Kate Doust and Lynn MacLaren MLCs) agree with this.
- 2.167 Further, a petition was tabled by Hon Giz Watson MLC in the Legislative Council on 5 April 2011 opposing G4S continuing to operate the transportation of detained persons in Western Australia in light of Mr Ward’s case.¹⁸⁴ The petition requests that the Legislative Council recommend and empower DCS to resume the sole responsibility, management and delivery of all custodial transport and immediately terminate the CSCS contract for the transportation of detained persons.¹⁸⁵
- 2.168 The Committee notes that the Inspector is of the view that the issue is not whether the transport service is delivered by the private sector or public sector but the important questions are the quality of service, accountability and transparency in the delivery of services and value for money (for the quality of service provided).¹⁸⁶ The former Inspector added that the private sector ‘*at its best, has logistical systems that are far ahead of anything the public sector can offer*’.¹⁸⁷

¹⁸² Submission No 30 from Deaths in Custody Watch Committee, 25 May 2010, p56.

¹⁸³ Submission No 24 from WA Prison Officers’ Union, 19 May 2010.

¹⁸⁴ Parliament of Western Australia, Legislative Council, 5 April 2011, Tabled Paper No 3200. The petition contains 1 225 signatures.

¹⁸⁵ The submission from Hon Giz Watson MLC adds that privatisation of custodial services should cease because it is an inappropriate service to outsource: Submission No 22 from Hon Giz Watson MLC, 14 May 2010, p11.

¹⁸⁶ Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p3. The Inspector noted that Acacia Prison, a prison run by Serco Australia Pty Ltd, is undoubtedly one of the best prisons in Western Australia.

¹⁸⁷ Emeritus Professor Richard Harding, Consultant, *Transcript of Evidence*, 17 November 2010, p6.

LACK OF TRANSPARENCY ON THE IMPLEMENTATION OF THE CORONER'S RECOMMENDATIONS

- 2.169 A number of stakeholders advised the Committee that there had been a lack of transparency surrounding the practical implementation of the Coroner's recommendations. For example, DICWC expressed the view that there is '*scant information available publicly*' from the Government regarding action taken to implement the Coroner's recommendations other than the Government's *Response to the Recommendations made by the State Coroner following the investigation into the death of Mr Ward* (September 2009), which is often superficial and lacks clear timelines for implementation.¹⁸⁸
- 2.170 Stakeholders and the public not being informed of the outcomes of coronial recommendation is not unique. A 2008 review of 484 coroner recommendations in 185 inquiries around Australia noted that there were '*recurring instances where coronial recommendations had not been communicated or had been miscommunicated, or were lost within bureaucratic processes*'.¹⁸⁹ (Whether legislation should require the Government to respond to coronial recommendations is canvassed in Chapter 4 of this report).
- 2.171 While there was some acknowledgement that DotAG may not have publicly communicated the number of actions they have taken to implement the Coroners recommendations,¹⁹⁰ DCS expressed surprise that a number of submitters had raised this as an issue. DCS believe they were very open about the process and encouraged key stakeholders involvement, noting that they conduct monthly Client Agency Group meetings where the issue could have been raised.¹⁹¹
- 2.172 The Committee refers to Chapter 4 of this report which deals with whether the *Coroners Act 1996* should be amended to require the Government to respond to coronial recommendations. As noted in Recommendation 16, the Committee recommends that the *Coroners Act 1996* be amended to require the Government to respond to coronial recommendations within three months.
- 2.173 The Committee is dismayed about the lack of transparency regarding the implementation of the Coroner's recommendations in the case of Mr Ward. Government departments did not proactively communicate with family, stakeholders and the public regarding the progress of action to implement the Coroner's recommendations. Given the tragic nature of Mr Ward's death, a Parliamentary

¹⁸⁸ Submission No 30 from Deaths in Custody Watch Committee, 25 May 2010, p14.

¹⁸⁹ Ray Watterson, Penny Brown and John McKenzie, 'Coronial Recommendations and the Prevention of Indigenous Death', (2008) 12 (6), *Australian Indigenous Law Review*, pp4, 5.

¹⁹⁰ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p4.

¹⁹¹ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, pp9-10.

inquiry, questions in Parliament and stakeholders chasing up Ministers and Government departments should not be required to obtain this information.

- 2.174 Further to the Committee's recommendation to amend the *Coroners Act 1996* to require the Government to respond to coronial recommendations within three months (Recommendation 16), the Committee is of the view that Government departments and agencies should proactively enhance transparency and accountability mechanisms by establishing appropriate processes to inform family, stakeholders and the community of Government action to implement coronial recommendations on a regular basis. This could be accommodated by a number of methods including arranging meetings with family and stakeholders at appropriate intervals to update them on government action and progress, by corresponding with parties where appropriate and/or posting updates on the department's website.

Recommendation 9: The Committee recommends that Government departments and agencies establish processes to appropriately inform family, stakeholders and the public of the progress of Government action taken to implement coronial recommendations on a regular basis.

PROSECUTIONS ARISING OUT OF THE DEATH OF MR WARD

- 2.175 The Coroner made a report to the Director of Public Prosecutions in relation to the death of Mr Ward pursuant to section 27(5)(a) of the *Coroners Act 1996*, which provides that the Coroner may make a report if the Coroner believes that an indictable offence has been committed in connection with a death which the Coroner investigated. Under the *Coroners Act 1996*, the Coroner is not permitted to suggest that any person is guilty of an offence. In making the report, the Coroner commented that he did not wish to create unrealistic expectations that 'justice' will result from this report.¹⁹²
- 2.176 In June 2010, the Director of Public Prosecutions announced that a prima facie case did not exist for a criminal prosecution against anyone involved in Mr Ward's death and therefore no criminal charges would be laid.
- 2.177 In January 2011, WorkSafe charged the State of Western Australia (DCS), G4S, Nina Stokoe and Graham Powell (GSL employees) with offences contrary to the *Occupational Safety and Health Act 1984* arising out of the circumstances surrounding the death of Mr Ward.

¹⁹² Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p125.

CHAPTER 3

LIMITING TRANSPORTATION OF PERSONS IN CUSTODY

- 3.1 The use of alternative means of transport, such as air transport, and implementing video and audio link technology and appropriate court procedures has the effect of limiting the transportation of persons in custody in Western Australia.
- 3.2 DCS undertake approximately 44 500 movements of persons in custody per year, including 5 500 long haul movements.¹⁹³ The use of alternative or safer and more humane means of transport is particularly important in a state the size of Western Australia, which is the second largest jurisdiction in the world, with its climatic conditions. Mr Ward's case highlighted the importance of avoiding the transportation of persons in custody.¹⁹⁴ Given the size of Western Australia, the justice system may have a greater impact on people living in remote Western Australia, including Indigenous people who may be transported 'out of country' to attend court.¹⁹⁵
- 3.3 Issues covered in this Chapter were raised in Coroner Recommendations 7 and 8, which state:

Recommendation No. 7

I recommend that the Department of the Attorney General review present procedures to extend the availability of video conferencing and, in the absence of available video conferencing, give consideration to increased use of telephone conferencing so that decisions, particularly those relating to the liberty of the subject, can be wherever possible made by qualified magistrates.

Recommendation No. 8

I recommend that the Department of the Attorney General review current court procedures with a view to limiting unnecessary transportation of accused persons over long distances.

¹⁹³ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p10. 'Long haul' is defined at footnote 121.

¹⁹⁴ Mr Ward not being bailed to appear in court would have had the effect of his being transported approximately 360 kilometres and spending at least three days in custody prior to his first court appearance.

¹⁹⁵ The Aboriginal Legal Rights Movement of South Australia noted their particular concern that for people detained in Western Australia near the South Australian border where the nearest prison is in Boulder (near Kalgoorlie). Recommendations by the State Coroner, South Australia in 2002 and 2005 that secure care facilities on Anangu Pitjantjara lands have not been implemented: Submission No 20 from Aboriginal Legal Rights Movement of South Australia, 14 May 2010, p4.

- 3.4 The Coroner noted that in a century of immediate communication across the world it was most unfortunate that reliance is placed with local justices of the peace volunteers in remote communities to perform the essential service of conducting court proceedings and that '*the time has come*' for increased use of technology to ensure that court hearings wherever possible are conducted before qualified magistrates.¹⁹⁶
- 3.5 DCS took over the role of transporting juveniles State-wide from WA Police in November 2010. Significant aspects of the arrangements entered into at the time include that children and young people will not be transported by road if the travel is in excess of 400 kilometres (when air travel will be used), no child will be transported unless that child has appeared before a magistrate (see paragraph 3.61), and the OICS will have responsibility for monitoring the transport of juveniles.¹⁹⁷

AIR AND COACH TRANSPORTATION

- 3.6 Persons in custody in Western Australia are now being transported by air and coach (bus).¹⁹⁸
- 3.7 In October 2009 DCS commenced a trial of charter flights operating from Broome. DCS also commissioned an external consultant to evaluate current transport model options which identified air transportation as feasible.
- 3.8 The Government has contracted with a number of companies in order to provide air transportation services around Western Australia, including making arrangements for the use of a medivac aircraft suitable for moving prisoners with medical conditions. Commercial flights have been used on occasions. The new CSCS contract provides that the contractor is to negotiate value for money subcontract arrangements (acceptable to DCS) with air charter companies.¹⁹⁹
- 3.9 As at June 2011, air transportation is used to move persons in custody between Perth prisons and prisons in the north (Greenough, Roebourne and Broome) (using a Brasilia 146 30-seater aircraft). Smaller aircrafts, usually a Cessna 402 (7-seater) or King Air (10-seater), are used on the following routes:
- East Kimberley (Wyndham, Kununurra, Halls Creek and Fitzroy Crossing) to Broome;

¹⁹⁶ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, p140.

¹⁹⁷ Ms Michelle Scott, Commissioner for Children and Young People Western Australia, *Transcript of Evidence*, 14 June 2010, p2.

¹⁹⁸ While air transportation was commenced after the death of Mr Ward, the State Coroner did not specifically recommend that air transportation be established.

¹⁹⁹ Court Security and Custodial Services Contract between the Commissioner for the Department of Corrective Services (for and on behalf of the State of Western Australia) and Serco Australia Pty Ltd, 14 June 2011, Clause 26.10.

- Pilbara (Newman, Onslow and Nullagine) to Roebourne;
 - Gascoyne and Midwest (Carnarvon, Meekatharra and Wiluna) to Greenough Prison;
 - Goldfields (Warburton and Esperance) to Eastern Goldfields; and
 - Where required, smaller craft are used to move persons between Albany/Kalgoorlie and Perth.²⁰⁰
- 3.10 DCS has also introduced coach (bus) transportation in regional Western Australia. In July 2009, coach transport was introduced to the following routes: Perth to Albany, Perth the Kalgoorlie and Perth to Greenough, Roebourne and Broome.²⁰¹
- 3.11 Almost all long haul transportations are currently being conducted by air or coach (bus).²⁰² DCS intends to continue with air transportation for long haul trips.²⁰³ The number of air movements has increased as WA Police and judicial officers become aware that planes are available to move prisoners.²⁰⁴ Secure vehicle movements still occur when a person in custody is frightened of flying, there is some physical reason why the person cannot fly or alternative options are not available.²⁰⁵
- 3.12 As previously noted, the new CSCS contract contains guidelines as to when specific modes of transport will be used to transport persons in custody. The contractor will determine the mode of transport most suitable for the movement of a person in custody.²⁰⁶
- 3.13 The new CSCS contract provides that air services should be considered where the total road travel required in a single day is greater than eight hours, the road travel required on any one leg would result in the person in custody being in a vehicle for greater than four hours, air travel is the only means of conducting the escort due to climatic

²⁰⁰ Letter from Ms Heather Harker, Acting Commissioner, Department of Corrective Services, 21 June 2011, Attachment C, p1.

²⁰¹ Submission No 29 from Department of Corrective Services, 24 May 2010, p2.

²⁰² Of the 2 544 long haul prisoner movements conducted between August 2010 and March 2011, 1 491 were conducted by air transportation (approximately 58.5 per cent), 1 017 were conducted by coach (bus) transportation (approximately 40 per cent) and 36 prisoner movements were conducted by road in a secure vehicle (1.5 per cent): Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p9.

²⁰³ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p3. Department of Corrective Services Policy Directive 28 relates to prisoner escorts.

²⁰⁴ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p9.

²⁰⁵ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p4.

²⁰⁶ Court Security and Custodial Services Contract between the Commissioner for the Department of Corrective Services (for and on behalf of the State of Western Australia) and Serco Australia Pty Ltd, 14 June 2011, Clause 26.10.

conditions, where air travel is a more cost effective option than road or where urgency prevents the use of road travel. Air services are to be provided in accordance with the DCS *Minimum Standards for the Provision of Air Charters and Air Services*.²⁰⁷

- 3.14 In relation to coach transport, the new CSCS contract provides that coach (with toilet) transport should be considered where the duty of care of persons in custody being held in a vehicle for greater than four hours can be managed by providing a higher duty of care and comfort through the use of bus or coach, where the number of persons requiring movement is likely to be greater than 14 persons in custody or where coach travel is a more cost effective option than air. The new CSCS contract also provides that coaches must meet the DCS *Minimum Standards for the Provision of Coach Services*.²⁰⁸
- 3.15 There is strong support for using air transportation to transport persons in custody. Air transportation is more efficient, safer and is comparable in cost to road transport because it is quicker and accommodation costs are not an issue.²⁰⁹ A 'slight increase' in the DCS budget was required and recurrent funding was factored into the 2010-2011 DCS budget so that air and coach transport is now fully funded. DCS will continue to use these modes of transport.²¹⁰
- 3.16 The Committee noted with interest that in Queensland, the Police Air Wing operates six aircrafts predominantly for transport operations. The aircraft, which operate from bases throughout Queensland, transported 2 389 prisoners in 2009-2010.²¹¹
- 3.17 The Committee was initially advised that DCS and WA Police were exploring the possibility of developing a business case for an additional aircraft which could facilitate joint usage arrangement between WA Police and DCS but no business case had been prepared.
- 3.18 Instead, DCS advised that they will support any WA Police business case (WA Police were seeking two further aircraft and would note in their submission that DCS would be a regular customer).²¹² DCS advised that a jointly used aircraft at Geraldton and Broome (where DCS has significant movement of persons in custody) would be

²⁰⁷ Letter from Ms Heather Harker, Acting Commissioner, Department of Corrective Services, 21 June 2011, Attachment C, p4.

²⁰⁸ Ibid, p3.

²⁰⁹ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p12.

²¹⁰ Mr Ian Johnson, Commissioner, and Mr Graeme Doyle, Assistant Commissioner Corporate Support, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, pp3-4.

²¹¹ Letter from Hon Neil Roberts MP, Minister for Police, Corrective Services and Emergency Services (Queensland), 29 October 2010, p1. The planes are also used for special operations such as search and rescue, flood relief, donor organ retrieval and deployment of specialist police into specific situations.

²¹² Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p4.

‘useful’, but WA Police prefer a Kalgoorlie base for an aircraft.²¹³ WA Police advised the Committee that the State could benefit from WA Police having an additional aircraft to transport persons in custody.²¹⁴ DCS has negotiated access to the Police Air Wing, if available, to assist in transporting persons in custody (including juveniles) for a fee of \$900 per hour.²¹⁵

Finding 9: The Committee finds that there is strong support for continuing to use air transportation to transport persons in custody.

Recommendation 10: The Committee recommends that the Minister for Corrective Services continues to provide adequate funding to enable persons in custody to be transported by air.

VIDEO LINK AND AUDIO LINK

- 3.19 Section 141 of the *Criminal Procedure Act 2004* provides that a court may permit an accused to appear before the court by means of a video link or audio link and the court may deal with the charge as if they were personally present.
- 3.20 Section 77(3) of the *Criminal Procedure Act 2004* provides that an accused in custody will appear by video link or audio link for second and subsequent appearances before a court, unless otherwise ordered by the court. (This does not apply to trial or sentence appearances or when there is no video link or audio link between the place of custody or detention and the court).
- 3.21 While there is no legal impediment to conducting court hearings with persons in custody by video link,²¹⁶ the physical presence of the person in court is often appropriate when sentence is passed, is essential when an accused is tried (at a trial) in order for there to be a fair trial and an accused should be present when they plead to a charge.²¹⁷

²¹³ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p10.

²¹⁴ Answers to Questions on Notice, Western Australia Police, 26 July 2010, p6. As at July 2010, Western Australia Police had two PC 12 aircraft, which cost \$6 to \$7 million, and were working on the business case for a third aircraft: Mr Gregory Italiano, Executive Director, Western Australia Police, *Transcript of Evidence*, 26 July 2010, pp2-3.

²¹⁵ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p10.

²¹⁶ Sections 141 and 142 of the *Criminal Procedure Act 2004* provides the power for an accused to participate in their trial by video or audio link and section 14A of the *Sentencing Act 1995* provides that sentences can be imposed via video link although it is for the court to determine whether this occurs.

²¹⁷ Submission No 3 from Hon Wayne Martin, Chief Justice of Western Australia, 27 April 2010, pp1-2 and *Transcript of Evidence*, 26 July 2010, p9. Hon Peter Martino, then acting Chief Judge of the District Court of Western Australia, added that judges do sentence by video link when appropriate: Submission No 7 from Hon Peter Martino, (then) Acting Chief Judge, District Court of Western Australia, 6 May 2010, pp1, 2.

Video link

- 3.22 Video link has been successfully implemented in various courts and is frequently used for Court appearances for persons in custody.
- 3.23 It is clear that there is strong support from the judiciary and other key stakeholders for further increasing the use of video link for court appearances.²¹⁸ Courts use video link as often as they possibly can.²¹⁹ ALS recognises the ‘*immense benefits*’ the increased use of video link could provide to Aboriginal people across Western Australia. The increased use of video link is ‘*particularly welcomed*’ in enabling magistrates to consider issues relating to the bail of detained persons at police watch houses in remote communities.²²⁰
- 3.24 There has been considerable proactive investment, particularly by DotAG, in improving and upgrading the audio visual capacity in courts. DotAG investment continues with \$1.23 million being allocated to Court audio visual maintenance and enhancement in the 2011-2012 budget.
- 3.25 DotAG has rolled out significant improvements in audio visual facilities in courts in the last five years, and more recently has invested in updating software in its courts, particularly regional courts, to allow multi-site conferencing. DotAG has also committed resources in some police and mining courts.²²¹ The opening of the new Central Law Courts building (in Perth) in 2008 was a significant advance in audio visual facilities although the District Court of Western Australia advised (in 2010) that technical issues are impacting on its ability to make more extensive use of video link facilities.²²² Improvements in audio visual facilities in regional courts and prisons may also assist the District Court in its trial listings for circuit (regional) sittings, an area the court has identified as having the potential for the more extensive use of video link.²²³

²¹⁸ The Supreme Court of Western Australia, District Court of Western Australia, the Director of Public Prosecutions, Legal Aid Western Australia and Aboriginal Legal Service of Western Australia and many other submitters advised the Committee of their support for video link court appearances.

²¹⁹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p9.

²²⁰ Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, p24.

²²¹ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, pp6, 7. Multi-site functionality allows multiple video calls to be conducted simultaneously from the court room. Multi-site upgrades since June 2010 include upgrades to the Meekatharra Mining Registry and Wiluna Multifunctional Policy Facility: Tabled Document, ‘Video Facilities - Recent Developments’, Department of the Attorney General, 29 March 2011, p1.

