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Ms Tara Tonkin 9263 2586

Ms Margaret Quirk, MLA
Chair
Community Development and Justice
Standing Committee
Parliament House
GPO Box A11
PERTH WA 6837

Dear Ms Quirk

SUBMISSIONS FOR INQUIRY INTO CUSTODIAL ARRANGEMENTS IN POLICE LOCK-UPS

I refer to the above matter and your correspondence addressed to Commissioner Karl O'Callaghan 20 June 2013.

Detailed below are the Western Australia Police submissions in relation to the terms of reference for your Committee's inquiry.

1. Whether current arrangements fully comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Optional Protocol to the Convention Against Torture

It is the view of Western Australia Police that the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommendations have been implemented, considered and assessed in some capacity to improve service delivery. Where there has been a change away from the intent, there is sound reason and consideration for that change. In many cases the direction of change may have been influenced by change of policy by Government or legislative advances.

WA Police is aware that the Commonwealth Government is currently giving consideration to the ratification of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). If ratified, practical implementation of this Protocol will depend on the model of National Preventative Mechanism adopted.

2. Access by detainees to medical and legal services and other third parties

(RCIADIC Recommendations 90, 122 to 167, 145, 223, 224 and 243)

The use of the WA Police Custody system incorporates a screening process whereby the health and wellbeing of all detainees is assessed upon admission to custody. Attached is a copy of the form "Manual Custody Registration Form".

Perth Watch House has access to a 24 hour Registered Nursing Service. The Nursing Service is limited to assessing non life threatening injuries and suitability for detention in a metropolitan police facility.

Further, a 24 hour 7 days a week on-call service exists whereby a Registered Nurse can be requested to attend the Perth Watch House or any other agreed location, where police are present, within the Metropolitan area to assess a detainee's health and well being.

At the conclusion of this assessment, the Nurse will provide a "Detainee Evaluation Report" to the arresting officer advising of the detainee's suitability to be held in custody. These notes accompany the detainee and are lodged with the Police facility.

Police Manual Policy LP4.2 directs that any detainee apparently in need of medical treatment is not to be admitted to a lockup. The officer responsible for the care of the detainee is to obtain medical treatment for the detainee prior to admission.

Any detainee, who is apparently intoxicated to such an extent that he or she requires medical treatment, is to be afforded such treatment. The officer responsible for the care of the detainee is to ensure that such treatment is made available.

Any detainee who is unconscious or semi-conscious is not to be admitted to a lockup until he or she is subjected to a medical assessment. The officer responsible for the care of the detainee is to ensure that such medical assessment is conducted.

All details of any medical treatment or medical assessment are to be recorded on the WA Police Custody system or in the Occurrence Book.

Any detainee who is in custody after admission into a police station or lock-up, who is found to be suffering serious injury/illness, shall be conveyed to a place for medical treatment by St John's Ambulance Service whenever possible. On occasion when a detainee is suffering from an illness/injury that is not of a serious nature, an unmarked police vehicle is to be utilised to convey the detainee for treatment, however the most expedient mode of transport should be utilised in the first instance.

A member should utilise the expertise of the Aboriginal Medical Service for Aboriginal prisoners, where the service is available.

A member – in satisfying duty of care requirements – is responsible for the provision of medical attention to any prisoner/detainee requiring same. **(WA Police Policy AD1.8)**

The **Aboriginal Visitor Scheme** was developed as a means of reducing the risk/likelihood of Aboriginal deaths in custody. In the spirit of ongoing development this scheme is being reviewed in the Kimberley area to identify improvements in implementation.

Police Manual Policy AD1.5 and LP14.10 states, a member shall assist and facilitate the interaction between aboriginal detainees and visitors under the Aboriginal Visitors' Scheme. Instructions within the Lockup Management Procedures and Perth Watch House Standard Operating Procedures (May 2013) refer.

Police Manual Policy AD1.4 directs it is the responsibility of both the arresting officer and the supervising member to ensure that notification of the Aboriginal Legal Service on the arrest of an Aboriginal person takes place in accordance with the WA Police Lockup Management Procedures.

Further, the introduction of the *Young Offenders Act (1994)*, *Criminal Investigations (Identifying People) Act (2002)* and the *Criminal Investigations Act (2006)*, has legislatively formalised police practices relating to the engagement of young offenders. WA Police policies and procedures have been aligned to comply with the legislation.

