INSPECTOR OF CUSTODIAL SERVICES AMENDMENT BILL 2011

Second Reading

Resumed from 28 September.

MR F.M. LOGAN (Cockburn) [12.47 pm]: I rise to respond on behalf of the opposition to the Inspector of Custodial Services Amendment Bill 2011. This bill is the final step in the government's response to the State Coroner's inquiry into the death of Mr Ward. We support the government in bringing forward this piece of legislation, which will, in effect, extend the powers of the Inspector of Custodial Services in a number of ways that meet the recommendations of the State Coroner. We will raise with the minister a couple of issues about this bill and about the powers of the Inspector of Custodial Services. I had the opportunity to have a chat with the minister prior to speaking today to see whether it was possible for us to amend the bill to extend the powers of the Inspector of Custodial Services even further than is provided for in the bill, but it is complex. I have also consulted with my colleague the member for Girrawheen about this, and she concurs that what we are seeking to do with the powers of the inspector is a complex amendment. That may well be an issue for another day—and possibly even another government.

Mr D.T. Redman interjected.

Mr F.M. LOGAN: But you never know. Certainly, we will not proceed with an amendment, which is what we were looking to do in the first place, because of the knock-on effects of that amendment on other pieces of legislation. We certainly do not have the time in the house to do that today.

As the house knows, and as you know, Mr Speaker, the circumstances in which Mr Ward died were horrendous. The way in which Mr Ward was treated and the way in which he was transported to a lockup can only be described as inhumane, and it ultimately led to his death. One of the things that unfortunately does not get mentioned very often as a result of Mr Ward's demise is what he was arrested for in the first place. Why was he in the van travelling from Laverton to Kalgoorlie? He was arrested for drink-driving. Would somebody who has been pulled up on Stirling Highway in the western suburbs be transported to the lockup in Northam for drink-driving? That is the effective distance between where he was arrested and where he was transported. How many people who have been picked up for drink-driving and are sitting on the side of the road next to a booze bus are actually put into police paddy wagons and transported to lockups around metropolitan Perth? Hardly any would be. They would be given a notice of an intending charge for drink-driving, for example, and required to report to court.

In Mr Ward's case, he was picked up for drink-driving in Laverton, put in the paddy wagon and then transported all the way to Kalgoorlie in the temperature that it was. I put it to you, Mr Speaker, that that happened because he was Aboriginal. That was the reason he was in that lockup. He was in the back of that van because he was Aboriginal. It would not have happened to other citizens of Western Australia, particularly white citizens of Western Australia. They would have been dealt with in completely different circumstances. Mr Ward died because he was arrested for an offence that should not have resulted in him being in the back of a van. He was arrested, put in the back of the van and transported to Kalgoorlie because he was black; because he was Aboriginal. That is the reason he died. Ultimately, that is why he found himself in the position that he did, and he died.

I will not bore the house with all the other horrific circumstances around his transportation that led to his death. The coroner has identified all those issues in his report and has made 31 recommendations. Most of those recommendations have been picked up in this legislation. Not all of them have been picked up, but most of them have. The government's response to the coroner's report has been the introduction of new vans. I congratulate the government for bringing in the system of transportation that it is currently in place, which ensures continuous monitoring of the people who are in the process of transportation and also the way in which they are transported, to ensure that they are transported in a fashion that is humane and acceptable to our society. I congratulate the government on doing that.

This legislation intends to change the powers of the Office of the Inspector of Custodial Services to undertake audits of individual prisoners and to issue show-cause notices to the Department of Corrective Services when the Office of the Inspector of Custodial Services has reasonable cause to suspect the existence of either a serious risk to life, personal safety, welfare, security or control or of treatment that is cruel, inhumane or degrading. As I said before, those two intentions of the bill reflect the findings and recommendations of the coroner.