²²² In 2010, the District Court of Western Australia advised that if the court is to make more extensive use of video link then it will require additional ‘codecs’ (a device which allows external video link). Further, the quality of the video link equipment at some prisons and police stations is not the same standard as that used in the courts and this impacts on the reliability and the courts ability to use these systems: Submission No 7 from Hon Peter Martino, (then) Acting Chief Judge, District Court of Western Australia, 6 May 2010, p2.

²²³ Ibid.

- 3.26 Unfortunately, while DotAG managed courts have audio visual facilities (with limited exceptions),²²⁴ Courts in a police station or Warden's Courts under the *Mining Act 1978* do not.²²⁵ DotAG is funded to implement and upgrade Court facilities (receiving \$2 million in audio visual funding in 2009-2010).²²⁶ Prisons (the responsibility of DCS) and WA Police do not presently have DotAG's audio visual upgrade budget.
- 3.27 Although the data on video link is limited, it is known that Courts are using video link in increasing numbers.²²⁷ DotAG considers that the increase in the use of video link is largely driven by the protocols that have been developed between prisons and courts to make arrangements more effective and the Court practice directions (see paragraphs 3.54 to 3.59 for further detail on court procedures). DotAG expressed some frustration at being unable to provide good statistical reports on the use or nature of video link in courts.²²⁸ However, a recent contract and the conversion of digital audio visual systems has enabled DotAG to capture usage statistics (This software will be implemented by 30 June 2011).²²⁹ While the aim of achieving the rate of 75 per cent of appearances for persons in custody has been discussed, DotAG do not consider it appropriate to set formal targets or objectives for video link use as this could be seen to encroach on the independence of the judiciary in determining the appropriate mode of appearance.²³⁰
- 3.28 Court facilities must be matched by equivalent facilities in the various custodial institutions to increase the use of video link for persons in custody.²³¹ As the Chief Justice of Western Australia advised, '*we could do better*'.²³² The Chief Justice added

²²⁴ Except Jigalong, Lalumbaru and Balgo which do not have the necessary infrastructure to support audio visual facilities. Questions on Notice, Department of the Attorney General, 29 March 2011, pp4, 5.

²²⁵ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p6.

²²⁶ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, pp13-14.

²²⁷ For example, a review of warrant for prisoners to attend video link notes that close to 60 per cent of prisoners attend court by video link in 2010-2011 compared to 52 per cent in 2009-2010. Aboriginal Legal Service noted an increase in the use of video link since the Coroner's Report: Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, p13.

²²⁸ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p16.

²²⁹ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 29 March 2011, p7.

²³⁰ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p6.

²³¹ Submission No 3 from Hon Wayne Martin, Chief Justice of Western Australia, 27 April 2010, p2.

²³² Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p8. The Chief Justice noted that Supreme Court, Court Room No 1 was not equipped with audio visual equipment. If it was, appeals could be video linked from prisons.

that many of the prisons that have audio visual infrastructure do not have the number of audio visual links that is desirable.²³³

- 3.29 DCS acknowledged that facilities in some prisons and detention centres require upgrading or replacing to meet future needs of courts.²³⁴ DotAG added that the main impediment of video conferencing from remote locations is the disparate audio visual systems between departments and locations.²³⁵ (This issue has only been partly addressed by recent DotAG upgrades). DotAG agrees that prisons, in particular, do not have a comparable number of audio visual sites compared to the courts. Major installations and upgrades are required at prisons and police stations.²³⁶
- 3.30 Following the death of Mr Ward, the Chief Justice of Western Australia formed the Transport of Persons in Custody Working Group to develop protocols to ensure that the transport of prisoners in custody only occurs when all other practical options have been exhausted.²³⁷ The Chief Justice of Western Australia advised that this working group has gone as far as it can go with the resources they have and the court's capacity to change processes and procedures to reduce the extent of the transport of persons in custody is constrained by the technological and human resources provided by the Government.²³⁸
- 3.31 DCS, DotAG and WA Police, through the Transport of Persons in Custody Working Group, developed a *Joint Capital Works Business Case: Expansion of Regional Video Conferencing Facilities in the Justice Sector* (2010-2011 joint budget proposal)²³⁹ for the 2010-2011 State budget process. This proposal sought adequate audio visual facilities in all appropriate courts and custodial institutions, including prisons and remote police stations, and the provision of human resources necessary to create a position within each prison responsible for liaison with courts in relation to

²³³ Ibid.

²³⁴ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p13.

²³⁵ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p16.

²³⁶ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p4. The Department of Corrective Services advised that all prisons have audio visual capacity: Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p8.

²³⁷ Submission No 3 from Hon Wayne Martin, Chief Justice of Western Australia, 27 April 2010, p2. The Transport of Persons in Custody Working Group first met in March 2008. The working group included the Chief Justice of Western Australia, Chief Judge of the District Court, President of the Children's Court, Chief Magistrate, Inspector of Custodial Services, Department of the Attorney General, Department of Corrective Services and Western Australia Police.

²³⁸ Ibid, p1.

²³⁹ Department of the Attorney General, Department of Corrective Services, Western Australia Police, *Joint Capital Works Business Case: Expansion of Regional Video Conferencing Facilities* (submitted during the 2010-2011 budget process).

transporting persons and investigating whether any transportation to court could be avoided.²⁴⁰

- 3.32 The 2010-2011 joint budget proposal and the DotAG budget proposal that complemented the proposal (see paragraphs 3.66 and 3.67), were rejected by the Government.
- 3.33 DCS resubmitted the budget proposal on behalf of DCS, DotAG and WA Police as part of the 2011-2012 budget process (2011-2012 joint budget proposal).
- 3.34 The 2011-2012 joint budget proposal noted that:

*The imprisonment rate in Western Australia has more than doubled over the last 20 years. There are a large number of persons, often indigenous, who are transported large distances because bail has been refused, and there is no adequate custodial facility where they have been arrested. In many instances such persons will be arrested in a town or community which does not have a resident Magistrate. In locations, such as in the East Kimberley or the Western Desert, individuals will be arrested more than 1,000 km from the nearest resident Magistrates. ... Not uncommonly, when that person is brought before the Magistrate, bail is granted.*²⁴¹

- 3.35 The 2011-2012 joint budget proposal sought:

- Additional audio visual facilities in prisons. The proposal sought for audio visual facilities to be upgraded at the following DCS custodial sites: Rangeview, Banksia Hill, Bandyup, Roebourne, Greenough, Acacia, Casuarina, Eastern Goldfields, Albany, Bunbury, Broome and Woorloo.
- Additional audio visual facilities in Police Stations and Courts. The proposal sought for audio visual facilities to be upgraded at the following police sites: Eucla, Kintore, Oombulgurri, Balgo Looma, Marble Bar, Onslow, Tom Price, Shark Bay, Burringurrah and Ravensthorpe, as well as the following DotAG courts sites: Leonora, Southern Cross and Coolgardie.
- Additional funding for support services to manage and maintain the expanded audio visual network.

²⁴⁰ Ibid, p5.

²⁴¹ Department of the Attorney General, Department of Corrective Services, Western Australia Police, *Joint Capital Works Business Case: Expansion of Regional Video Conferencing Facilities* (submitted during the 2010-2011 budget process), p2.

- Additional staff to support the implementation and management of the expanded audio visual network and co-ordination of listing involving persons in custody.
 - Provision of additional funding to cover new telecommunication services and associated call costs.²⁴²
- 3.36 The 2011-2012 joint budget proposal noted that the benefits of the proposal included reducing prison transport, increasing prisoner safety, reducing justice costs and ‘meeting the outstanding recommendations of the coroner’.²⁴³
- 3.37 The costings for the preferred option in the 2011-2012 joint budget proposal were:²⁴⁴
- | | 2011-12 (\$) | 2012-13 (\$) | 2013-14 (\$) | 2014-15 (\$) | 2015-16 (\$) |
|------------|--------------|--------------|--------------|--------------|--------------|
| Capital | 3,985,975 | 2,234,011 | 823,409 | 749,682 | 772,172 |
| Recurrent | 1,087,110 | 1,743,601 | 1,887,813 | 1,980,960 | 2,040,390 |
| FTE Impact | 9 | 14 | 14 | 14 | 14 |
- 3.38 A cheaper alternative option, reducing the number of WA Police, DCS and DotAG sites provided with audio visual facilities was also proposed
- 3.39 The Government rejected the 2011-2012 joint budget proposal.
- 3.40 In June 2011, DCS advised the Legislative Council Budget Estimates hearing that there is no funding available for audio and video conferencing facility upgrades in the next financial year. DCS added that they are ‘*certainly making sure that we use to the maximum the facilities that we have got available within our own offices and within the prisons and within the juvenile detention centres*’.²⁴⁵
- 3.41 Audio visual facilities at prisons and police stations could also be used to enable persons in custody to conference with family, friends, legal counsel or for telehealth purposes.²⁴⁶ Accused in courts also use video link to communicate with their lawyers on occasions.²⁴⁷

²⁴² Ibid, pp4, 5, 6.

²⁴³ Ibid, p6.

²⁴⁴ Ibid, p8.

²⁴⁵ Ms Heather Harker, Acting Commissioner, Department of Corrective Services, Legislative Council Budget Estimates Hearing, *Transcript of Evidence*, 20 June 2011, p9.

²⁴⁶ The Department of Health supports the use of information technology for telehealth purposes. Telemedicine provides a vital role in providing specialist medical care to remote areas and the use of video conferencing for education purposes is increasingly replacing travel: Submission No 27 from Department of Health, 14 May 2010, p1.

²⁴⁷ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p11.

- 3.42 ALS supports the installation of 4-way audio visual equipment in all regional and remote police stations to enable contact between detained persons, magistrates, legal representatives and interpreters.²⁴⁸ Confidentiality may be an issue when an accused uses court video facilities to communicate with their solicitors. There may also be cultural issues when an accused uses video link requiring the video link officer to assist and explain the process to the accused.²⁴⁹

Finding 10: The Committee finds that video link has been successfully implemented in various courts and is frequently used for Court appearances of persons in custody.

Finding 11: The Committee finds that court video link facilities must be matched by equivalent facilities in the custodial institutions to increase the use of video link for court appearances of persons in custody.

Recommendation 11: The Committee recommends that the responsible Minister/s commit funds and resources to upgrade audio visual conferencing facilities in custodial institutions, as well as police stations and courts, as required to enable the increased use of video link for court appearances.

Skype

- 3.43 The use of Skype²⁵⁰ for court appearances and to enable persons in custody to communicate with family, friends and legal counsel from prison was raised during the course of the inquiry. For example, the Inspector considers that there is enormous potential for Skype and other technology in prisons and noted that this technology is cheap and lawyers often complain that they do not see their client's as often as they would prefer.²⁵¹
- 3.44 DotAG investigated Skype as an option for court appearances but Skype does not have the type of security they are 'very comfortable' with and is not considered secure enough for court purposes in terms of not having the pixilation and smooth flow of information required.²⁵² However, in 2010 DotAG advised that they are keen to explore these types of technologies and have not 'put up the shutters' to other

²⁴⁸ Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, pp2, 13.

²⁴⁹ Ms Shanna Satya, Policy Officer, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 14 June 2010, p6.

²⁵⁰ Skype is a software application that allows users to make audio visual calls over the internet. To enable audio visual calls, a small video camera is attached to each computer.

²⁵¹ Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p14.

²⁵² Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p17.

technologies but are concentrating on rolling out the audio visual systems they have.²⁵³

- 3.45 Skype facilities are available at Hakea Remand Prison (two work stations) and Acacia Prison and are being increasingly used by persons in custody to communicate with family, friends and legal counsel locally and internationally.²⁵⁴ (A Youth Justice Officer had also introduced a video enabled laptop at Banksia Hill Juvenile Detention to enable families in the Goldfields to communicate with detainees).²⁵⁵ There has been positive feedback on the ‘trial’ of Skype at Hakea Remand Prison, particularly from lawyers. Skype saves DCS from processing visitors to the prison and contact with family may settle prisoners.²⁵⁶ Prisoners are booking the Skype facilities well (sometimes months) in advance.²⁵⁷
- 3.46 On the issue of privacy and security, DCS advised that the Skype equipment is not connected to their corporate network and is not recorded. An officer is able to watch the session on a monitoring screen, but is not able to listen to the session.²⁵⁸ Skype is not a secure platform. DCS is looking at ways to make this service more secure.²⁵⁹
- 3.47 DCS is exploring ways to increase Skype access in prisons within its existing funding.²⁶⁰ There is dialogue at a national level about Skype and similar services, which are available in other jurisdictions. DCS is looking at technologies in other jurisdictions, including Queensland which uses a different platform (not Skype).²⁶¹

Recommendation 12: The Committee recommends that the Minister for Corrective Services commits funds and resources to expand and implement the use of Skype and other similar technologies in custodial institutions throughout Western Australia to enable persons in custody to communicate with family, friends and legal counsel.

²⁵³ Ibid.

²⁵⁴ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, pp11-12. Skype in Hakea Remand Prison is being used largely for legal consultations.

²⁵⁵ Ibid.

²⁵⁶ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, pp8, 10.

²⁵⁷ The challenge with Skype is often with there being a connection at the other end, including remote areas that may not have these facilities: Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p9.

²⁵⁸ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p12.

²⁵⁹ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p9.

²⁶⁰ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p13.

²⁶¹ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p10.

Recommendation 13: The Committee recommends that the Department of the Attorney General continues to explore options to use Skype and other similar technologies to enable persons in custody to appear in Court, particularly in regional and remote Western Australia.

Audio link

- 3.48 Audio link is used for court appearances when video link is unavailable and where the judicial officer deems this appropriate.²⁶² There has been an increase in the demand for audio link of between 20 and 30 per cent.²⁶³ The Committee was informed that magistrates are more open to audio link if video link is not an option.²⁶⁴
- 3.49 Audio link can be very beneficial in dealing with urgent matters such as bail applications when video link is not available.²⁶⁵ Legal Aid Western Australia submitted that it would be useful if the practice of hearing bail applications by audio link was formalised throughout regional Western Australia. They suggest that regional magistrates could take turns hearing after hour bail applications.²⁶⁶ On the other hand, an ALS representative advised the Committee that they *‘do not think audio link is very culturally appropriate for our clients’*.²⁶⁷
- 3.50 The Children’s Court of Western Australia’s recent practice direction, prescribing that if a justice of the peace refuses a juvenile bail on a Saturday or public holiday the matter will be immediately re-listed and a magistrate shall re-hear the issue of bail (see below), notes that the magistrate shall conduct the bail hearing *‘by whatever means as decided by the Magistrate, including by video link or telephone’*.²⁶⁸
- 3.51 In 2006, the Law Reform Commission of Western Australia recommended that the *Bail Act 1982* be amended to entitle an accused *‘to apply to a magistrate for bail by telephone application if he or she could not otherwise be brought before a court (either in person or by video link or audio link) by 4.00pm the following day’*.²⁶⁹ (A related issue, providing a magistrates bail service, is canvassed below).

²⁶² Answers to Questions on Notice, Department of the Attorney General, 31 March 2011, p7.

²⁶³ Submission No 31 from the Department of the Attorney General, 28 May 2010, p4.

²⁶⁴ Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p17.

²⁶⁵ Submission No 9 from Legal Aid Western Australia, 13 May 2010, p3.

²⁶⁶ Ibid.

²⁶⁷ Ms Shanna Satya, Policy Officer, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 14 June 2010, p10.

²⁶⁸ Children’s Court of Western Australia, Practice Direction No 1 of 2011, p3.

²⁶⁹ Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Final Report, September 2006, Recommendation 31, p164.

- 3.52 On a related matter, Legal Aid Western Australia raised the need for arrangements to be in place in courts for confidential telephone calls between prisoners and their lawyers to be made so that instructions can be taken and advice provided.²⁷⁰
- 3.53 The Chief Justice of Western Australia also noted that legal counsel at courts having access to clients in detention is an issue. At present, the court may be cleared where possible to enable the use of available video link facilities to talk to clients. The Chief Justice advised that the County Court of Victoria has a telephone booth at the back of the court which has a direct line to the prison facility to enable legal counsel to have a private conversation with clients. The Chief Justice considers this type of facility desirable.²⁷¹

Finding 12: The Committee encourages the use of audio link (telephone) to conduct court appearances, particularly bail hearings where the accused is located in remote locations, where appropriate and where video link is not an option.

Recommendation 14: The Committee recommends that the Department of the Attorney General establishes infrastructure and arrangements in courts to enable legal counsel to conduct confidential conversations with persons in custody.

COURT PROCEDURES

- 3.54 Coroner Recommendation 8 recommended a review of court procedures to limit the unnecessary transportation of accused persons over long distances.
- 3.55 As noted above, the judiciary strongly supports reducing the transportation of persons in custody to court appearances in metropolitan and regional Western Australia. The Chief Justice of Western Australia considers that there is still too much prisoner transport occurring in Western Australia.²⁷²
- 3.56 In 2007, the Heads of the Courts in Western Australia exercising criminal jurisdiction resolved that the default positions, in the absence of an order of the court, should be that every person in custody should appear before the court by video link unless being tried (a trial) or sentenced. The courts have implemented techniques to enable bail decisions to be made by video link which reduces the need for travel.²⁷³ The courts have issued strong practice directions directed at limiting transportation.²⁷⁴

²⁷⁰ Submission No 9 from Legal Aid Western Australia, 13 May 2010, p2.

²⁷¹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p11.

²⁷² *Ibid*, p8.

²⁷³ *Ibid*, pp6-7.

²⁷⁴ Mr Ray Warnes, Executive Director, Court and Tribunal, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, pp12-13.

- 3.57 The above default position has not been reached because of the limitation of audio visual resources required to implement practices the courts, WA Police and DCS regard as desirable.²⁷⁵
- 3.58 The District Court of Western Australia advised (in 2010) that it was reviewing the way it managed circuits (regional court sittings) with one objective of the project being to eliminate unnecessary prisoner transportation.²⁷⁶
- 3.59 DotAG and DCS have also established a Steering Committee that has two working groups reporting to it. The Committee was advised that further achievements by these working groups can only occur once the outcome of the budget proposal (see above) has been determined.²⁷⁷ The first working group considers prisoner movement coordination. If a person is moved unnecessarily the working group looks at why and tries to resolve this from a process point of view. The Legislative Remand and Warrant Working Party reports on legislative or technical changes that could be proposed to amend the existing Form 2 (Remand Warrant) under the *Criminal Procedure Act 2004* and regulations.

Magistrates bail service

- 3.60 The Children's Court of Western Australia has introduced bail practices that reduce the transportation of juveniles in custody.
- 3.61 A Children's Court practice direction in April 2008 prescribed that juvenile offenders are not to transported away from their place of arrest unless and until a bail decision has been made by a Children's Court magistrate.²⁷⁸ This also ensures that bail decisions are brought before a higher judicial level than justices of the peace, particularly in regional areas.²⁷⁹ The Children's Court also now sits on Saturdays, when juveniles in custody appear in court by video link.²⁸⁰
- 3.62 On 7 June 2011, the Children's Court of Western Australia directed that if a justice of the peace refuses a juvenile bail on a Saturday or a public holiday the matter will be immediately re-listed and a magistrate shall re-hear the issue of bail by any means

²⁷⁵ Submission No 3 from Hon Wayne Martin, Chief Justice of Western Australia, 27 April 2010, p1.

²⁷⁶ Submission No 7 from Hon Peter Martino, (then) Acting Chief Judge, District Court of Western Australia, 6 May 2010, p2.

²⁷⁷ Answers to Questions on Notice, Department of the Attorney General, 29 March 2011, p5.

²⁷⁸ Children's Court of Western Australia, Practice Direction No 2 of 2008, 'Bail Act 1982'. The Aboriginal Legal Service noted that this procedure may not always be followed in practice: Ms Shanna Satya, Policy Officer, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 14 June 2010, p4.