3. Lock-up design, staffing and administration

(RCIADIC Recommendations 137, 138, 139, 140, 141, 142, 144, 149, 161, 165)

All police stations have been fitted with modern alarm and intercom equipment and this practise continues with police stations under construction.

WA Police have developed a subset of its Building Code *Western Australia Police Building Code Custodial Design Guidelines*. These guidelines remain as a standard reference for police custodial facilities.

In direct response to the RCIADIC, the then Australian Police Ministers' Council endorsed an indicative model for the design and operation of custodial facilities in all jurisdictions (Standard Guidelines for Police Custodial Facilities in Australia).

Using this model the WA Police Service developed a set of standards, comprising of:

- Lock-up Management Manual, and
- Custodial Design Guidelines.

When medical attention or advice is sought relating to the wellbeing of a detainee, a notation is to be made on the detainee's running sheet and on the WA Police Custody system detailing the following:

1. The time when the medical attention or advice was sought.
2. The name of the medical facility and staff member giving the advice or diagnosis.
3. The advice or diagnosis given by the medical staff.

It is procedure for a member to regularly visit each prisoner to ensure the safety and welfare of that prisoner and to determine any reasonable needs. Cell checks and observations are recorded on the detainee running sheet and on the WA Police Custody system. In addition, in the case of an attempted self harm in a police lockup, the member in charge shall ensure that a constant watch is kept on that particular detainee until release, discharge, removal to a medical facility or medical clearance is received. A constant watch can be maintained by an officer via CCTV or physical presence.

If a medical clearance is received frequent cells checks no more than 10 minutes apart are to be made. All actions are recorded on the WA Police Custody system, on the detainee running sheet if applicable and in the Occurrence Book. Where a detainee appears to be suffering from an emotional, psychological, mental or drug induced problem, or exhibits anxiety or medical issues they are to be considered "At Risk". At all times, a yellow "At Risk" P10A form is to be used to clearly list the reasons why the detainee is deemed at risk. Where applicable, the WA Police Aboriginal and Community Diversity Unit should be advised for possible intervention or action.

In these circumstances and in addition to seeking medical attention, continued surveillance is to be maintained until the detainee is either bailed, attends court or is released.

Police personnel are directed that if in doubt about the health, welfare or medication for a detainee, they are to seek a medical opinion.

WA Police have a Duty of Care to detainees and as such no prisoner or detainee will be left unattended in a Police lockup except in the following circumstances;

- There is a clear and urgent necessity for police to respond immediately to a life threatening emergency;
- The prisoner is assessed as having no risk of self harm; and,
- Other officers can be recalled to duty within one hour to provide custodial care to prisoners.

Police policy and procedure directs that a member shall not use a padded cell as a punishment for any detainee. Padded cells may be used for temporary prisoner management only, to restrain violent or aggressive detainees, in the interests of their own safety, the safety of other detainees and personnel working at the facility.

The Officer in Charge will record the reasons the padded cell was utilized including the time of admission and release. The use of these cells is audited by Commissioned Officers.

In accordance with RCIADIC Recommendation 144, Aboriginal people are only separated in custody if a tribal conflict may occur. In all other instances it is encouraged for them to share a cell with other Aboriginal persons. The practice of granting freedoms referred to in RCIADIC Recommendation 149 is undertaken at a local level. All persons in custody are managed in accordance to lockup procedures and custody management procedure. Duty of Care and safety of detainees and custody officers are paramount.

4. Training of custodial officers on cultural issues

(RCIADIC Recommendation 133, 159, 177, 228)

At recruit and all other levels for sworn and unsworn officers, Equal Opportunity training is compulsory and ongoing. Cultural Diversity training is provided by WA Police to both sworn and Auxiliary Officers.

The WA Police Academy has a dedicated senior trainer who has the responsibility to liaise regularly with the Aboriginal and Community Diversity Training Unit and deliver the training program in partnership with them.

Each time an individual is transferred to a new location, he/she will undergo orientation as is applicable to the new area upon his/her arrival.

With respect to Aboriginal culture and orientation, policy and procedure dictate an Officer in Charge shall, as soon as practical, ensure that upon the arrival of a new sworn member, that member receives a period of instruction on issues of concern to the local Aboriginal community by a member of that community.