²⁷⁹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, pp6-7.

²⁸⁰ Letter from Hon Denis Reynolds, President, Children's Court of Western Australia, 25 June 2010, Attachment, 'President's Direction on Saturday Children's Court Sittings in Perth'.

decided by the magistrate, including by video link or telephone.²⁸¹ The preferred procedure is for the local magistrate to hear the bail application but if this is not possible a magistrate in Perth will conduct the bail hearing. A stated objective of implementing this practice is to ensure that young persons are not unnecessarily detained over the weekend in police lock-ups in country areas. This direction followed two cases where juveniles refused bail by justices of the peace were held in custody in regional Western Australia for extended periods.

- 3.63 The Commissioner for Children and Young People submitted that Perth desperately needs a 24 hour bail service for juveniles.²⁸² Hon Giz Watson MLC also submitted to the Committee that a 24 hour judicial service to serve regional and remote communities by video link should be established immediately.²⁸³ DICWC proposed that Parliament prescribe regulations to establish a duty magistrate to service remote areas or use video link if a court can not be convened in 24 hours.²⁸⁴
- 3.64 The Chief Justice of Western Australia wants the Children's Court of Western Australia procedure of not transporting accused away from their place of arrest unless and until a bail decision has been made available for adult offenders. The Chief Justice considers that there have been too many occasions where accused have been transported over very long distances for the purposes of a bail hearing and, as the technology is available for bail decisions to be made by video link, this should be used.²⁸⁵
- 3.65 The Chief Justice of Western Australia advised that if there were sufficient resources a magistrate could be on standby to perform an extended bail service. In his view, a bail service available '*pretty much*' around the clock for detained persons wherever they are would be '*a giant step forward in terms of reducing the transport of prisoners in custody*'²⁸⁶ and the '*blue ribbon*' outcome to reduce long haul transport.²⁸⁷
- 3.66 Further to the 2010-2011 joint budget proposal noted above, DotAG's Court and Tribunal Services division submitted a budget proposal for the 2010-2011 budget process for the provision of sufficient judicial resources to enable the question of bail

²⁸¹ Children's Court of Western Australia, Practice Direction No 1 of 2011. This applies to country locations where the Court is supported by a court registry managed by the Department of the Attorney General.

²⁸² Ms Michelle Scott, Commissioner for Children and Young People Western Australia, *Transcript of Evidence*, 14 June 2010, p3.

²⁸³ Hon Giz Watson MLC also submitted that '*The Bail Act 1982 should be amended to require that all hearings under the Bail Act 1982 must be considered by a magistrate, not a police officer, JP or community officer*' and the *Bail Act 1982* be amended to provide that an arrest person should not be transferred more than 50 kilometres unless ordered to do so by a magistrate: Submission No 22 from Hon Giz Watson MLC, 14 May 2010, pp4, 7.

²⁸⁴ Submission No 30 from Deaths in Custody Watch Committee, 25 May 2010, p21.

²⁸⁵ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, pp6-7.

²⁸⁶ Ibid.

²⁸⁷ Ibid, p13.

to be assessed by a magistrate before the prisoner is moved from their place of arrest or initial detention. This proposal, drafted to complement the 2010-2011 joint budget proposal, sought:

*to introduce centrally available judicial services to provide after hours services via audiovisual facilities to respond to the needs of regional and remote communities. These services are proposed to be available state-wide from 4pm until 11pm each weeknight and from 10am until 11pm on weekends.*²⁸⁸

- 3.67 The DotAG budget proposal was also rejected during the 2010-2011 budget process.
- 3.68 DotAG did not submit a similar budget proposal during the 2011-2012 budget process.²⁸⁹ However, in this context, DotAG referred the Committee to action taken to review the justices of the peace model (separating judicial and administrative functions) in response to Coroner Recommendation 6 (see paragraphs 2.72 and 2.73) and advised that costings and business cases of the proposed models are being prepared in order to assess the most effective allocation of resources.²⁹⁰

Recommendation 15: The Committee recommends that the Attorney General commits funding and resources to establish an extended bail service available to all persons in custody throughout Western Australia, which will enable bail to be considered by Magistrates outside standard business hours.

²⁸⁸ Department of the Attorney General, Department of Corrective Services, Western Australia Police, *Joint Capital Works Business Case: Expansion of Regional Video Conferencing Facilities* (submitted during the 2010-2011 budget process), p5.

²⁸⁹ Letter from Mr Michael Johnson, Director, Magistrates Court and Tribunals, Department of the Attorney General, 13 June 2011, p1.

²⁹⁰ *Ibid*, p2.

CHAPTER 4

PROPOSED AMENDMENT TO THE *CORONERS ACT 1996* - REQUIREMENT FOR A GOVERNMENT RESPONSE TO CORONIAL RECOMMENDATIONS

- 4.1 The inquiry's term of reference 4 requires the Committee to consider whether the *Coroners Act 1996* should be amended to require the Government to respond to coronial recommendations within a set timeframe.
- 4.2 The Law Reform Commission of Western Australia is currently reviewing this issue as part of its broader review of Coronial Practice in Western Australia. The Law Reform Commission is likely to make a recommendation on this issue in its final report, which is due to be published by the end of 2011.²⁹¹
- 4.3 The Attorney General advised in 2010 that he was awaiting the outcome of the Law Reform Commission's final report (which at the time was due to be published at the end of 2010) prior to deciding on this matter.²⁹²
- 4.4 The modern approach and purpose of coronial investigations was outlined in the Coroner's Report as follows:

*The Royal Commission [into Aboriginal Deaths in Custody] provided an impetus for more widespread reform and modernisation of the coronial jurisdiction. ... The Royal Commission recommended an expansion of coronial inquiry from the traditional narrow and limited medico-legal determination of the cause of death to a more comprehensive, modern inquiry; one that seeks to identify underlying factors, structures and practices contributing to avoidable deaths and to formulate constructive recommendations to reduce the incidence of further avoidable deaths.*²⁹³

- 4.5 The *Coroners Act 1996* sanctions a broader view of the purpose of coronial inquiries. Section 25(2) of the *Coroners Act 1996* provides that the '*coroner may comment on any matter connected with the death including public health or safety or the administration of justice*'. Section 25(3) provides that '[where] *the death is of a*

²⁹¹ Letter from Ms Heather Kay, Executive Director, Law Reform Commission of Western Australia, 15 March 2011, p1.

²⁹² Letter from Hon Christian Porter MLA, Attorney General, 29 June 2010, p2.

²⁹³ Coroner's Court of Western Australia, *Record of Investigation into Death*, Ref No 9/09, June 2009, pp116-117 citing Watterson R, Brown P and McKenzie J, 'Coronial Recommendations and the Prevention of Indigenous Death', 2008 12 (Special Edition 2), *Australian Indigenous Law Review*, 6.

person held in care, a coroner must comment on the quality of the supervision, treatment and care of the person while in that care'. Further, section 27(3) of the *Coroners Act 1996*, which deals with 'reports', provides:

The State Coroner may make recommendations to the Attorney General on any matter connected with a death which a coroner investigated, including public health or safety, the death of a person held in care or the administration of justice.

- 4.6 In 1991, the Royal Commission into Aboriginal Deaths in Custody made a number of recommendations directed at the more effective use of the state and territory coronial structures to address deaths in custody. The Royal Commission's Recommendations 14 to 18 provided for a public reporting and review of coronial recommendations and response by governments to them. In particular Recommendation 15, which was accepted by all Governments,²⁹⁴ stated:

That within three calendar months of publication of the findings and recommendations of the Coroner as to any death in custody, any agency or department to which a copy of the findings and recommendations has been delivered by the Coroner shall provide, in writing, to the Minister for the Crown with responsibility for that agencies or department, its response to the findings and recommendations, which should include a report as to whether any action has been taken or is proposed to be taken with respect to any person.

- 4.7 The issue of whether to legislate to require a government response to coronial recommendations was under consideration by the Standing Committee of Attorneys General (under COAG)²⁹⁵ at meetings in April and August 2009. The Committee understands that the Standing Committee of Attorneys General was of the view that a legislated approach to responding to coronial recommendations was not warranted or necessary.²⁹⁶
- 4.8 There has been significant reform on the Government responding to coronial reports in Australia in the last ten years. Mandatory systems for response to coronial recommendations are now in place in New South Wales, Victoria, Queensland, the Northern Territory, South Australia and the Australian Capital Territory²⁹⁷ although

²⁹⁴ Submission No 14 from Adjunct Professor Ray Watterson, 14 May 2010, p5.

²⁹⁵ Council of Australian Governments, the peak inter-governmental forum in Australia.

²⁹⁶ Submission No 31 from Department of the Attorney General, 28 May 2010, p5.

²⁹⁷ With a legislated requirement for a response in the latter two jurisdictions relating only to deaths in custody: Submission No 14 from Adjunct Professor Ray Watterson, 14 May 2010, p8.

this mandated requirement is not legislated in all jurisdictions.²⁹⁸ Victoria and Northern Territory legislation requires the Government to respond to coronial recommendations. Section 72 of the *Coroners Act 2008* (Vic) requires any public entity in receipt of coronial recommendations to provide a written response to the coroner within three months. The response must specify a statement of action (if any) to be undertaken in relation to the recommendation. All responses are published on the internet. Section 46B of the *Coroners Act 1993* (NT) requires the response to be laid in the Legislative Assembly. Section 25 of the *Coroners Act 2003* (SA) requires a Government response only in relation to coronial recommendations arising from a death in custody, which shall be tabled in each House of Parliament within six months.

- 4.9 As at 2010, Western Australia and Tasmania are the only Australian jurisdictions without a mandatory system for responding to coronial recommendations.²⁹⁹ DotAG advised the Committee that DCS has a policy of essentially responding to every recommendation made by the Coroner in relation to a death in custody.³⁰⁰ In Mr Ward's case, a Government *Response to the Recommendations made by the State Coroner following the investigation into the death of Mr Ward* was released on 29 September 2009.
- 4.10 Submitters to the inquiry expressed strong support for the *Coroners Act 1996* being amended to require a Government response to coronial recommendations for the reasons noted below.³⁰¹ Submitters urged the Committee to recommend that this reform be implemented as a matter of urgency and not delayed until the Law Reform Commission of Western Australia reports on their reference.³⁰²
- 4.11 The Law Reform Commission of Western Australia's Background Paper *Review of Coronial Practices in Western Australia*, published in September 2010, also noted that the review had received submissions indicating strong support for mandatory responses to coronial recommendations with some submitters suggesting that the requirement should extend to private interests such as nursing homes. The concept of publishing the Coroner's findings, recommendations and responses on the internet

²⁹⁸ For example, in June 2009 the New South Wales Government Memorandum introduced a new process for responding to coronial recommendations directed at Minister and government agencies. In Queensland an administrative process for monitoring coronial responses was introduced in 2008: Submission No 14 from Adjunct Professor Ray Watterson, 14 May 2010, pp9, 10.

²⁹⁹ Submission No 14 from Adjunct Professor Ray Watterson, 14 May 2010, p8.

³⁰⁰ Submission No 31 from Department of the Attorney General, 28 May 2010, p5.

³⁰¹ Including Hon Giz Watson MLC, Adjunct Professor Ray Watterson, Department of Health, Equal Opportunity Commission, Australian Human Rights Commission, Australian Inquest Alliance, Uniting Church, Catholic Social Justice Council Archdiocese of Perth, Aboriginal Legal Rights Movement, Deaths in Custody Watch Committee and Aboriginal Legal Service of Western Australia.

³⁰² For example, Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee, *Transcript of Evidence*, 22 September 2010, p14.

also received strong support from submitters to that review. Transparency and accountability were cited as important benefits of such reform.³⁰³

- 4.12 The value of coronial inquiries ultimately lays in their ability to save lives. The effectiveness of coronial inquiries in preventing deaths depends on proper consideration and response to coronial recommendations by government agencies.
- 4.13 The Government being required to respond publicly to coronial recommendations provides transparency and accountability. This seems particularly relevant when the State has been found to have contributed to a person's death, such as in the case of Mr Ward. A number of submitters noted that the Government's implementation of the recommendations in the Coroner's Report (relating to the death of Mr Ward) was not transparent (see paragraph 2.169). Requiring a response would also assist in monitoring the implementation rates of coronial recommendations.
- 4.14 There may also be a public expectation that the Government will respond to the Coroner's recommendations and this response will be published.
- 4.15 The Government issuing a public response to coronial recommendations is also a way for family members, advocates and the general public to be informed of the outcomes of the coronial inquiry and, perhaps, gain some comfort in the knowledge that the coronial process (which may be traumatic for loved ones) has produced outcomes and reduced risks to others in the community.
- 4.16 Further reasons for supporting this proposal are well summarised by Adjunct Professor Ray Watterson, who submitted:

Such an amendment would finally honour a Western Australian government commitment to implement a similar recommendation of the Royal commission into Aboriginal Deaths in Custody, almost two decades ago. Such an amendment would also bring Western Australia into line with the mandatory response and reporting requirements relating to coronial recommendations which are currently in place in every other Australian State and Territory, apart from Tasmania, and contribute to the national trend to strengthen the role of coroners in the prevention of death ...

*a Recommendation by this inquiry for an amendment ... would be a respectful and especially appropriate response to Mr Ward's death.*³⁰⁴

³⁰³ Law Reform Commission of Western Australia, *Coronial Practices in Western Australia: Background Paper*, Project No 100, September 2010, p46.

³⁰⁴ Submission No 14 from Adjunct Professor Ray Watterson, 14 May 2010, pp3-4.

- 4.17 The Law Reform Commission of Western Australia in its *Review of Coronial Practices in Western Australia: Discussion Paper* proposed, among other things:

*That a public statutory authority or public entity the subject of a coronial recommendation must within three months of receiving the recommendation provide a written response to the State Coroner specifying a statement of action (if any) that has, is or will be taken in relation to the recommendations made by the coroner.*³⁰⁵

- 4.18 A number of submitters to our inquiry proposed that a mandated response be required in three months as was proposed by the Royal Commission into Aboriginal Deaths in Custody.³⁰⁶ The Equal Opportunity Commission suggests that the Government report to the Coroner and publicly every three months until all recommendations are fully implemented.³⁰⁷ ALS considers that legislation should require the Government and companies to respond to Coroner recommendations within three months and again after 12 months.³⁰⁸ The Western Australian Bar Association submitted that an arbitrary time frame to respond to coroner recommendations is misplaced as some recommendations may be of a complexity that they require inquiry and investigation by the Government prior to a response being made.³⁰⁹
- 4.19 It is also relevant to note that the inquiry's terms of reference asks whether the Government should be required to respond to coronial recommendations, not whether it should be required to implement coronial recommendations. On this point, the Western Australian Bar Association submitted that it must be borne in mind that not every recommendation made by a coroner is a sensible one or one that could conceivably be implemented by Government.³¹⁰

Recommendation 16: The Committee recommends that the *Coroners Act 1996* be amended to require the Government to respond to coronial recommendations within three months. The Committee recommends that the amending legislation provides that the Government response shall be tabled in both Houses of Parliament.

³⁰⁵ Law Reform Commission of Western Australia, *Review of Coronial Practices in Western Australia: Discussion Paper*, Project No 100, June 2011, p172.

³⁰⁶ For example, Submission No 15 from Uniting Church in Australia, 14 May 2010, p4.

³⁰⁷ Submission No 32 from Equal Opportunity Commission, 28 May 2010, p3.

³⁰⁸ Submission No 21 from Aboriginal Legal Service of Western Australia, 14 May 2010, pp2, 28.

³⁰⁹ Submission No 23 from Western Australian Bar Association, 17 May 2010, p2.

³¹⁰ Ibid.

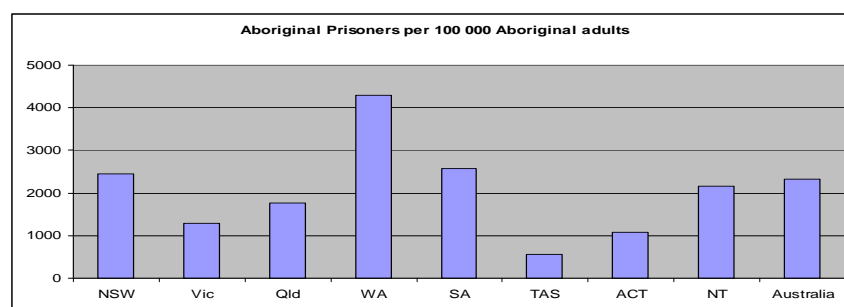
CHAPTER 5

ABORIGINAL IMPRISONMENT AND RECIDIVISM

- 5.1 The Committee decided to inquire into and report on ‘*the scope and efficacy of government action to reduce indigenous incarceration and recidivism rates to prevent further indigenous deaths in custody*’.
- 5.2 The Committee canvassed overarching Government policy and strategies as well as views expressed by experts and stakeholders on strategies to address the gross overrepresentation of Aboriginal people in the criminal justice system.

ABORIGINAL IMPRISONMENT

- 5.3 The gross overrepresentation of Aboriginal people in the criminal justice system has been the subject of a number of inquiries and reports. Despite these studies, urgent action is still required.
- 5.4 The gross overrepresentation of Aboriginal people in the criminal justice system is the biggest single issue confronting the criminal justice system in Western Australia.³¹¹
- 5.5 The Aboriginal imprisonment rate in Western Australia per head of the Aboriginal population is by far the highest in Australia. The Aboriginal adult imprisonment rate in Western Australia in 2009-2010 per 100 000 Aboriginal adults was 4 293, against a national average of 2 325 per 100 000. Aboriginal people in Western Australia are imprisoned at double the rate Aboriginal people are imprisoned in the Northern Territory (2 165 per 100 000) and at 2.4 times the rate they are imprisoned in Queensland (1 773 per 100 000),³¹² the two most geographically comparable jurisdictions. The national data is demonstrated in the following graph:³¹³



³¹¹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p1.

³¹² Commonwealth of Australia, Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services 2011*, January 2011, Volume 1, Table 8A.4.

³¹³ Non-age standardised rates based on the daily average prisoner population numbers supplied by State and Territory governments, calculated against adult Indigenous population estimates. *Ibid*, p8.7.

- 5.6 In Western Australia, an Aboriginal adult is 25 times more likely to be imprisoned than a non-Aboriginal person.³¹⁴ The non-Aboriginal rate of imprisonment in Western Australia in 2009-2010 was 168 per 100 000 adults, compared to 4 293 prisoners per 100 000 Aboriginal adults.³¹⁵
- 5.7 The gross overrepresentation of Aboriginals in Western Australia is also demonstrated by the following:
- Aboriginal people constitute approximately 3.5 per cent of the population but represent approximately 40 percent of the adult prison population;³¹⁶
 - Aboriginal juveniles constitute approximately 5 per cent of the juvenile population but in the last five years have represented between 65 and 80 per cent of the juveniles in custody.³¹⁷
- 5.8 The Chief Justice of Western Australia also submitted that:
- [while] international comparison is imperfect because of the limited range of data, such data as is available would suggest that the imprisonment rate of Western Australian Aboriginals is among the highest, if the not the highest, of any ethnic group in the world.*³¹⁸
- 5.9 The Aboriginal imprisonment rates for juveniles are particularly concerning. Western Australia has by far the highest rate of detention of Aboriginal juveniles in Australia. Ms Michelle Scott, Commissioner for Children and Young People, expressed her concern about the level of juvenile imprisonment in this State noting that that the number of juveniles in detention far exceeds Victoria, despite its larger population.³¹⁹

³¹⁴ Commonwealth of Australia, Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services 2011*, January 2011, Volume 1, Table 8A.4.

³¹⁵ Ibid.

³¹⁶ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p2. As at 16 June 2011, 1 776 of 4 645 adult prisoners in Western Australia are Aboriginal: Department of Corrective Services, 'Weekly Offender Statistics Report as at 16/6/2011', p3.

³¹⁷ Percentage of Aboriginal juveniles (5.3 per cent) extrapolated from Australian Bureau of Statistics, 2006 Census of Population and Housing, Western Australia, Cat No 2068.0 - 2006 Census Tables: www.censusdata.abs.gov.au (viewed on 29 June 2011). The percentage of juveniles in custody has been between 65 and 80 per cent: Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 June 2010, pp3, 9. As at 16 June 2011, 125 of 189 juveniles in custody in Western Australia are Aboriginal: Department of Corrective Services, 'Weekly Offender Statistics Report as at 16/6/2011', p3.

³¹⁸ Submission No 3 from Hon Wayne Martin, Chief Justice of Western Australia, 27 April 2010, p4.

³¹⁹ In 2009-2010, the daily average population of juveniles in detention in Western Australia was double that of Victoria: Commonwealth of Australia, Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services 2011*, January 2011, Volume 1, Table 15.4.

An Aboriginal juvenile in Western Australia is approximately 43 times more likely to be imprisoned than a non-Aboriginal juvenile.³²⁰

- 5.10 Despite decades of Government policy, action and significant expenditure aimed at reducing the rate of imprisonment, Aboriginal over representation in the criminal justice system continues to get ‘*steadily worse*’.³²¹ Between 2006 and 2010, the number of Aboriginal people imprisoned increased by 25 per cent.³²² DotAG provided a more optimistic analysis when they noted that between 2005 and 2009 there was no increase in Aboriginal prisoners as a percentage of the total prison population.³²³
- 5.11 It is important to recognise that most of the crimes committed by Aboriginal people are committed against other Aboriginal people.³²⁴ A reduction in Aboriginal offending will impact on the number of Aboriginal victims of crime.
- 5.12 The Parliament of Australia, House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, in its report *Doing Time - Time for Doing* described the incarceration rate of Indigenous Australians as ‘*a shameful state of affairs*’, ‘*a national disgrace*’ and ‘*a national tragedy*’.³²⁵

The revolving door

- 5.13 Recidivism rates demonstrate that a significant proportion of Aboriginal people are, from a young age, caught in the cycle of offending and imprisonment.³²⁶ Just under 70 per cent of Aboriginal adult men return to prison and 55 per cent of adult females return to prison,³²⁷ compared to a recidivism rate of approximately 40 per cent for male non-Aboriginal prisoners and approximately 30 per cent for female non-Aboriginal prisoners.³²⁸ The recidivism rate for Aboriginal male juveniles is 80 per cent and 64 per cent for Aboriginal females.³²⁹

³²⁰ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p2.

³²¹ Hon Wayne Martin, Chief Justice of Western Australia, ‘Corrective Services for Indigenous Offenders - Stopping the revolving Door’, 17 September 2009, p2.

³²² Letter from Hon Wayne Martin, Chief Justice of Western Australia, 27 October 2010, p1.

³²³ Mr Andrew Marshall, Manager, Research and Analysis, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p18.

³²⁴ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p4.

³²⁵ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Foreword and pp1, 2. The report can be accessed at <http://www.aph.gov.au/house/committee/atsia/sentencing/index.htm> (viewed on 29 June 2011).

³²⁶ Recidivism is defined as a person returning to prison within two years.

³²⁷ Hon Wayne Martin, Chief Justice of Western Australia, ‘Corrective Services for Indigenous Offenders - Stopping the revolving Door’, 17 September 2009, pp4,5.

³²⁸ Ibid, pp4, 5.

³²⁹ Ibid, p5.

- 5.14 As the Chief Justice of Western Australia explained, a high proportion of Aboriginal prisoners are caught in a ‘revolving door’:

*An alarmingly high proportion of the Aboriginal population of Western Australia are caught in a metaphorical revolving door at the entrance to the criminal justice system. They will often enter that system at a very young age - perhaps at or about the age of criminal responsibility, which is the age of 10. The seriousness of their offending will progressively elevate, to the point where they find themselves in detention. In due course they ‘graduate’ from the juvenile justice system into the adult justice system and receive prison terms. Although they may emerge from the system, from time to time, through the revolving door, they quickly re-enter through that same door.*³³⁰

- 5.15 Further, intergenerational offending is a risk factor for offending³³¹ and children of offenders are normalising a life spent in contact with the criminal justice system.³³² Peter Collins, ALS, advised the House of Representatives ATSIA Committee of the grim situation in Western Australia:

*The Aboriginal experience in Western Australia is one of imprisonment. ... [Aboriginal men] start off with young cousins in custody with them and then go onto being uncles who have young nephews coming through, fathers and brothers.*³³³

- 5.16 The House of Representatives ATSIA Committee added on this issue:

The impact of incarceration on an offender’s family, up or down the generational tree, cannot be underestimated ...

The Committee considers [that] the current intergenerational entrenchment of offending has devastating social and economic impacts for all Australians. However, the impact on Indigenous

³³⁰ Ibid, p6.

³³¹ This was identified in the National Aboriginal and Torres Strait Islander Social Survey: New South Wales Government submission to the Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs inquiry into the high level of involvement of indigenous juveniles and young adults in the criminal justice system, February 2010, p1.

³³² Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, pp42-43.

³³³ Mr Peter Collins, Aboriginal Legal Service of Western Australia, *Committee Hansard*, Perth, 30 March 2010, p46 (relating to Mr Collin’s appearance before the Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs).

*victims of crime is profound, with a large number becoming offenders themselves.*³³⁴

COST OF CRIME

- 5.17 Aboriginal people's involvement in the criminal justice system imposes a high cost on the individual (offender and victim), families, communities and on society. Regarding the impact on society, ALS observed:

*ALSWA is frustrated with the lack of progress and political will to fundamentally improve the experience of Aboriginal peoples in contact with the justice system and the far-reaching impact this has on our society as a whole. This appalling situation contributes to a perceived divide between Aboriginal and non-Aboriginal peoples, feeds negative stereotyping and racism, and seriously threatens the spiritual strength and pride of Aboriginal peoples, whilst tarnishing the 'fair-go' reputation of Australia as a civilised nation.*³³⁵

- 5.18 Imprisonment also imposes a financial cost on the State. It costs the State \$295 per day or \$107 000 a year to imprison an adult and \$645 per day or \$235 000 a year to imprison a juvenile in recurrent costs (excluding capital costs).³³⁶ The capital cost of building a prison is approximately one million dollars per prison bed.³³⁷
- 5.19 In 2008, the Auditor General of Western Australia reported in *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994* that the indicative cost of dealing with the 250 young offenders with the most expensive pathways in the juvenile justice system, including periods of detention, was \$100 million, which equates to \$400 000 per child.³³⁸
- 5.20 In recent years the prison population in Western Australia has increased from approximately 3 500 in June 2006 to 4 600 in June 2011 (peaking at nearly 4 900 in March 2010).

³³⁴ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, pp43, 45.

³³⁵ Aboriginal Legal Service of Western Australia submission to the Legislative Assembly Standing Committee on Community Development and Justice in relation to its inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies, April 2010, p4.

³³⁶ Government of Western Australia, *2011-12 Budget: Budget Statements*, Budget Paper No 2, Volume 2, p799. This date reflects recurrent expenditure (not capital costs).

³³⁷ Hon Terry Redman MLA, Minister for Corrective Services, Legislative Assembly Budget Estimates Hearing, *Transcript of Evidence*, 31 May 2011, p10.

³³⁸ Office of the Auditor General, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*, Report 4, June 2008, p24.

- 5.21 A number of submitters raised that factors external to the rates of offending impact on the number of people imprisoned, including changes in the practices of the Prisoner Review Board (keeping prisoners in prison until their release date), ‘over-policing’ and mandatory prison sentences. The Committee did not consider these issues in detail.
- 5.22 Government strategies, programs and services that reduce Aboriginal offending will have many positive outcomes for the State.

GOVERNMENT ACTION TO REDUCE ABORIGINAL OFFENDING AND RECIDIVISM

- 5.23 Research has revealed that the underlying causes of Aboriginal offending is attributable to a range of social, health and educational factors including, but not limited to, high levels of alcohol and substance abuse, mental illness, health issues, a lack of education, unemployment, poverty, inadequate housing and community and intergenerational family dysfunction. As the underlying causes of offending are multifaceted and interrelated, so must be the solutions.
- 5.24 The Commonwealth and State governments have implemented a number of initiatives directed at addressing Aboriginal disadvantage, including initiatives under COAG’s Closing the Gap Strategy.
- 5.25 The House of Representatives ATSIA Committee in its report *Doing Time - Time for Doing: Indigenous Youth in the Criminal Justice System* stated that the following principles must be applied to effect change in the area of Aboriginal disadvantage and disproportionate imprisonment rates:
- focus on early intervention and the well-being of Aboriginal children rather than punitive responses;
 - integrate and coordinate initiatives by government agencies, non-government agencies, and local individuals and groups;
 - address the needs of Aboriginal families and communities as a whole;
 - engage and empower Aboriginal communities in the development and implementation of policy and programs; and
 - engage Aboriginal leaders and elders in positions of responsibility and respect.³³⁹

³³⁹ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, p322.

- 5.26 Many of the above principles reflect evidence presented to this Committee during the course of our inquiry.
- 5.27 State Government action to address underlying causes of crime requires action from Government agencies within the criminal justice sector (DCS, DotAG and Western Australia Police) and outside the criminal justice sector (such as the Department of Education, Department of Health, Department of Housing, Department of Child Protection, Mental Health Commission and drug and alcohol agencies). As can be appreciated, this is a complex area with many different programs and agency involvement. The Committee's inquiry focused on programs and services delivered by departments within the criminal justice sector.
- 5.28 DCS programs and services directed at reducing Aboriginal offending are attached at Appendix 6.
- 5.29 DCS noted that most offenders are only under DCS management for a relatively short time and then return to the dysfunctional lifestyle that led to their offending.³⁴⁰ However, as the former Inspector stressed, prison programs are effective and should be pursued as one of a number of strategies to reduce offending.³⁴¹ Recent DCS analysis of program data clearly demonstrates statistically significant reductions in the recidivism of offenders who have completed programs when compared to offenders that have not.³⁴² (The evaluation of programs is referred to at paragraphs 5.86 to 5.92). DCS analysis also demonstrates that program completion has a significant impact on reducing the seriousness of reoffending.³⁴³
- 5.30 The DCS model of service delivery to achieve their philosophy of Making a Positive Difference includes ten intervention strategies including employment, structured day, education and training, health, supervision and reporting, life skills, cognitive skills, offence specific programs, counselling and re-settlement (re entry) services. DCS delivers programs within prisons and in the community.
- 5.31 DCS advised that over the last two years it has made a concerted effort to improve the quality and quantity of treatment programs offered to offenders.³⁴⁴ There was a 68 percent increase in programs in 2009-2010 upon an increase of 45 per cent in

³⁴⁰ Submission No 29 from the Department of Corrective Services, 24 May 2010, p3.

³⁴¹ Emeritus Professor Richard Harding, Consultant, *Transcript of Evidence*, 17 November 2010, p8.

³⁴² For example 57.1 per cent of offenders who completed programs in 2007-2008 did not return tot either prison or community corrections within two years. In comparison 47.1 per cent of offenders who did not complete programs did reoffend in the same period and returned to either prison or community corrections. Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, pp13-14.

³⁴³ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p14.

³⁴⁴ Ibid, p13.

- 2008-2009.³⁴⁵ (As DCS acknowledges, these program increases were from a low base).³⁴⁶ As at 31 May 2011, 450 offenders were enrolled in treatment programs (9.6 per cent of the prison population), 1 624 offenders were enrolled in education programs (34.75 per cent of the prison population) (600 of the 1 624 prisoners being Aboriginal prisoners), and 47 prisoners (1 per cent of the prison population) were approved for the Prisoner Employment Program (PEP).³⁴⁷
- 5.32 The number of Aboriginal prisoners participating in programs to address offending behaviour increased from 652 in 2008-2009 to 935 in 2009-2010. The average participation rate of Aboriginal prisoners in education and vocational training increased from 33 per cent in 2007-2008 to 41 per cent in 2009-2010.³⁴⁸
- 5.33 As noted above, many prisoners do not participate in or complete a program while in prison. A common theme in submissions to the Committee was the lack of programs.
- 5.34 The Legislative Assembly Standing Committee on Community Development and Justice (CDJ Committee) in its report *Making our Prisons Work* commented on the efficiency and effectiveness of prisoner education, training and employment strategies noting that the poor literacy of prisoners is considered one of the biggest issues for prisoners.³⁴⁹ The Legislative Assembly CDJ Committee's final report noted deficiencies in current systems and that the current justices system's response to crime is failing where the individual comes from a highly dysfunctional community.³⁵⁰
- 5.35 Programs and services delivered by DotAG directed at reducing Aboriginal offending are attached at Appendix 7. DotAG has refocused what was the Aboriginal Justice Agreement into the Aboriginal Justice Program whose aim is to target four of the key activities that trigger the disproportionate involving of Aboriginal people in the criminal justice system, motor vehicle suspensions, fines and infringement defaults, offending by Aboriginal youth and domestic violence.³⁵¹ DotAG advised that it is

³⁴⁵ Ms Jacqueline Tang, Deputy Commissioner, Offender Management and Professional Development, Department of Corrective Services, Legislative Assembly Budget Estimates Hearing, 31 May 2011, p6.

³⁴⁶ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 26 July 2010, p8.

³⁴⁷ Supplementary Information, Legislative Assembly Budget Estimates Hearing, Department of Corrective Services, 2 June 2011, pp1-4. The Department of Corrective Service could not provide details on people not engaged in these services because prisoners may be engaged in more than one service at one time.

³⁴⁸ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, pp20, 21.

³⁴⁹ Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice, Report No 6, *Making our Prisons Work*, November 2010, Finding 8, p19.

³⁵⁰ Ibid, Finding 31, p108.

³⁵¹ Letter from Hon Christian Porter MLA, Attorney General, 5 May 2011, p2.

anticipated that the Aboriginal Justice Program will strategically work with local communities to contribute towards improvements in the above areas.³⁵²

A WHOLE OF GOVERNMENT APPROACH AND ENHANCED INTERAGENCY COOPERATION

- 5.36 As noted above, the underlying causes of offending are multifaceted and interrelated and reducing offending and recidivism rates is a complex area involving many different programs and agencies.
- 5.37 The need for a whole of government approach and improved interagency coordination to address Aboriginal offending was repeatedly raised by stakeholders during the course of the inquiry and has been identified in a number of inquiries.
- 5.38 The Indigenous Implementation Board submitted that one of the main reasons government fails to engage effectively to address Aboriginal offending is the compartmentalised way in which it is organised and its inability to address programs holistically.³⁵³ The Indigenous Implementation Board also considers that the Government should move to regional governance which will result in sustainable long term growth for the regions.³⁵⁴
- 5.39 DCS acknowledge that a whole of Government approach to addressing Aboriginal imprisonment and recidivism rates is essential but adds that any whole of government approach must have bipartisan support to ensure longevity and to support building relationships and achieving effects over a long term.³⁵⁵
- 5.40 DCS advised that there has been far more interagency cooperation in the last couple of years and they have also fostered partnerships with non-government organisations.³⁵⁶
- 5.41 A number of Government interagency committees and groups have been established.³⁵⁷ A directors general and commissioners group sets up and monitors projects their departments work on together. The Chief Justice of Western Australia advised that he addressed this group and came away with the firm impression that they understand that their agencies have to work with each other effectively and that they have to devise community-based solutions.³⁵⁸ A Community Services Leadership

³⁵² Government of Western Australia, *2011-12 Budget: Budget Statements*, Budget Paper No 2, Volume 1, p334.

³⁵³ Submission No 28 from Indigenous Implementation Board, 21 May 2010, p2.

³⁵⁴ Ibid.

³⁵⁵ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p20.

³⁵⁶ Mr Ian Johnston, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p12 and Submission No 29 from Department of Corrective Services, 24 May 2010, p9.

³⁵⁷ Unless otherwise noted, the following information is sourced from Mr Ian Johnston, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p5.

³⁵⁸ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p7.

Group (the departments of Housing, Disability Services, Child Protection, DCS and the Mental Health Commission) meets every month. The Aboriginal Affairs Co-ordinating Committee, legislated for in section 19 of the *Aboriginal Affairs Planning Authority Act 1972* has the statutory function of effectively coordinating the activities of all persons and bodies providing or proposing to provide service and assistance in relation to persons of Aboriginal descent.³⁵⁹ As previously noted, a Youth Justice Steering Committee has been established.

- 5.42 The House of Representatives ATSIA Committee recommended in its report *Doing Time – Time for Doing* that the Commonwealth Government endorse justice targets developed by Standing Committee of the Attorneys-General for inclusion in COAG's Closing the Gap Strategy and that these targets should then be monitored and reported against.³⁶⁰
- 5.43 The Committee is of the view that a high level whole of government group, with defined objectives and targets, should be established in Western Australia to coordinate Government funded action to address the underlying causes of Aboriginal imprisonment.
- 5.44 The Committee supports the model Hon Denis Reynolds, President of the Children's Court of Western Australia, proposed:

*In this state, what I would do is set up within the Department of the Premier and Cabinet a high-level policy group charged with dealing with these problems in the Aboriginal area. They would have overarching authority over each of the agencies. They would identify ultimate objectives. They would then, with the various agencies, identify what role each of those agencies needed to play to achieve that ultimate objective. They would then, on an ongoing basis, require the agencies to do what each of them needed to do to fulfil that ultimate objective and, on a regular basis, get together and put each of the agencies to account to show that they had done what they had been required to do in order for that ultimate objective to be achieved.*³⁶¹

- 5.45 The Committee is of the view that it is important that the Premier's office takes the lead role in this whole of government approach. This will provide the leadership

³⁵⁹ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p18.

³⁶⁰ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Recommendation 2, p40.

³⁶¹ Judge Denis Reynolds, President, Children's Court of Western Australia, evidence before the Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 30 March 2010, p15. Available at www.apph.gov.au/hansard/rep/committee/R12899.pdf (viewed on 21 June 2011).

required and ensure that some entity takes responsibility to address this critical, complex and longstanding issue.

- 5.46 The Committee considers that it is critical that the whole of government body sets objectives and targets that are monitored, measured against and reported to Parliament. As noted below in this Chapter, it is important that programs be evaluated.

Recommendation 17: The Committee recommends that the Premier and his department coordinate the whole of Government approach to address the underlying causes of the gross overrepresentation of Aboriginal people in the criminal justice system. The Committee recommends the setting of objectives and targets that are monitored, measured against and reported to Parliament.

A GREATER FOCUS ON CRIME PREVENTION AND DIVERTING PEOPLE FROM THE CRIMINAL JUSTICE SYSTEM, AND ACTION TAKEN TO DIVERT JUVENILES FROM THE CRIMINAL JUSTICE SYSTEM

- 5.47 The Committee is of the view that there is a critical need for the Government to focus on crime prevention and diverting Aboriginal people from entering or returning to prison.
- 5.48 Early intervention strategies are particularly important to prevent young Aboriginal people from entering ‘the revolving door’ of offending and reoffending, improve their life opportunities and deliver savings to the criminal justice system.
- 5.49 As noted by the Auditor General in the 2008 report *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*, a significant number of young people with high levels of offending have mental health or substance abuse problems. ALS describes the number of young Aboriginal people who offend who have serious substance abuse problems as ‘*alarming*’.³⁶² ALS advised that the prevalence of psychiatric disorders in children in Aboriginal communities range from 1.8 per cent to 31.7 per cent and in adolescents is between 25 and 51 per cent.³⁶³ In this context, the proposed intervention court program for people with mental impairment supported by the Government³⁶⁴ may be particularly beneficial to Aboriginal juveniles. ALS support programs that engage young Aboriginal people in their communities and strengthen their ties to Aboriginal culture.