In response to the special policing needs of the Aboriginal and Torres Strait Islander communities, a strategy is in place for the delivery of a period of instruction to members transferring to areas with Aboriginal representation within the community.

The responsibility for identifying suitable persons within the Aboriginal community to deliver such instruction rests with the Officer in Charge or other designated officer.

An Officer in Charge is responsible for ensuring that the details of any such training are recorded against a member's name under the *Resource Management Information System* (RMIS) as soon as practicable after the delivery of such instruction.

Provision has been made for the details of such instruction to be recorded against a members name on the RMIS.

The WA Police Academy continues to review training to ensure Aboriginal people, Torres Strait Islander people and minority group needs are recognised and processes implemented to adhere to the mentioned policies, from language barriers to cultural traditions.

The WA Police Academy strives towards diversity training and awareness for police recruits by working with the Aboriginal and Community Diversity Unit to provide a comprehensive two (2) day Cultural Diversity Training program. The program includes communication skills, Australian history, Aboriginal and Torres Strait Islander specific issues, including over-representation in the judicial system and immigrations specific issues.

With reference to RCIADIC Recommendation 159, Police Life Support Training is compulsory for all members (including non-operational staff, Custody Officers, Police Auxiliary Officers and all Commissioned Officers), to be undertaken every 2 years.

The WA Police has a “screening” process implemented at the recruitment stage that identifies and rejects recruits if they show any emerging patterns of behaviour or attitudes which indicate a disregard for authority, an inability to comply with instructions, dishonesty, latent aggression, discrimination or cultural bias.

5. Whether oversight mechanisms, procedures and discipline measures for personnel involved in custodial processes are adequate

(RCIADIC Recommendations 60, 122, 123, 226)

WA Police employed by the Commissioner of Police and also under the *Public Sector Management Act 1994* are all bound by the “Code of Conduct”.

Criminal action, corruption, unlawful conduct, dishonest and unethical conduct, breaches of discipline and conflicts of interest, and failure to report same, relating to police personnel or others, are examples of unprofessional conduct. It is the duty of all police employees to report the above behaviour or conduct to one or more of the following;

- Immediate Supervisor, Officer in Charge, a Commissioned Officer, Manager, Assistant Commissioner or Director;
- BLUE LINE – 1800 88 44 88;
- Internal Affairs Unit;
- Assistant Commissioner (Corruption Prevention & Investigation Portfolio);
- Corruption and Crime Commission (CCC);
- Behavioural Assessment Unit.

In addition, any person who feels aggrieved during or after being detained by the State is able to lay a complaint with independent oversight bodies such as the Ombudsman (administrative issues) and the Corruption and Crime Commission (WA) (CCC).

A complaint can also be lodged with the Police Complaints Administration Centre (PCAC); all investigations by PCAC are subject to independent review by the CCC.

Under Section 21A of the *Corruption and Crime Commission Act 2003*, the Commissioner of Police is required to notify the CCC of matters concerning a “reviewable police action”. The term “reviewable police action” is defined in section 3 of the CCC Act as:

reviewable police action means any action taken by a police officer or an employee of the Police Service of the Public Service, that

(a) is contrary to law;

(b) is unreasonable, unjust, oppressive or improperly discriminatory;

(c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

(d) is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or

(e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given;

These provisions require the Commissioner of Police to notify the CCC of all allegations of ill treatment or excessive use of force by Police Officers. The CCC may then investigate the matter itself or refer the investigation to another agency.

WA Police are also bound by *Criminal Code Amendment (Racial Vilification) Act 2004 (WA)*, *Equal Opportunity Act 1984 (WA)* and the *Police Force Regulations (WA) (1979)*.

WA Police have developed numerous manuals, policies and operating procedures. These manuals are designed to provide guidance to all personnel whilst carrying out their duties. It is recognised that negligent non compliance may be dealt with as a breach of discipline.

In instances where no specific or formal instruction exists, personnel are to use their initiative and common sense approach to resolve the issue whilst keeping in line with and reflecting the WA Police style and standards in delivering our services to the community, including but not limited to our Code of Conduct.

I understand your Committee also sought information in relation to the training requirements undertaken by Police Auxiliary Officers. This material has been provided separately to your Committee Clerk via email.

Should you require any further information, please do not hesitate to contact this office.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C J Dawson', with a long horizontal line extending to the right.

C J DAWSON APM
ACTING COMMISSIONER OF POLICE

13 September 2013