³⁶² Aboriginal Legal Service of Western Australia submission to the Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs inquiry into the high level of involvement of indigenous juveniles and young adults in the criminal justice system, December 2009, p21.

³⁶³ Ibid.

³⁶⁴ Hon Michael Mischin MLC, Legislative Council, *Parliamentary Debates (Hansard)*, 25 May 2011, p3906.

- 5.50 The Auditor General found that the system is becoming less effective in achieving the objectives for the treatment of young people set out in the *Young Offenders Act 1994* and it is critical to address the core problem of repeat offending. The Auditor General found that the application of redirection options in the *Young Offenders Act 1994*³⁶⁵ was declining. The Auditor General recommended that WA Police ensure their officers consider redirection options in line with the *Young Offenders Act 1994*, particularly through cautioning and referral to the juvenile justice teams where appropriate.³⁶⁶ The Chief Justice of Western Australia advised the Committee that the Government and Western Australia Police are working strongly to try to get those rates of diversion back up.³⁶⁷
- 5.51 While submitters praised some programs and services, for example the Regional Youth Justice Services (see paragraphs 5.55 to 5.58), the Kimberley Aboriginal law and culture bail intervention program in Fitzroy Crossing and the community and drug courts, concern was raised about the lack of programs, particularly culturally appropriate programs, available in custody and in the community.

Finding 13: While the Committee was made aware of a number of intervention programs implemented to address issues relating to the gross overrepresentation of Aboriginal people in the criminal justice system, the Committee finds that there is no comprehensive list of all intervention programs available in Western Australia which indicates a lack of a whole of government approach.

- 5.52 It is concerning that in October 2010 the OICS, in its *Report of an Announced Inspection of Rangeview Remand Centre* (a juvenile facility), commented on the dearth of programs at the centre as follows:

At the time of inspection 73 per cent of the detainees at Rangeview were Aboriginal. Given this stark fact, it is surprising that the Centre is not more adequately addressing the needs to the Aboriginal detainees. There is no dedicated program of events or activities for the Aboriginal detainees, little by way of Aboriginal artwork or other symbols of Aboriginal culture, and no program of visiting elders or other evidence of effective engagement with Aboriginal community

³⁶⁵ The *Young Offenders Act 1994* provides the following options for police when dealing with a young person who is reasonably believed to have committed or been about to commit an offence: giving a caution; referring the matter to the juvenile justice team (which involves the offender, their parents and the victim meeting face to face, discussing issues and agreeing to a penalty); charging the person without taking the person into custody; and apprehending the person and releasing them to bail or detention in custody.

³⁶⁶ Office of the Auditor General, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*, Report 4, June 2008, p8.

³⁶⁷ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p5.

*organisations and service providers. Rangeview can and must improve service delivery to Aboriginal detainees.*³⁶⁸

5.53 The OICS recommended at Recommendation 13 of its report:

*That a suite of brief intervention programs be developed and provided to young people at Rangeview.*³⁶⁹

5.54 DCS provided the following response to Recommendation 13:

*The Department will explore strategies to provide brief intervention programs prior to making any commitment to support or progress the recommendation.*³⁷⁰

Recommendation 18: The Committee recommends that the Department of Corrective Services develops and implements a suite of intervention programs for juveniles and young adults in custody as a matter of high priority.

5.55 On a positive note, the Government's implementation and expansion of the Regional Youth Justice Service is a welcome development. This service, previously established in Geraldton and Kalgoorlie, is being expanded to the Kimberley and Pilbara.³⁷¹

5.56 The primary strategy of the Regional Youth Justice Service is on prevention and diversion which bring social and financial benefits to the individual and wider community. The Regional Youth Justice Service, which involves a number of departments and agencies, offers the management of young people on community orders, an extended hours family support service for young people at risk, an extended hours bail service, emergency short stay accommodation for young people that have been given bail but can not meet bail conditions, a dedicated juvenile justice team and psychological support. Each Regional Youth Justice Service is supported and monitored by a local community reference group which meets regularly to review the service and discuss issues which affect the community.

5.57 The Regional Youth Justice Service in Geraldton and Kalgoorlie has been widely praised by stakeholders including the Chief Justice of Western Australia, Ms Michele Scott, Commissioner for Children and Young People, the Inspector and the

³⁶⁸ Office of the Inspector of Custodial Services, Report No 69, *Report of an Announced Inspection of Rangeview Remand Centre*, October 2010, piii.

³⁶⁹ Ibid, Recommendation 13, p46.

³⁷⁰ Ibid, p67.

³⁷¹ As at June 2011, the Pilbara service was scheduled to commence in July 2011 and some services in the Kimberley had commenced: Ms Heather Harker, Acting Commissioner, Department of Corrective Services, Legislative Council Budget Estimates Hearing, *Transcript of Evidence*, 20 June 2011, p6 and Legislative Assembly Budget Estimates Hearing, *Transcript of Evidence*, 31 May 2011, p10.

Indigenous Implementation Board. DCS advised that the service in Kalgoorlie and Geraldton have raised the diversion rate and reduced remand in custody and that fewer young people from these areas are entering the formal justice system and detention centres.³⁷²

- 5.58 The Regional Youth Justice Service in the Kimberly and Pilbara will address young people at risk of entering the justice system as well as those already in the justice system, especially Aboriginal young people. DCS advised that approximately 90 per cent of the young people in the Kimberly and Pilbara who had offended and engaged with the service were Aboriginal.³⁷³
- 5.59 An interagency Youth Justice Steering Committee chaired by DCS Deputy Commissioner, Community and Youth Justice has been established.³⁷⁴

Finding 14: The Committee finds that the Regional Youth Justice Service in Geraldton and Kalgoorlie has been widely praised by stakeholders.

COMMUNITY-BASED AND CULTURALLY APPROPRIATE PROGRAMS, AND ENGAGING ABORIGINAL COMMUNITIES TO DELIVER PROGRAMS

- 5.60 Submitters noted that community based programs that engage Aboriginal people and communities are particularly effective. DotAG acknowledged that targeted and ‘culturalised’ programs have better success rates in terms of recidivism.³⁷⁵
- 5.61 It is of concern that in April 2010, ALS commented:

ALS has no knowledge of culturally appropriate programs for Aboriginal peoples that effectively integrate behaviour management, education and training strategies with real work opportunities, and

³⁷² For example, cautions in the Goldfields had increased by more than 41 per cent and referral to juvenile justice teams (which diverts juveniles from formal prison options) in the mid west have increased by over 52 per cent. Since the implementation of the service, police cautions across both regions have increased by 77 per cent and police referral to juvenile justice teams have increased by 62 per cent: Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p15.

³⁷³ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p16. Regional Youth Justice Service offices have been established in Broome, Derby, Fitzroy Crossing, Kununurra, Halls Creek, Wyndham in the Kimberley and South Hedland, Roebourne, Newman in the Pilbara. WA Police have committed to placing an officer in the offices at Broome, Kununurra and Hedland for three days per week with the possibility of this increasing if necessary. The Department of Child Protection has agreed to pilot the permanent placement of an officer in the East Kimberley Regional Youth Justice Services: Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p18.

³⁷⁴ Mr Ian Johnson, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p12.

³⁷⁵ Mr Andrew Marshall, Manager, Research and Analysis, Department of the Attorney General, *Transcript of Evidence*, 14 June 2010, p23.

*suggest this is an area of major improvement for prisoners to focus on.*³⁷⁶

- 5.62 DCS advised that it is collaborating across government agencies and with Aboriginal people to provide culturally appropriate services and programs, noting that new Regional Youth Justice Services (see paragraphs 5.55 to 5.58) and development of the new West Kimberley Regional Prison and Warburton Work camp are being undertaken with strong partnerships with other government agencies and community involvement.³⁷⁷ DCS added that it contracts a number of non government organisations to deliver programs in prisons around the state, including programs to Aboriginal offenders.³⁷⁸
- 5.63 As noted above, the number of Aboriginal prisoners participating in programs has increased over the last few years. However, many prisoners do not undertake or complete programs.
- 5.64 In 2009-2010, DCS established an Aboriginal Program Facilitation Unit staffed by ten Aboriginal people to increase the delivery of programs to Aboriginal offenders and build the capacity of community organisations to deliver programs in prison and in the community.³⁷⁹ DCS advised that Aboriginal facilitators frequently fly into regional prisons to deliver programs and they will have a presence in Geraldton and the Kimberley.³⁸⁰
- 5.65 As at March 2011, the Aboriginal Program Facilitation Unit delivered the Indigenous Men Managing Anger and Substance Use programs, the Indigenous Medium Sex Offender Program and the Indigenous Family Violence program at prisons and the Indigenous Family Violence Program in the community.³⁸¹
- 5.66 DCS advised in June 2011 that as a result of increased program delivery, DCS has largely met the demand for some addiction offending programs, particularly in regional areas of the State. In 2010-11, due to a lack of demand for these programs in regional prisons a number have been cancelled. A total of eight Indigenous Men Managing Anger and Substance Use programs in 2010-11 will be cancelled. DCS

³⁷⁶ Aboriginal Legal Service of Western Australia submission to the Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice in relation to the inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies, April 2010, p8.

³⁷⁷ Government of Western Australia, *2011-12 Budget: Budget Statements*, Budget Paper No 2, Volume 2, p797.

³⁷⁸ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, p18.

³⁷⁹ Ibid and Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p20.

³⁸⁰ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p20.

³⁸¹ Ibid.

advised that at the end of the third quarter of 2010-11, the demand State-wide for this program was listed as four offenders.³⁸²

Recommendation 19: The Committee recommends that the Government undertakes an audit to identify the programs and services that are effective in reducing Aboriginal offending and recidivism, and takes action to ensure that effective programs are developed and delivered.

- 5.67 The Legislative Assembly CDJ Committee in its report *Making our Prisons Work* acknowledged that DCS conducts a number of culturally based initiatives and were developing a more targeted approach to the needs of Aboriginal people in custody but prisoner access to programs is an issue.³⁸³
- 5.68 The need to engage and empower Aboriginal communities to develop and implement programs was also raised by a number of stakeholders during the inquiry.
- 5.69 The House of Representatives ATSIA Committee noted in its report *Doing Time – Time for Doing* that engaging and empowering Aboriginal communities was an important principle. In 2006, the Law Reform Commission of Western Australia in its *Final Report on Aboriginal Customary Laws* called for the establishment of Aboriginal owned and controlled youth justice diversion programs.³⁸⁴ The Chief Justice of Western Australia also expressed the view that local initiatives and local support is important. The Inspector added that we should be trying to build local capacity.³⁸⁵ The Kimberley Aboriginal Law and Culture Centre calls for investment in community owned and controlled justice diversion programs.³⁸⁶
- 5.70 The Chief Justice of Western Australia expressed the view that:

*we need to encourage Aboriginal people to take responsibility for and ownership of these problems and to themselves devise the solutions. I think if we do that the solutions are likely to be much more effective.*³⁸⁷

³⁸² Letter from Ms Heather Harker, Acting Commissioner, Department of Corrective Services, 21 June 2011, Attachment D, p4.

³⁸³ Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice, Report No 6, *Making our Prisons Work, An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, November 2010, pp90-92.

³⁸⁴ Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Final Report, September 2006, Recommendation 50, p204.

³⁸⁵ Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p17.

³⁸⁶ Submission No 4 from Kimberley Aboriginal Law and Culture Centre, 3 May 2010, p2.

³⁸⁷ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, pp5-6.

5.71 The Committee noted with interest that when witnesses were asked to name programs available for Aboriginal people (particularly community programs in the regions) they could not name more than a few and they often named programs initiated by Aboriginal people or communities.³⁸⁸ The Chief Justice of Western Australia advised of an employment agency in the South West trying to teach Aboriginal people how to drive that could not get a roadworthy vehicle to use for driver's licence testing.³⁸⁹ The Chief Justice considered, and the Committee agrees, that that this type of grass roots initiative should be funded by Government, particularly given the number of people imprisoned for drivers' licence offences.

5.72 The House of Representatives ATSIA Committee in its report *Doing Time – Time for Doing* made the following recommendations relating to community based programs:

*The Committee recommends that the Commonwealth Government establish a new pool of adequate and long term funding for young Indigenous offender programs. Organisations and community groups should be able to apply for funding for programs that assist young indigenous offenders [with a range of specified programs]. ... The Committee recommends that this fund is geared towards small-scale community-based groups, operating in local areas ...*³⁹⁰

And:

*The Committee recommends that the Commonwealth Government work with state and territory governments to coordinate sustained and flexible funding support for a range of youth justice diversion and rehabilitation services which are developed with and supported by local Indigenous communities.*³⁹¹

5.73 The Committee supports these recommendations.

JUSTICE REINVESTMENT

5.74 A number of submitters, including the Australian Human Rights Commission, ALS, DICWC and Women in Black Perth are of the view that the Government should implement a justice reinvestment policy to address the high level of Aboriginal offending.

³⁸⁸ For example, Ms Marianne MacKay, Co-deputy Chair, Deaths in Custody Watch Committee, *Transcript of Evidence*, 22 September 2010, p8.

³⁸⁹ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, pp9-10.

³⁹⁰ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Recommendation 31, p262.

³⁹¹ Ibid, Recommendation 39, p321.

- 5.75 Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, explains justice reinvestment as follows:

*Justice reinvestment is a localised criminal justice policy approach from the United States that diverts the funds spent on imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these specific communities. Performance outcomes are measured against the amount of imprisonment money saved, reduction in imprisonment, reduction in recidivism, and indicators of community wellbeing and capacity.*³⁹²

- 5.76 Justice reinvestment is a data driven, evidence-based, scientific approach that aims to reduce corrections spending and reinvest savings in strategies directed at reducing crime in targeted areas. A number of submitters noted that the results in a number of states in the USA that have established this strategy have been very encouraging.
- 5.77 Justice reinvestment is a comprehensive government, non government, business and community coordinated response funded through savings gained. An interagency steering committee could be responsible for identifying potential options for reducing recidivism and generating savings.
- 5.78 It is argued that justice reinvestment recognises the limitations of current individually focused corrections policy. Even if an offender is put through a well-resourced rehabilitation program, if they return to a community with few opportunities, their chances of staying out of prison are limited.
- 5.79 Implementing or considering a justice reinvestment strategy has been supported by a number of committees and entities.
- 5.80 The House of Representatives ATSIA Committee in its report *Doing Time – Time for Doing* recommended:

*The Committee supports the principles of justice reinvestment and recommends that government focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.*³⁹³

³⁹² Submission No 8 from Australian Human Rights Commission, 14 May 2010, p3.

³⁹³ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Recommendation 40, p321.

5.81 The Parliament of Australia, Senate Legal and Constitution Affairs References Committee also recommended, in 2009, that ‘*the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system*’.³⁹⁴

5.82 The Legislative Assembly CJD Committee in its report *Making our Prisons Work* recommended:

[That] *government at the highest level charge a lead agency to establish the proposed pilot Justice Reinvestment strategy to:*

- *have an over arching responsibility for each of the agencies collaborating in the strategy insofar as their deliverables to the strategy are concerned; and*
- *have control and be accountable for the pooled Justice Reinvestment budget.*³⁹⁵

5.83 The Government Response to the above recommendation is worth noting in detail:

The Government notes this recommendation.

Justice reinvestment cannot be achieved by the Department of Corrective Services alone; would require a Government wide approach (sic). The Government acknowledges the benefits that can be gained from identifying hot spots and providing local funding to those areas to tackle the social disadvantages that contribute to offending behaviour, however, past attempts to address social disadvantage have had mixed outcomes and it is not clear how the justice re-investment approach will lead to better outcomes. If such an approach is to work, it is one that would require generational change. Utilising capital funding from the Department’s future capital planning for existing requirements prior to these needs being met will simply magnify the gap between design and operational capacity within prisons.

The Government acknowledges the desirability of collaboration among government agencies. As the Committee’s Report (page 109) indicates, this approach can be problematic due to a number of

³⁹⁴ Parliament of Australia, The Senate, Legal and Constitutional Affairs References Committee, *Access to Justice*, December 2009, Recommendation 21, p110.

³⁹⁵ Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice, Report No 6, *Making our Prisons Work, An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, November 2010, Recommendation 24, p113.

factors, such as the hierarchical accountability framework within government and the various agencies having different priorities.

Australian and international research indicated that any justice reinvestment strategy requires a well co-ordinated and closely monitored inter-agency approach. ...

If the Western Australian government were to pilot a Justice Reinvestment Strategy, the Department's research has identified that the following areas are key elements for success:

- Housing: Stable housing and access to support in the community have been identified as important factors for newly released offenders.*
- Mental Health: Efforts to divert offenders with mental illness away from the criminal justice system have a positive impact. There are some effective US police diversion models which could be explored.*
- Alcohol and other drug use: There are a range of studies exploring the relationship between drug and alcohol use and crime. Programs could be developed to cater for offenders with more entrenched drug use and a more serious level of offending.*
- Parenting support, social supports: There has been a significant amount of international research into the area of social supports such as early childhood interventions and mentoring - and the role these may play in preventing contact with the justice system.*

Justice Reinvestment is founded on the premise that there is appropriate infrastructure for the current requirements (i.e. sufficient design capacity) prior to consideration of reinvestment of future funds to alternatives to imprisonment. The Department is a considerable way from this point.

- 5.84 The Inspector advised the Committee that he supports the justice reinvestment philosophy and the investment of money and resources into diverting people out of custody and into crime prevention however this is done. The Inspector considers that justice reinvestment is becoming a label which now has political overtones and particular connotations from the United States about targeting high risk areas.³⁹⁶

³⁹⁶Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 17 November 2010, p17.

- 5.85 The Committee supports the principles of justice reinvestment and the recommendation made by the House of Representatives ATSIA Committee.

Recommendation 20: The Committee supports the principles of justice reinvestment and recommends that the Government focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Western Australia.

EVALUATING THE EFFECTIVENESS OF GOVERNMENT PROGRAMS

- 5.86 The importance of establishing robust processes to critically assess and evaluate Government programs was raised during the course of the inquiry. Without the robust evaluation of programs it is difficult to determine the effectiveness of programs.
- 5.87 The Inspector highlighted the need to improve measuring tools for programs and added:

*We used to measure inputs; we would measure how many people were put into a program. We then started to measure outputs; we would measure how many people completed a program. What we are really interested in is outcomes, not outputs—outcomes in terms of how many people go into employment on release if they have done employment training programs. But the flipside to that is, of course, that is not a very effective measure because the market may fluctuate; the job market may be different at different times.*³⁹⁷

- 5.88 The CJD Committee in its report *Making our Prisons Work* found that the ability of DCS to analyse the effectiveness of its rehabilitative initiatives is impaired by its current lack of an integrated data management system.
- 5.89 Hon Giz Watson MLC submitted that the review of initiatives by an independent body such as the Crime Research Centre would be an appropriate way to check their efficiency and effectiveness.³⁹⁸
- 5.90 DCS advised that over the last two years it has established a series of management processes to support and monitor the increased delivery of programs.³⁹⁹ The role of its new Clinical Government Unit is to establish whether programs should be implemented.⁴⁰⁰ DCS added that it monitors the recidivism of program completers and the effectiveness of programs delivered is assessed. In 2009, DCS adopted a three-

³⁹⁷ Ibid, p15.

³⁹⁸ Submission No 22 from Hon Giz Watson MLC, 14 May 2010, pp13-14.

³⁹⁹ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p13.

⁴⁰⁰ Ms Jacqueline Tang, Deputy Commissioner, Offender Management and Professional Development, Department of Corrective Services, Legislative Council Budget Estimates Hearing, 20 June 2011, p18.

stage offender program evaluation strategy based on the evaluation frameworks in Queensland and New Zealand. In 2009-2010, DCS conducted 48 pre-program evaluations, 43 post-program evaluations and 52 focus groups (they conduct focus groups with prisoners).⁴⁰¹

- 5.91 DCS do not publish the results of its program evaluation but added ‘[s]ome would say we should publish it but it is important for us to evaluate it and look at what we are doing’.⁴⁰²
- 5.92 The Chief Justice of Western Australia acknowledged that the Minister for Corrective Services has implemented requirements for DCS to improve program delivery and introduce mechanisms for measuring the efficacy of the programs being delivered. The Chief Justice considers these ‘*enormously positive developments*’.⁴⁰³

ABORIGINAL IMPRISONMENT ARISING OUT OF DRIVING OFFENCES

- 5.93 Approximately one-third of the charges against Aboriginal people relate to driving offences, excluding cases of dangerous driving and driving under the influence.⁴⁰⁴ Including dangerous driving and driving under the influence, about one-quarter of the Aboriginal people sentenced to imprisonment in the Magistrates Court of Western Australia were sentenced for driving offences.⁴⁰⁵
- 5.94 While it is difficult to determine how many Aboriginal people are jailed as a result of driving offences alone, DotAG advised that in 2010 170 Aboriginal people in regional and remote areas and 62 Aboriginal people in the metropolitan and south west regions were imprisoned in cases where the most serious offence was a driving while not qualified offence.⁴⁰⁶
- 5.95 The Chief Justice of Western Australia advised that is not uncommon to see quite young Aboriginal people before the court on their eight to twelfth charge of driving while disqualified or under suspension who have never had the opportunity to apply for a license. Eventually, the Court may impose a custodial sentence.⁴⁰⁷
- 5.96 A number of structural and systemic issues, particularly in remote areas, contribute to Aboriginal road traffic offending. Aboriginal people may have difficulties in obtaining

⁴⁰¹ Answers to Questions on Notice, Department of Corrective Services, 26 July 2010, pp13, 17, 18.

⁴⁰² Mr Ian Johnston, Commissioner, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p12.

⁴⁰³ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p5.

⁴⁰⁴ Ms Jacqueline Tang, Deputy Commissioner, Offender Management and Professional Development, Department of Corrective Services, *Transcript of Evidence*, 29 March 2011, p14.

⁴⁰⁵ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p3.

⁴⁰⁶ Letter from Hon Christian Porter MLA, Attorney General, 5 May 2011, p2.

⁴⁰⁷ Hon Wayne Martin, Chief Justice of Western Australia, *Transcript of Evidence*, 26 July 2010, p3.

a license and people in remote areas may not be able to travel to licensing centres. The driver's licence questionnaire may be in language Aboriginals from remote areas do not understand. In many remote areas there are few adults who have many years of an unblemished record required to supervise learner drivers. Also, the lack of alternative means of transport may cause a person to be apprehended for driving without a licence before they are able to apply for a license. A person disqualified from holding a licence (which is automatic if a person drives without a license) in remote areas often does not have transport options and out of necessity may drive. The Chief Justice of Western Australia considers that making it easier for Aboriginal people in remote areas disqualified from driving to obtain extraordinary licences should merit serious consideration.⁴⁰⁸

- 5.97 The 2007 report *Indigenous Licensing and Fine Default: A Clean Slate*⁴⁰⁹ (Wyatt Report) offered a number of practical solutions to prevent offending, including sending out teams to address the lack of licensing in regional areas. Many submitters to the Committee, including the Chief Justice of Western Australia, ALS and DICWC commended this report to the Committee.
- 5.98 Hon Troy Buswell MLA, Minister for Transport, advised of action taken to address Aboriginal licensing issues and the recommendations of the Wyatt Report. The Minister for Transport's letter dated 12 May 2011 is attached at Appendix 8.
- 5.99 A Remote Area Driver's Licence Steering Committee, chaired by the Department of Transport who have the responsibility for developing strategies to address the recommendations of the Wyatt report, has been established.⁴¹⁰ The Committee consists of directors general and commissioners from departments including DCS, WA Police, the Department of Education and Department of Transport.
- 5.100 DCS advised that a Driver Education and Training Program is being delivered at each of the 14 prisons for prisoners who are within six months of parole, release or work release. In 2009-2010 84 people obtained a learner's permit and 149 obtained a motor driver's licence.⁴¹¹
- 5.101 The Legislative Assembly CDJ Committee in its report *Making our Prisons Work* acknowledged that DCS provides limited driver education and training to persons in custody and in the community.⁴¹² The Legislative Assembly CDJ Committee

⁴⁰⁸ Ibid.

⁴⁰⁹ The Committee to Explore The Effect of Motor Driver's Licence and Driving Laws on Remote Communities, *Indigenous Licensing and Fine Default: A Clean Slate*, September 2007.

⁴¹⁰ Answers to Questions on Notice, Department of Corrective Services, 29 March 2011, p21.

⁴¹¹ Ibid, pp21-22.

⁴¹² Parliament of Western Australia, Legislative Assembly Standing Committee on Community Development and Justice, Report No 6, *Making our Prisons Work, An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, November 2010, p77.

recommended that the Minister for Police, the Attorney General and the Minister for Transport implement the recommendations made in the Wyatt Report.⁴¹³ The Government response to the above recommendation 'noted' the recommendation.

- 5.102 The House of Representatives ATSIA Committee in its report *Doing Time – Time for Doing* recommended that the Commonwealth and State ministers establish specific learner driver resources in multiple media formats that appropriately meet language and literacy needs of local Indigenous communities, and a remote and regional learner driver licensing scheme to assist people in remote and regional areas to obtain learner and provisions licences.⁴¹⁴

CONCLUSION

- 5.103 As the House of Representatives ATSIA Committee noted in its report *Doing Time – Time for Doing*, many core underlying factors explaining the disproportionate number of Aboriginal people in custody identified in the Royal Commission into Aboriginal Deaths in custody 20 years ago are identified two decades later, and during this period the overrepresentation of Aboriginal people has increased.⁴¹⁵
- 5.104 The Committee is of the view that now is the time for Government to take action on these matters.
- 5.105 The Committee commends its report to the House.



Hon Kate Doust MLC
Deputy Chair

18 July 2011

⁴¹³ Ibid, Recommendation 16, p80.

⁴¹⁴ Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Island Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Recommendation 21, p187.

⁴¹⁵ Ibid, p2.

APPENDIX 1

PETITION

Mark Newhouse on behalf of the Deaths in Custody Watch Committee of P. O Box 8196 Perth Business Centre, WA 6849, in the State of Western Australia, am the promoter of this petition which contains 4,950 signatures.

PETITION IN RELATION TO THE DEATH IN CUSTODY OF MR WARD

To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.

We the undersigned residents of Western Australia support fundamental changes to the system of transportation of detained persons and the administration of justice that led to the death in custody of Mr. Ward who died of heatstroke in inhumane and avoidable circumstances in January 2008. Your petitioners therefore respectfully request the Legislative Council to recommend:

1. Full and prompt implementation of the Coroners Findings;
2. That there be criminal charges laid against those responsible for Mr Wards death, as soon as possible;
3. Immediate termination of the contract between G4S and the State of Western Australia;
4. The return of responsibility for the custodial transport in WA to the Department of Corrective Services;
5. An end to the privatization of custodial services;
6. Using air transport or video conferencing instead of long haul vehicle transport;
7. That immediate steps are taken to reduce Indigenous incarceration and recidivism rates to prevent further Indigenous deaths in custody;
8. A public inquiry into systemic racism or Royal Commission into the administration of Justice;
9. That the *Coroners Act* 1996 (WA) be amended to ensure that there are positive obligations on the WA Government to respond to coronial recommendations within set periods; and
10. That relevant international human rights instruments and recommendations of the Royal Commission into Aboriginal Deaths in Custody are reviewed and where they have not yet been implemented, that they are now fully implemented and funded in the administration of justice in WA.

And your petitioners as in duty bound, will ever pray.

NAME	ADDRESS	SIGNATURE
Jay Fleischman	Murdoch	[Signature]
Karen Louise Williams	Murdoch	[Signature]
Edward Wilson	KARDINYA	[Signature]
Michael Pilkington	Murdoch	[Signature]
Titus Rivers	Gosnells	[Signature]
Tamara Smith	20 Linton St, Byford WA 6122	[Signature]
Luis De Araujo	6 Labyrinth way, Smith Lake	[Signature]
Adrian Fisher	32 Gershamouth Drive	[Signature]
Andrew Fisher	Willetton	[Signature]
Annette Harrington	Huntingdale	[Signature]
Melissa Harrington	Huntingdale	[Signature]
Jessica Everett	Willetton	[Signature]
Catherine Mearns	Dalkeith	[Signature]
Elizabeth White	Hangarup	[Signature]
Julia White	Toondalup	[Signature]

Please return this Petition by 21st August 2009 to: Deaths in Custody Watch Committee PO BOX 8196, Perth Business Centre, WA 6849. This petition must not be altered and only original signatures are permitted. Faxed copies of signatures cannot be accepted.

[Signature]

APPENDIX 2

SUBMISSIONS

No.	Submitter	Date
1	Mr Geoff Taylor	8 April 2010
2	Patricia and Graeme Beamish	13 April 2010
3	Hon Wayne Martin, Chief Justice of Western Australia	27 April 2010
4	Kimberley Aboriginal Law and Culture Centre	3 May 2010
5	Women in Black, Perth	11 May 2010
6	Law Reform Commission of Western Australia	10 May 2010
7	Hon Peter Martino, Chief Judge, District Court of Western Australia	6 May 2010
8	Commissioner Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission	13 May 2010
9	Legal Aid Western Australia	13 May 2010
10	Amnesty International Australia	13 May 2010
11	Commissioner for Children and Young People	13 May 2010
12	Office of the Inspector of Custodial Services	13 May 2010
13	National Indigenous Drug and Alcohol Committee, Australian National Council on Drugs	12 May 2010
14	Adjunct Professor Ray Watterson, La Trobe University (Victoria)	14 May 2010
15	Uniting Church in Australia, Synod of Western Australia	14 May 2010
16	Australian Inquest Alliance	14 May 2010
17	G4S Custodial Services Pty Ltd	13 May 2010
18	Director of Public Prosecutions	14 May 2010
19	Mr Jim Duffield	14 May 2010
20	Aboriginal Legal Rights Movement Inc	14 May 2010
21	Aboriginal Legal Service of Western Australia	14 May 2010
22	Hon Giz Watson MLC	14 May 2010
23	Western Australian Bar Association	17 May 2010

24	WA Prison Officers' Union	19 May 2010
25	Catholic Social Justice Council, Archdiocese of Perth	14 May 2010
26	Western Australia Police	13 May 2010
27	Department of Health	14 May 2010
28	Lt General John Sanderson AC, Chairperson, Indigenous Implementation Board	21 May 2010
29	Department of Corrective Services	24 May 2010
30	Deaths in Custody Watch Committee of Western Australia	25 May 2010
31	Department of the Attorney General	28 May 2010
32	Equal Opportunity Commission	28 May 2010
33	Private Submission	

APPENDIX 3

HEARINGS

Date	Name	Position	Organisation
14 June 2010	Mr Dennis Eggington	Chief Executive Officer	Aboriginal Legal Service of Western Australia
	Ms Tammy Solonec	Managing Solicitor	Aboriginal Legal Service of Western Australia
	Ms Shanna Satya	Policy Officer	Aboriginal Legal Service of Western Australia
14 June 2010	Mr Ray Warnes	Executive Director, Court and Tribunal Services	Department of the Attorney General
	Mr Michael Johnson	Director, Magistrates Court and Tribunals	Department of the Attorney General
	Mr Andrew Marshall	Manager, Research and Analysis	Department of the Attorney General
14 June 2010	Ms Michelle Scott	Commissioner for Children and Young People	Office of the Commissioner for Children and Young People
26 July 2010	Hon Wayne Martin	Chief Justice of Western Australia	Supreme Court of Western Australia
26 July 2010	Mr Ian Johnston	Commissioner for Corrective Services	Department of Corrective Services
	Mr Graeme Doyle	Assistant Commissioner, Corporate Support	Department of Corrective Services
	Mr Brian Lawrence	Manager, Acacia Prison Contract	Department of Corrective Services
26 July 2010	Mr Greg Italiano	Executive Director	Western Australia Police
	Mr Wayne Gregson	Assistant Commissioner (Judicial Services)	Western Australia Police
	Mr Rod Peterson	Inspector, WA Custodial Services	Western Australia Police
22 September 2010	Ms Daisy Ward	Representing the Ward family (by audio link)	

	Mr Marc Newhouse	Chair	Deaths in Custody Watch Committee
	Ms Marianne Mackay	Co-Deputy Chair	Deaths in Custody Watch Committee
	Ms Elizabeth Carbone	Committee Member	Deaths in Custody Watch Committee
October 2010 (Private hearing)	Name suppressed		
17 November 2010	Professor Neil Morgan	Inspector of Custodial Services	The Office of the Inspector of Custodial Services
	Mr James Bryden	Inspections and Research Officer	The Office of the Inspector of Custodial Services
	Mr Clifford Holdom	Inspections and Research Officer	The Office of the Inspector of Custodial Services
17 November 2010	Emeritus Professor Richard Harding	Former Inspector of Custodial Services	
29 March 2011	Mr Ian Johnston	Commissioner	Department of Corrective Services
	Mr Graeme Doyle	Assistant Commissioner, Corporate Support	Department of Corrective Services
	Ms Jacqueline Tang	Deputy Commissioner, Offender Management and Professional Development	Department of Corrective Services
29 March 2011	Mr Ray Warnes	Executive Director, Court and Tribunal Services	Department of the Attorney General
	Mr Michael Johnson	Director, Court and Tribunal Services	Department of the Attorney General
	Mr Andrew Marshall	Manager, Research and Analysis, Policy Directorate	Department of the Attorney General
6 April 2011 (Private hearing)	Mr Keith Badham	Managing Director	G4S Australia Pty Ltd
	Mr Andrew Dewsnap	Legal Counsel	G4S Australia Pty Ltd

APPENDIX 4
SECTIONS 34 AND 39 OF THE
TERRORISM (PREVENTATIVE DETENTION) ACT 2006

34. Inspector of Custodial Services to be notified of detention

- (1) As soon as practicable after a person is first taken into custody under a preventative detention order, the senior police officer nominated under section 24(2) in relation to the order must —
 - (a) give the Inspector of Custodial Services a copy of the order; and
 - (b) notify the Inspector of Custodial Services as to the place where the person is being detained.
- (2) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1).

39. Humane treatment of detainee

- (1) The detainee —
 - (a) must be treated with humanity and with respect for human dignity; and
 - (b) must not be subjected to cruel, inhuman or degrading treatment,by anyone exercising authority under the PDO or implementing or enforcing the PDO.
- (2) The Inspector of Custodial Services may, at any time, review the detainee's detention under the PDO to determine whether subsection (1) is being complied with in relation to the detainee.
- (3) The Inspector of Custodial Services may, at any time, report to —
 - (a) the Commissioner; and
 - (b) the senior police officer nominated under section 24(2) in relation to the PDO,on any matter relating to a review under subsection (2) and give advice or make recommendations as the Inspector of Custodial Services considers appropriate in relation to the matter.
- (4) For the purposes of this section the Inspector of Custodial Services may exercise any power conferred by the *Inspector of Custodial Services Act 2003* whether or not the place where the detainee is being detained is a place referred to in section 19 of that Act.

APPENDIX 5

DCS *MINIMUM STANDARDS FOR SECURE ESCORT VEHICLES*



Minimum Standards for Secure Escort Vehicles

Department of Corrective Services Western Australia

Purpose

The purpose of these standards is:

- to achieve consistency in the standard of secure escort vehicles;
- to minimise any risk to the safety and security of persons in custody, and the safety of escort staff, during the journey and while entering or exiting the escort vehicle; and
- to maximise public safety and road safety while escorting prisoners.

Scope

These standards will apply to the acquisition of all replacement escort vehicles operated by the Department of Corrective Services in Western Australia or by any service contracted to Department of Corrective Services in Western Australia under the Court Security and Custodial Services Act 1999 (Part 2, Division 2, section 18), for the provision of security and custodial services.

Terminology

In these standards the terms:

- “will” & “must” are used to indicate that there is no discretion in the application of the standard;
- “should” is used to indicate that reasonable effort should be used to apply the standard, and that any non-application must not significantly reduce the overall compliance of the vehicle with these standards; and
- “may” is used to indicate that the provision is optional and may apply at the discretion of the supplier of the vehicle.

Glossary of Terms

Escort vehicle – any vehicle used for the purpose of transporting persons in custody on the public road system. In Western Australia, vehicles currently range from small four (4) seat vans to large cab chassis nineteen (19) seat and the new fourteen (14) seat cab chassis fitted with in-built flush toilets, generally used for long haul journeys.

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The latest range will also include medium sized eight (8) seat vehicles with in-built toilets, eight (8) seat dual cab vehicles and (12) seat vehicles. In addition, there are a number of large vans with a nine (9) seat capacity currently being built for Juvenile Justice and a number of specialised vehicles used by the Emergency Support Group (ESG).

Long Haul Escort Vehicle – purpose built 14 seat inter-prison (I.P.) escort vehicle used for long range inter-prison transfers.

Long Haul Journeys – previously referred to as long range inter-prison escorts, however, now includes all journeys over three (3) hours in duration, but not necessarily undertaken in I.P. vehicles.

Secure Facilities – secure places where escort vehicles may stop to allow persons in custody a 'comfort break', e.g., police stations, prisons, detention centres.

Comfort break – short (half hour) break during a long haul journey to allow persons in custody to alight from vehicle to take short exercise break.

Welfare Check – crew will stop and alight from the vehicle when safe to do so in order to undertake a physical check on the welfare of all persons in custody. This will entail opening the outer doors of each 'cell pod' and personally speaking with the occupants, distributing extra water where required.

Person(s) in Custody – any prisoner, juvenile detainee or other person held in lawful custody whether remanded or convicted, irrespective of gender.

Duty of Care Principles

These standards are based upon the following Duty of Care principles:

- The transport of persons in custody should take place only when absolutely necessary for court commitments, medical appointments, attendance at funerals, and/or operational requirements and should be conducted in a safe and humane manner;
- Alternative arrangements (e.g., use of video link, travel by air etc.), will be made for those persons in custody identified by a health professional as being unfit to undertake travel in an escort vehicle;
- Effective processes must be implemented to ensure that all relevant information in regard to health and security status must travel with the person in custody and is made available to transport staff and the receiving agency;
- All persons in custody being transported should be treated in accordance with their individual needs;
- Persons in custody should only be held in cellular vehicles for the minimum possible period of time, i.e., wherever possible, the journey should take the most direct route;

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- Persons in custody will be monitored at all times during escort. Welfare checks will be conducted by staff at least every two (2) hours during long haul journeys;
- Where possible, welfare checks will be undertaken at secure facilities (i.e., Police Stations), where prisoners may be allowed a comfort break out of the vehicle (by agreement with local police);
- Where no such secure facilities exist, welfare checks will require stopping the vehicle at a safe, convenient point along the route where the crew can safely alight and converse with the occupants of the cell pods;
- All persons in custody on long haul journeys will be provided with food and water at the commencement of the journey and extra bottled water on request;
- Effective processes will be implemented for the administration of medication considered essential by a health professional during transport;
- Persons in custody with special needs (e.g., those who are pregnant, non-ambulant etc.), should be transported in appropriate vehicles. In the absence of vehicles purpose built for people with special needs, the Superintendent, in consultation with a Health Professional, may decide on an individual basis, what type of vehicle is deemed suitable;
- Where possible, all long haul journeys should be undertaken in purpose-built fourteen (14) seat "I.P." vehicles fitted with in-built toilet facilities, or where appropriate, smaller eight (8) seat vehicles, also fitted with in-built toilets;
- Transport staff will have in place an appropriate contingency plan for when vehicles break down and an appropriate emergency management plan to deal with any emergency situation; and
- Transport staff will be trained in vehicle emergency procedures and first aid.

Vehicle Standards

SECURE ESCORT VEHICLES		
1. Vehicle standards	All vehicles used for the transportation of persons in custody will adhere to the following standards:	
	1.1	All vehicles must meet all necessary Australian Design Rules (ADR) and safety standards and provide safe, secure, clean and comfortable cell accommodation for each person in custody transported;
	1.2	All vehicles will afford persons in custody natural light, external views and privacy from outside view;
	1.3	All vehicles will have sufficient leg room to allow stretching (refer 'Seating' section, point 4 below);

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SECURE ESCORT VEHICLES		
	1.4	All vehicles will carry fresh water, (minimum 1 litre) for every person, in addition to any water given to persons in custody by the prison/detention centre/lockup at the commencement of journeys;
	1.5	All vehicles will have adequate storage for persons in custody property, either within the vehicle or by the use of a property trailer;
	1.6	A control console for controlling the communication systems, duress/cell-call alarms, air conditioning, temperature sensors and alarms, video and audio monitoring and recording systems and equipment which may play radio/music into cells will be fabricated and installed in the vehicle cabin;
	1.7	The console is for the use of the passenger, and therefore must be installed in such a way that it (or any other monitoring equipment), will not distract the driver from his/her driving duties.
	1.8	All vehicles will carry appropriate suitable emergency equipment including: <ul style="list-style-type: none"> 1.8.1 first aid kit; 1.8.2 fire extinguisher; 1.8.3 spare wheel(s); 1.8.4 ligature knife; 1.8.5 high-visibility vests; and 1.8.6 safety triangles and any other equipment deemed necessary for emergency use.
	1.9	Vehicles undertaking long-haul journeys will carry: <ul style="list-style-type: none"> 1.9.1 a minimum of an additional 2 litres of fresh water per person, per leg of the journey; 1.9.2 spare belts; 1.9.3 spare hoses; 1.9.4 a torch; 1.9.5 a facility for storing medication and/or extra food (e.g., fridge); and

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SECURE ESCORT VEHICLES		
	1.9.6	a camera to record any incidents which may occur outside of the vehicle or range of the onboard cameras.
	1.10	Long haul vehicles will be fitted with appropriate tracking devices (e.g., GPS), and other appropriate communications (e.g. two-way radios, mobile/satellite telephones), in case of vehicle breakdown; and
	1.11	A redundant power system is required for air conditioning in long haul inter prison (I.P.) transport vehicles when vehicle is stationary.
2. Cells	Cells must adhere to recognised "safe cell" principles and must be free of fittings such as sharp edges, holes, crevices or any fixtures that could be used for self harm whether by impact /contact or by being used as ligature hanging points, bolt heads etc. In addition, cells will be fitted with:	
	2.1	Seat belts;
	2.2	Forward or rear facing passenger seats only;
	2.3	Moulded and/or cushioned seats with cushioned head rests;
	2.4	Emergency exits from vehicle cells;
	2.5	Appropriate communication systems to facilitate communication between staff and persons in custody;
	2.6	Effective video and audio monitoring and recording systems;
	2.7	Effective adjustable air conditioning for staff and persons in custody;
	2.8	Temperature sensors and alarms linked to audible and visual alarms in vehicle cab;
	2.9	Duress/Cell Call alarms linked to cab;
	2.10	Camera surveillance equipment that will enable secure, digital video recording of cell pods, which must be displayed on CCTV screens in cab; and
	2.11	Equipment may be installed to play radio/music into cells.

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SECURE ESCORT VEHICLES		
3. Toilets	Vehicles fitted with toilet systems must adhere to the following:	
	3.1	Toilets are to be stainless steel type with a similar bowl design that has been designed for corrective services use e.g., the 'Stoddart Steel-Sure' and is both vandal and self harm resistant;
	3.2	Doors fitted to toilets are not only to provide privacy but must maintain segregation between the different cells at all times;
	3.3	The doors must have controlled unlocking with the mechanism being external to the cell or toilet room space. The doors will self-lock automatically when closed;
	3.4	Under normal operating conditions, all internal doors (including toilet doors), must be unlocked from vehicle cabin only. However, once unlocked, doors are to be manually operated by occupants;
	3.5	Any doors separating cell area from toilet will be interlocked so that one door only may open at a time;
	3.6	When not in use all doors must remain closed and locked;
	3.7	A light or other warning device on the control console in the crew cab must indicate whenever a door is open;
	3.8	Should the internal doors become jammed closed (due to an accident) there must be a means by which to disengage the locks, giving access to the emergency escape exit;
	3.9	Cell occupants wanting to use the toilet facility must contact the crew using the communications system; and
4. Seating	3.10	Toilets need only be supplied with fresh air. However, this must be fan supplied and activated when the air conditioner unit is on. The toilets are also to be fitted with an extraction fan that draws air out (through a mesh grill with maximum mesh opening size of 2 mm), for the comfort of other users.
	4.1	The height above any seat must be at least 900 mm;
	4.2	The width of a seat at the widest point must be at least 450 mm;
	4.3	The shoulder-room width for a seated person must be at least 450mm; and
	4.4	The foot room must be at least 230 mm measured from a line vertically below the seat front.

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APPENDIX 6

DCS PROGRAMS AND SERVICES DIRECTED AT REDUCING ABORIGINAL IMPRISONMENT AND RECIDIVISM

PRISON BASED SERVICES

Aboriginal Visitors Scheme provides Aboriginal visitors to support Indigenous people in prison by talking and offering support, monitoring their well-being and reporting their concerns and disclosures. This strategy is designed to help reduce the likelihood of Aboriginal deaths and self-harm whilst in custody.

Absence Permits provide the opportunity for Indigenous prisoners to maintain cultural and community links by facilitating the absence of prisoners from prison for the purpose of meeting the compassionate need to attend family and culturally significant events such as funerals or associate with significant others with a dangerous illness.

The Displaced Prisoners Unit – Casuarina Prison is a culturally appropriate unit to house Indigenous prisoners from remote regions that need to take part in rehabilitation programs. Enables members of the same community to be housed together, to support each other and assists to reduce sense of displacement.

Elders Visiting Program enables Aboriginal Elders to visit prisons and interact with Indigenous offenders, facilitating cultural events and ceremonies, providing cultural support, spiritual guidance, and maintaining links with Indigenous culture.

‘Out of Country’ telephone subsidies is a policy initiative providing a weekly allowance credited to each Indigenous ‘Out of Country’ prisoner’s telephone account allowing Indigenous prisoners from remote regions to maintain contact with family.

The Jubaddah Program (at Broome Regional Prison) consists of six sessions with Aboriginal women to build their confidence and skills around managing emotions, how to react to incidences in the home, and develop a sense of self worth to reduce the likelihood of Aboriginal women reoffending.

Career and Employment Services (CES) offers a range of services to support prisoners and ex-prisoners into sustainable employment options. These include but are not limited to Career and Employer Expos, career counselling, job preparedness skills, employability skills and post placement support. The Prisoner Employment Program (PEP) is one such strategy to assist in sustainable employment options. 435 Indigenous prisoners are currently receiving assistance through CES. This represents 46 per cent of all prisoners currently being assisted.

Prisoner Employment Program provides minimum security prisoners with the opportunity to engage in meaningful and sustainable paid employment, work experience, vocational training and education in the community prior to release for the purposes of rehabilitation and reintegration in preparation for their release. Indigenous prisoners represent approximately a quarter of applications considered for the formal PEP. In 2009-10, 277 applications were considered for the Prisoner Employment Program (PEP) with 92 approved prisoners attending work experience, training, job seeking and employment in the community. During the first three quarters of 2010-11 268 applications were considered for the Prisoner Employment Program (PEP). Of these prisoners 57 were Indigenous.

Regional Work Camps (Wyndham, Bunguran, Mt Morgans, Millstream) provide eligible prisoners, mainly Indigenous, with an opportunity to maintain links with community by living and working near to their cultural lands and making reparation to their community, while developing life and practical trade skills that can be utilised upon release.

Prison Industries employ Indigenous prisoners and provide them with a range of benefits including specific skills sets (Traineeships and apprenticeships are offered), general employment skills, and work ethics. These skills provide offenders with valuable work experience and employment skills in preparation for reintegration with the community.

DECCA Station is a skills training site attached to Roebourne Prison and runs a program dedicated to up-skilling prisoners, and equipping the mostly Indigenous population of Roebourne with work-ready and job specific skills.

Education and Vocational Training (EVTU) - Aboriginal prisoners are a substantial part of the Adult Basic Education cohort. The EVTU offers adult literacy, general education, bridging or pre-vocational courses to address language and literacy needs of Indigenous prisoners. In the 2010 calendar year, there were 14 803 Indigenous students enrolled in education units with 9 416 completing. This equated to a total 390 938 student contact hours. This compares to approximately 7500 unit enrolments by Indigenous prisoners in 2009 which totalled over 375 thousand contact hours.

The Department's Indigenous education programs assist in ensuring educational participation and positive learning outcomes which help address some of the disadvantages faced by Indigenous people who are incarcerated. These programs include:

- *The Hands on Learning Program* - teaches vocational and literacy skills necessary for further education and training;
- *Environmental Health* - helps improve Indigenous health outcomes for Indigenous communities;
- *The Elders Speaking Program* - supports cultural and social learning; and
- *Indigenous Story Telling Through Art* - works to encourage participation in education while improving communication skills of students.

Indigenous Specific Treatment Programs

The following programs are targeted at the needs of Indigenous offenders and are designed to reduce the rate of re-offending:

- *Indigenous Sex Offender Program*.
- *Indigenous Think First* - improve problem solving skills in every day situations and develop strategies to apply to reduce the likelihood of re-offending.
- *Indigenous Men Managing Anger and Substance Use (IMMASU)*.
- *Indigenous Family Violence*.
- *Building on Aboriginal Skills (BOAS)* - To equip participants with an understanding of the circumstances that have lead to offending and develop culturally appropriate skills and

strategies to choose alternative options in order to achieve a pro-social lifestyle and reduce the likelihood of re-offending.

- *The Ngurrakutu Program* ('Going Home') is a newly developed program that will be piloted at Casuarina Prison in July 2011.
- The Department is also developing an Aboriginal addendum for the addictions offending program *Pathways*.

ADULT COMMUNITY CORRECTIONS

Family Violence Courts operate at Perth, Fremantle, Rockingham, Midland and Armadale. Community and Youth Justice staff work on an interagency basis with offenders who are subject to the court process. The Geraldton Family Violence Court (Barndimalgu Court) hears family and domestic violence charges involving Aboriginal people. Offenders are given the opportunity to complete programs to address their violent behaviour (while on conditional bail) before the final sentence is delivered. [These courts are also noted in Appendix 7 of this report]

Sheriff/Community Development Officers liaise with Aboriginal communities in the Kimberley, Pilbara, Mid-West and Goldfields regions on the range of court services available and provide advice to Courts and releasing authorities on disposition of offenders in relation to fines.

Community Supervision Agreements provide a framework for remote communities in the Kimberley, Pilbara, Goldfields and Mid-West regions to assist in the support and monitoring of Indigenous youth and adult offenders in their community.

Regional Program Development Officers assist with the development/delivery of programs in Kimberley, Pilbara, Goldfields and Mid-West regions.

Community Corrections Officers and Youth Justice Officers are participating in the *Kalgoorlie Sentencing Court Pilot* – a community sentencing court initiative aimed at providing culturally relevant court interventions to Indigenous offenders.

Recommendations from the *Adult Community Corrections Functional Review* related to services and supervision of offenders in regional and remote locations are being progressed and business cases developed.

YOUTH JUSTICE SERVICES

Programs provided in detention and in the community aimed to reduce young people's recidivism and/or preparing them for release back into the community include:

- *Building healthy relationships and reducing the incidence of violence* (domestic/family);
- *Conflict resolution* aimed at reducing the incidences of conflict in young person's life.
- *Drug and alcohol programs* aimed at increasing knowledge and support for young people in dealing with drug and alcohol issues that relate to offending behaviour.
- *Parenting skills for young men* – aimed at strengthening the identity of young men as parents and care-givers to their children, encouraging them to avoid offending and reduce incarceration which will separate them from their children.

- *Sexual Health Programs* to assist young people in making safer choices regarding sexual health in the future.
- Additional supports and programs will become available to youth in the East and West Kimberley and Pilbara regions as *regional youth justice services* are expanded in these areas.
- *Youth Psychological Services* provide counselling to young people in detention and in the community.

Education Services include CGEA literacy and numeracy courses, metalwork/woodwork/horticulture, Art and Computing; Driver's Education to reduce offending by attaining "L" plates in community; Occupational Health and Safety Awareness; and reparation programs to increase awareness of needs in the community.

External providers include:

- *Youth Legal Services* who provide legal advice and information to young people.
- *YMCA-Healthy Choices* - provides a recreational program. This program will be delivered to both remand and sentenced clients.
- *Kooya Consultancy* and *Halo* provide leadership and mentoring program for Indigenous youth in detention and on release.

Other pro-active strategies and programs include:

- Identifying, promoting and facilitating *transitional services* within prisons and the community. Transitional services provide a pivotal link for offenders to contracted services/programs and information such as the re-entry link service, supported accommodation services and the transport options programs along with essential government services such as Centrelink, the Child Support agency and Medicare. On average offenders are linked to 7636 services on a quarterly basis to assist with release preparation. For the March 2010 quarter there were 3 216 contacts with Aboriginal offenders both pre and post release for the Re-entry Link Service.
- Establishing a *Young Adults Facility* (YAF) which is a separate facility for 18 to 24 year old men. Although not specifically designed for Aboriginal men, the establishment of this facility will have an impact on young Aboriginal men as they represent a significant proportion of the potential prison population for the facility. The facility will provide opportunities and support to develop skills by providing education, training, employment and personal programs to all young men. Such programs would include drug and alcohol counselling/education, family and domestic violence, financial management, impulse control and positive parenting. Significant engagement with families to support young men make positive changes will be a key component of the operation of the centre.
- Developing new *regional facility environments* that support cultural responsibilities, spiritual relationship to land, sea and waterways, kinship and family responsibilities and community responsibilities.
- As part of the Government's \$655 million capital infrastructure program, DCS is constructing:
 - 350 bed facility in the *Eastern Goldfields* by the end of 2015 that includes:

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- improved facilities and services for offenders in the Goldfields and enables a greater number of prisoners can remain 'in country' whilst serving their sentence to assist in their rehabilitation.
 - multi-faceted custodial facilities that ensure the numbers of Goldfields Aboriginal prisoners are properly managed, in terms of practical reparation, rehabilitation and successful re-entry, and
 - the changing role of the facilities, to become vehicles for positive individual behavioural change, which can underpin social and economic growth and well-being for the Goldfields community as a whole.
 - *Work camp* at Warburton by July 2011 comprising 24 work camp beds and a six bed secure unit as well as the capacity to provide vocational training, education and programs. This facility will house suitable prisoners close to home. Offenders on community work orders and prisoners from the work camp will undertake community work projects in Warburton and the surrounding communities.
 - 150 bed multi security male and female facility at *Derby* by April 2012. This will be the first prison in Australia designed and developed as an inclusive prison specifically tailored to an Aboriginal population. The prison will focus on a rehabilitative model of service delivery which addresses the core issues of readiness for work and life skills.
 - The development and maintenance of an effective and co-ordinated *re-entry service* for offenders. Although DCS alone (as mentioned above) is unable to have a general societal impact or to address social justice issues in the community, it is within the power of DCS to achieve an improvement in life skills in relation to the offenders who pass through the system. A consequence of improving coping skills and general life skills of offenders would be a reduction in offending rates and a reduction in re-offending. In addition, at the level of the individual, there would be the scope for increased employment and educational opportunities leading to increased income levels, safer homes with fewer abused wives and children, a reduction in alcohol or drug fuelled violence. For remote Aboriginal communities the skills learnt during a term of imprisonment could be used to lift the standard of living for all the community by enabling people to build and repair community facilities. Strategies currently in place include:
 - Increasing the Department's focus on early *intervention and diversionary programs* and initiatives to divert young people away from the justice system.
 - The establishment of the *Regional Youth Justice Services Centres* (RYJS) in the Mid West and Goldfields to provide a full range of services, including outreach support, bail and emergency accommodation that focus on all aspects of a young person's life and also offers support to their families. The 2010-11 State Budget included \$43.86 million from Royalties for Regions over four years to expand the RYJS to the East and West Kimberley and the Pilbara. Services in the East and West Kimberley have already commenced and the Pilbara service is due to commence in August 2011. These models will be based on the services in Kalgoorlie and Geraldton, the success of which is evidenced by a significant drop in the number of young people being remanded in custody to Perth since the services commenced operation. The supervised bail programs have stopped more than 80 young people being remanded to
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detention in Perth – in fact only one child has been unnecessarily remanded to Perth from these areas since the operation of this service. Since inception of the RYJS until February 2011 remand admissions from these regions have dropped by 31 per cent.

- *Upholding of community work orders* that enable adult offenders to repay their debt to WA for crimes committed by contributing to important not-for-profit community projects and at the same time improving their employment skills. In 2009-10 approximately 144 000 hours of community work were carried out with more than 350 work projects operating across the State at any one time.
- Delivering a comprehensive *suicide prevention strategy* for offenders in custody which includes a whole-of-prison approach, incorporating primary, secondary and tertiary suicide prevention strategies. This involves intake screening of all offenders upon admission to custody, orientation/reception processes to reduce stressors upon entry to prison and multi-disciplinary management of prisoners identified as at-risk to self.
- Clinical staff are available at each facility to conduct risk assessments and provide *counselling and clinical interventions*. In 2009-10 a total of 1 982 At Risk Management System alerts were raised across the State's adult custodial facilities and a further 2 413 have been raised in 2010-11 (up to 31 May). Some 116 prisoners were trained in the Gatekeeper Suicide Awareness program to assist them in identifying self-harm or suicide risk factors among other prisoners. In addition, 474 (316 received the program through the Entry Level Training Program (ELTP) as probationary prison officers) staff completed the same program. During 2010-11 (up to 31 May) 70 prisoners were trained in Gatekeeper Suicide Awareness; 386 (166 received the program through the ELTP) staff completed the same program and 16 completed the Gatekeeper Train the Trainer program.
- *DCS' Support and Management System (SAMS)* also provides a collaborative case management system for prisoners who are not at risk to self, but require intervention or additional support and monitoring while in custody. In 2009-10 a total of 315 SAMS referrals were raised across the State's adult custodial facilities and a further 313 have been raised in 2010-11 (up to 31 May).

Establishing and forming cross government and agency service partnerships and collaboration.

DCS is focusing more on the implications of social disadvantage and hence is aligning service partnerships with those departments whose mandate it is to address aspects of social disadvantage such as education, housing, health, disability services, child protection and police. In addition partnerships are also being fostered with non-government organisations. Strategies currently in place include:

- *A Procurement Strategy for Commercial and Non-Commercial Agreements with Aboriginal Community Groups and Not for Profit (NFP) Organisations* which enables proactive engagement and streamlining of contractual arrangements for Aboriginal and NFP organisations for the delivery of services to Aboriginal offenders in regional and remote locations.
- Establishing an across-agency *Youth Justice Steering Committee* which comprises an across-agency Youth Justice Strategic Framework that will be underpinned by a Memorandum of

Understanding (MOU) between the agencies to work towards the outcomes to be achieved in line with the Framework.

- Planning and facilitating the *co-location of government services in regions*.
- *Indigenous Services Committees* at each prison and detention centres who are charged with identifying and addressing issues affecting the prisoner population. The Committees' membership includes representatives from Aboriginal staff, local community organisations and Aboriginal prisoners.
- Committing to the *WA Aboriginal Justice Agreement* which is a vehicle that enables Aboriginal communities to negotiate with government on justice matters and to identify justice issues and develop actions to address them through local reference groups.
- Convening regular *joint executive meetings with Department of Child Protection, Disability Services Commission and WA Police* to enhance the provision of services throughout Western Australia

APPENDIX 7

DOTAG PROGRAMS AND SERVICES DIRECTED AT REDUCING ABORIGINAL IMPRISONMENT AND RECIDIVISM

ABORIGINAL JUSTICE PROGRAM

The Policy and Aboriginal Services Directorate of DotAG is responsible for the Aboriginal Justice Program (AJP) that aims to reduce the high numbers of Aboriginal people that come in contact with the criminal justice system, both as victims and perpetrators of crime.

The AJP, which developed from the former Aboriginal Justice Agreement, is a more refined program that targets four specific focus areas where Aboriginal people commonly find themselves in contact with the justice system. These are:

- the need to decrease the number of Aboriginal people who do not hold a valid driver's licence by virtue of licence suspension;
- the adverse affects of the fines enforcement process on Aboriginal people particularly in regional areas;
- the problem of young Aboriginal offenders; and
- high level of victims of family and domestic violence in Aboriginal communities.

While the Department is currently developing strategies to address each of these areas based on geospatial analysis of relevant data and risk factors, it is already achieving results in the areas of motor driver's licensing and fines enforcement through its Open Day initiative.

Open Days provide a one stop shop for the delivery of government services and information to remote communities. The Open Days, which are held at various locations over several days, bring service providers and Aboriginal community members under one roof so that community members can easily access a range of information and services in a more casual environment. The Open Days have shown immediate and tangible results with many Aboriginal people taking steps towards gaining or regaining their driver's licence. Not having a driver's licence causes many problems for Aboriginal people in remote and rural areas. It limits access to employment opportunities and essential services and increases the likelihood of Aboriginal people driving without a valid licence coming into contact with the criminal justice system.

To date Open Days, held in the Mulga Mallee and East Kimberley regions, have assisted many Indigenous people to:

- access information on licensing issues;
- gain a driver's licence or take steps towards obtaining a driver's licence;
- pay their fines or enter into time to pay arrangements; and
- obtain a record of their birth, a necessary requirement of a driver's licence.

In total, there have been 10 Open Days held in the Mulga Mallee and East Kimberley Regions since October last year. Open Days were held in Laverton, Leonora, Djarindjin, Menzies, Coolgardie, Leonora, Warmun, Kalumburu, Wyndham and Kununurra.

The Open Days have resulted in 53 people either booking, or completing, a Practical Driving Assessment. Of these, 19 immediately passed the test to gain a driver's licence. Others have taken steps towards gaining their learner's permits with 48 sitting the learner's permit test on the day. The Open Days have resulted in 29 new motor driver's licence applications and the issue of five motor driver's licences. There have also been three extraordinary motor driver's licence applications and two vehicle registrations.

The success of the Open Day initiative has ensured that it will continue to be used to assist Aboriginal people in regional and remote areas of Western Australia with their licensing and fines enforcement issues.

METROPOLITAN FAMILY VIOLENCE COURTS

Six Family Violence Courts (FVCs) were created during 2007 and 2008 and are now operational at the following locations (commencement dates in brackets):

- Rockingham (11 June 2007);
- Geraldton (13 August 2007);
- Fremantle (27 August 2007);
- Midland (11 January 2008);
- Armadale (7 August 2008); and
- Perth (3 September 2008).

An outcome evaluation of the metropolitan FVCs is currently being undertaken and as part of that evaluation the following indigenous issues will be reviewed and reported on:

- how effective are the culturally appropriate provisions for Aboriginal and Torres Strait Islanders and ethnic minority people?
- how effective is the FVC at meeting the needs of Aboriginal offenders?
- has the FVC contributed to an overall reduction in Aboriginal imprisonment?

BARNDIMALGU COURT GERALDTON

The Barndimalgu Family Violence Court opened in Geraldton in August 2007.

The Barndimalgu Court process operates as a partnership between DotAG, that is, Court and Tribunal Services, Aboriginal Policy and Services, Victim Support Services and the Department of Corrective Services (DCS), Western Australia Police and the Geraldton Aboriginal Community.

An Aboriginal Reference Group, comprising of members of the Geraldton Aboriginal Community, worked in close consultation with DotAG and DCS to formulate a model to address Aboriginal

imprisonment and family and domestic violence in the Geraldton region. The court process was to be based on local needs and, importantly, to operate differently to the Joondalup Family Violence model.

The Barndimalgu Court was developed based on a different approach that reflected the different needs of Indigenous people in country areas. It has a similar approach to the Kalgoorlie Community Court, which is designed to be more culturally inclusive and relevant for Aboriginal people. In both of these courts, Aboriginal elders and respected people provide advice to the magistrate on cultural issues and speak directly to the offender.

The driving forces for this project were that mainstream diversion strategies and models did not adequately address the issues of Aboriginal family and domestic violence and a more culturally appropriate model was required.

The anticipated benefits in the original business case were stated as:

- reduced family and domestic violence convictions, presenting a dollar value saving to the State (reduction in prison beds) as well as valuable social outcomes for families affected by family violence; and
- programs and approaches developed in partnership with the local Aboriginal community will be more appropriate to the local situation and are significantly more likely to succeed.

An outcome evaluation of the Barndimalgu Court will be undertaken in 2012.

KALGOORLIE COMMUNITY COURT

The Kalgoorlie Community Court is a Magistrates Court or a Children's Court (constituted by a magistrate) in the criminal jurisdiction which acts as a sentencing court for Aboriginal accused who plead guilty to offences. A Community Court acknowledges and respects Aboriginal people's traditional and cultural beliefs. It takes into account regional dynamics and makes the current sentencing process culturally relevant and inclusive.

The purpose of the Community Court is to provide an environment that is more relevant and less intimidating to Aboriginal people. The processes of the Community Court are designed to be more informal than mainstream courts and it has a rehabilitative focus. The Community Court involves Aboriginal elders and respected community people who serve as advisors to the magistrate and give advice on cultural issues and other relevant matters. They also assist the accused in understanding court process.

The presence of the elders and Aboriginal respected persons in the court provides culturally relevant authority figures. The opportunity for greater involvement by the Aboriginal community in the sentencing process also promotes the sense of Aboriginal ownership of the justice process and may result in higher attendance rates and fewer breaches of bail by Aboriginal accused.

The Kalgoorlie Community Court was evaluated in 2009 and as a result of the findings the Government has extended the pilot for a further three years at which time the outcomes will be further evaluated.

ABORIGINAL LIAISON OFFICER PROGRAM

In November 2006, DotAG commenced a program of appointing Aboriginal Liaison Officers (ALOs) in metropolitan and regional courts. Currently there are eight ALOs positions across the State – Albany,

Broome, Carnarvon, Kununurra, Roebourne, South Hedland, Perth (Magistrates Court), and the Perth Children's Court.

The role of an ALO is to:

- assist aboriginal people with dealings with the court;
- develop relationships with indigenous peoples and agencies;
- education within the Aboriginal community;
- identify underlying issues that are linked to anti social behaviour;
- assist and explain court processes and procedures;
- address, manage and educate about fines, licences, court orders, etc;
- assist in addressing recidivism and reduce incarceration, alter perceptions that Aboriginal people have about court; and
- research alternative sentencing in conjunction with the Magistrate Court, to assist in facilitation and the development of a "holistic" approach with other agencies, and contribute to the cultural change within the department.

The ALO program is currently being evaluated with the focus being to measure the effectiveness and shortcomings of the program and determine if it is achieving its primary goals of:

- optimising Aboriginal people's access to, confidence in and use of the range of services provided by Courts; and
- contributing to reducing Aboriginal people's over-representation as offenders in the criminal justice system.

COMMUNITY DEVELOPMENT OFFICER PROGRAM

A further initiative to reduce aboriginal imprisonment was the introduction of a program of introducing Community Development Officers to regional locations. The pilot commenced in Kalgoorlie in 2004-05.

In the beginning CDOs were funded 50/50 between DotAG and the DCS, however they are now fully funded by DCS. The purpose of the CDO is to take a holistic approach to case management of offenders including aboriginal offenders who may have warrants issued through the Fines Enforcement Registry.

CDOs arrange either Time to Pays (TTPs) or predominantly Work and Development Orders (WDOs) to avoid offenders being sentenced to imprisonment for non-payment of fines. While the CDOs have a dual role in serving FER warrants, they attempt to negate the negative effect the warrants have by taking payments and placing offenders on TTPs and WDOs, thereby allowing aboriginal offenders the opportunity to apply for a licence and get access to work if they can remove fine imposed suspension.

The CDOs also engage the elders and other respected members of the community by educating them and to some extent, have them on side in spreading the positive information and forms of assistance the CDOs can provide. CDOs are now located in Kununurra, Broome, South Hedland, Roebourne, Carnarvon, Geraldton and Kalgoorlie.

APPENDIX 8

LETTER FROM HON TROY BUSWELL MLA, MINISTER FOR TRANSPORT



Minister for Transport; Housing



Our ref: 30-16909

Hon Brian Ellis MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Mr Ellis

Inquiry into the Transportation of Detained Persons

Thank you for your letter dated 6 April 2011 regarding your inquiry into the transportation of detained persons. I apologise for the late response.

The Department of Transport (DoT) has progressed a number of the recommendations in the *Indigenous Licensing and Fine Default: A Clean Slate* report (the Wyatt Report). They include:

Educational Materials (Recommendation 1, 2, and 11)

Recognising that literacy issues provide a significant barrier to driver licensing in remote areas, DoT has commenced development of information brochures in simplified English to assist people with low literacy levels. The 'Six Steps to Getting a Driver's Licence' has been published and brochures regarding other aspects of the licensing system (including vehicle licensing) are under development.

DoT has also developed guidelines for groups seeking to establish a driver training program in their community. This can be an education program to assist in passing the theory test or mentor programs to deliver practical instruction or fulfil the 25-hour supervised driving requirement. The guidelines cover a number of topics including considerations before establishing a program, legislative and insurance requirements and possible sources for funding.

DoT is also assisting the Office of Road Safety in the development of an Indigenous Drink Driving Education Kit to make drivers aware of the consequences of drinking and driving.

DoT also participates in a National Indigenous Licensing Group which has sought funding through Austroads to engage a consultant to review educational materials and to develop a sample 'Education Tool Kit' which can be used in all jurisdictions.

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Driver Education and Training in Prisons (Recommendation 6)

A Memorandum of Understanding (MOU) between DoT and the Department of Corrective Services (DCS) allows DCS officers to perform specified driver licensing services to complement DoT's program. These services include learner's permit theory testing, eyesight testing, verifying and witnessing driver's licence applications and coordinating driver's licence renewals.

DoT supports the program by providing information on driver licensing requirements and procedures, processing driver's licence applications submitted on behalf of offenders in custody, issuing receipts, learner's permits and providing theory testing materials and licensing forms.

Licensing Tours (Recommendation 7)

A number of licensing tours have been undertaken by representatives from several State Government agencies, including the Western Australia Police (WAPOL), DoT, DCS and others, to visit a number of communities in the Ngaanyatjarra Lands (the Lands) to assist clients with driver licensing and fines issues. Telephone support was provided where other key agencies were unable to attend in person.

The activities performed on the tours range from delivering theory tests and driving assessments, sorting out fines suspension issues and organising time to pay arrangements, assisting with medical assessment requirements and assisting with applications for the issue of extraordinary driver's licences.

There have been two tours undertaken, with a third being planned for May 2011 as it is recognised that constant follow up is required. The tours have proven to be very successful and the results have been very positive (64 learner's permits and 173 licences issued).

Engagement with Private Sector to Deliver Theory Testing (Recommendation 8, 10 11 and 12)

DoT has engaged a number of non-government organisations to deliver theory testing as part of its driver education program. While ensuring that candidates have a full understanding of traffic laws prior to undertaking an assessment, it allows candidates to sit the theory test in a less intimidating environment. Organisations engaged under these agreements are also able to deliver eyesight testing and assist candidates to prepare the documentation for the application of a learner's permit.

Upon successful completion of the theory test, candidates are issued with a Certificate of Achievement that they are then able to take to a licensing centre or agent. Upon payment of the application fee (\$68.30), candidates are issued with a learner's permit. The \$17.40 theory test fee is not charged as the service is not delivered by DoT or a licensing agent.

Current organisations delivering theory testing as part of the driver training program are:

- Fortescue Metals Group (South Hedland);
- Police & Citizens Youth Club (Armadale);
- Winun Ngari Aboriginal Corporation (Derby);

- Emama Nguda Aboriginal Corporation (Derby);
- East Kimberley Community Development Employment Programme (Kununurra);
- SMYL Community Services (Dampier Peninsula); and
- Karrayili Adult Education Centre (Fitzroy Crossing).

Many of these organisations also provide practical driving instruction and assist candidates with meeting their 25 hour supervised driving requirement. Additionally, the driver training program is often a component of a literacy and numeracy program, assisting participants to improve their education levels and therefore their employment prospects.

DoT provides training in the delivery of theory testing and assistance in determining candidate's eligibility to obtain a licence and all licensing materials required to deliver the testing. Additionally, DoT provides ongoing support and advice of any changes to driver licensing processes or legislation.

Negotiations with the Jigalong and Warakurna communities to become a DoT licensing agent have been postponed due to a number of reasons such as the complexity of the licensing system, low literacy levels and willingness of the corporation to be involved in government initiatives on a continuous basis.

Licensing Services in Remote Communities (Recommendation 8)

In December 2002 the State Government announced its response to the Gordon Inquiry entitled Putting People First. One of the key initiatives of the response was the provision of a permanent policing presence in selected remote areas that would provide a first line of response for victims and a basis of safety for community members.

The communities where the Multi Functional Police Facility (MFPF) were located did not have licensing services, with the nearest service being many kilometres away. Recognising that this service delivery gap needed to be filled, DoT has worked closely with WAPOL and arrangements were made for WAPOL to deliver licensing services including offline over the counter services and practical driving assessments (PDA). In October 2010, WAPOL and DoT formalised the arrangement in an MOU.

Licensing services are delivered from MFPFs at Balgo, Bidadanga, Blackstone, Jigalong, Warakurna and Warmun; with Burringurrah due to commence delivering services from late June 2011. The Shire of Ngaanyatjaraku delivers online licensing services at the Warburton community and PDAs are conducted by WAPOL.

DoT provides training and ongoing support as well as supplying all necessary equipment (such as photo image capture units, backdrops and eyesight testing charts), printed documentation and stationery requirements. Additionally DoT reprocesses the offline work into TRELIS.

Safe Driving Course (Recommendation 9, 10 and 11)

The supervised driving hours requirement is a significant barrier for people in remote areas due to minimal or no access to appropriately licensed supervisors, lack of suitable vehicles and the high costs of fuel. The Director General of DoT approved the Safe Driving Course (SDC) as an alternative to the supervised driving hours for

persons aged 25 years and over in specified remote communities that are serviced by a MFPF. Where eligible candidates successfully complete the SDC, they are not required to undertake the supervised driving hours requirement, nor wait the mandatory six months between the PDA and Hazard Perception Test.

Based on the Defensive Driving Course previously delivered by WAPOL, the SDC is a half-day theory based program to educate on safe driving practices, particularly focused on the driving conditions in remote areas of the state. The SDC contains six modules:

- trip readiness;
- normal road driving;
- unsealed road driving;
- night driving;
- alcohol and driving; and
- emergency procedures and responses.

The SDC has been rolled out to MFPFs throughout the state and is currently delivered by WAPOL officers, subject to operational considerations. Alternate service delivery methods are currently being investigated.

The implementation of the SDC to remote areas has resulted in many community members obtaining a driver's licence.

Theory Testing (Recommendation 10)

DoT has developed an alternative version of the paper based learner's theory test with simple English questions, greater use of pictures and the wording of some of the questions has been simplified to lessen confusion for the applicant. However, there has been no change to the standard that applicants are required to meet in order to demonstrate their knowledge of traffic laws and safe driving techniques.

While it does not replace the computerised theory test, this paper based test may assist people that have low literacy levels or where English is not a first language, or persons that experience difficulty using computers. The revised theory test was developed to assist the previously mentioned organisations delivering theory testing on behalf of DoT as part of a driver training program and is proposed to be made available in licensing centres and to agents in mid 2011.

Additionally, DoT provides the option of theory testing being delivered orally to assist applicants that have barriers precluding them from undertaking a computerised or written test.

Community Open Days (Recommendation 11)

As part of the Aboriginal Justice Agreements, the Department of the Attorney General's Policy and Aboriginal Services Directorate is progressing community open days where a number of government agencies attend a community to provide services and information.

Having the agencies together and available to the community at the same time makes a significant difference.

While driver licensing is seen as the hook to gain interest from the community, open days also afford other agencies the opportunity to promote their services and provide assistance. Additionally, it may assist local companies to link in with community members seeking to gain employment.

Open days have been held in a number of communities throughout the State (including Laverton, Kalumburu and Menzies) with great success. Several more are currently being planned.

Support for Indigenous Enterprises (Recommendation 14)

DoT has established partnership arrangements to assist delivery of driver education programs at Fitzroy Crossing, Derby and Kununurra. Assistance has also been provided to Karrayili Adult Education Centre regarding driver instructor licensing.

Collection of Licensing Transactions

Due to the remoteness of the Warakurna and Blackstone communities in the the Lands, licensing transactions undertaken at the MFPFs was on an irregular basis and significant delays would occur between payment and processing into TRELIS. This would result in data integrity issues for DoT, enforcement issues for WAPOL and problems to the client if they were required to prove payment but had lost the interim payment receipt.

An informal arrangement commenced where DCS officers would collect licensing monies and paperwork when undertaking its regular circuit in the Lands and drop it in to DoT's Goldfields Regional Office upon their return to Kalgoorlie. As this arrangement proved to successfully reduce delays in processing times and it ensured monies were regularly banked, it was formalised by DCS and DoT through an exchange of letters in March 2010.

DoT has also convened the Remote Areas Driver Licensing Steering Committee (Steering Committee), comprising Chief Executive Officers from key State Government agencies, which is currently developing a strategic Government approach to fines and driver licensing issues. This approach includes strategies aimed at a reduction of the incarceration rate of Aboriginal persons for driver licensing and fines suspension matters.

The Steering Committee has endorsed a package of initiatives, many of which are aligned to recommendations in the Wyatt Report, which have been incorporated into a submission for Cabinet approval.

I am certain that the initiatives under consideration will have a positive impact in respect to a reduction of incarceration rates and increased opportunities for employment for Aboriginal people.

Yours sincerely



TROY BUSWELL MLA
MINISTER FOR TRANSPORT

12 MAY 2011

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