One of the things that I would like the minister to explain in his response to the second reading debate is the process of show-cause notices and how they are expected to work. Whilst the act sets out exactly the powers of the inspector, the chief executive officer and the commissioner of the department, I would like to know how those show-cause notices are actually expected to work. Show-cause notices will be given if the inspector

suspects, on reasonable grounds, that there is a serious risk to the security, control, safety or welfare of a prisoner or that the prisoner has been subject to cruel, inhuman or degrading treatment. But how are show-cause notices expected to work and what will be the response of the Commissioner of Corrective Services or any of his staff in acting on those show-cause notices, particularly the time frames that they are expected to comply with? The Inspector of Custodial Services is required to specify a period of three days in which the notice must be complied with, but how is that supposed to occur, particularly if there are structural issues relating to the way in which the prisoner has been treated and the infrastructure around that? I would like to know exactly how the show-cause notice is expected to work and the time frames of responses for those show-cause notices.

I wanted to raise with the minister the issue of police lockups, which we talked about before we started these proceedings. So far, as a result of the response to the death of Mr Ward, the issue of transportation has been resolved and the powers of the Inspector of Custodial Services to audit areas as he sees fit will be dealt with by the legislation that is in front of us. The audit of individual prisoners will also be dealt with as a result of this legislation. It identifies exactly where the powers of the commission can be applied with respect to those audits, particularly in clause 4.

When it comes to actual police lockups, some will be governed under the Court Security and Custodial Services Act. The advice I have received from the minister, for example, is that East Perth lockup is governed by that. There is a relationship between the East Perth lockup and the Department of Corrective Services to the extent that that would allow the Inspector of Custodial Services to audit and inspect the East Perth lockup. There are others in the state, and that is what the minister was going to find out for me. How many of those lockups have that relationship to the CSCS act? Where are those lockups and to what extent does the inspector's powers go to being able to audit individual prisoners as detainees within those lockups and audit the lockups themselves, particularly with respect to the way in which prisoners are treated, as set out in the intentions of this bill, to overcome cruel, inhumane or degrading treatment? The reason we raise that is because of the recent Spratt case and the use of Tasers on prisoners and detainees in lockups—in that case, they are detainees; they are not even prisoners—and the way in which control of those prisoners is being applied by police officers in those lockups. We all saw the Spratt video footage. Regardless of what Mr Spratt is like and has been like since those incidents, I think everybody in Western Australia was appalled at the way in which he was treated in that police lockup. Prior to the start of this debate, I asked the minister how we can extend the powers of the Inspector of Custodial Services to ensure that people such as Spratt or others are treated in a reasonable, fair and respectful manner in police lockups despite their incapacities at the time. How can the powers of the Inspector of Custodial Services be extended to ensure that those detainees are treated in a respectful and civilised manner? How can the power of the Inspector of Custodial Services be extended to inspect the infrastructure of those police lockups? The minister advised me informally that that would be quite complex and it required an amendment to the Police Act 1892.

Mr D.T. Redman: I now have an accurate answer. I have just sought clarification of that. I will let you know.

Mr F.M. LOGAN: I am pretty sure that what we talked about informally was correct. It probably would have a knock-on effect to the Police Act, hence my comments at the start of my speech that the amendment that we are seeking is probably too complex to be dealt with today, but it is certainly one that the opposition will be looking at in due course. I hope that the government will look at that. The minister has also advised me informally that those lockups that would not come within the areas of the ICS act and that do not have a relationship with the department would not be covered by the inspector's powers and therefore are outside his ability to examine how detainees are treated and where detainees are held. That is the issue that needs to be addressed that we would like to put to the minister. We believe that the coroner's recommendations in relation to Mr Ward and the amendments that are before this house today by way of this bill have greatly benefitted and improved the procedures involved in holding prisoners as detainees or even in remand. They still need to go further. There are areas of police lockups that need attention, particularly those police lockups that do not fall within the powers of the Department of Corrective Services and therefore come under the role of the Inspector of Custodial Services. That will not be dealt with today. The opposition will continue to try to rectify that issue. If that means we will do that in government, all well and good. If it means that we have an opportunity to do that by way of any other changes that the government seeks to make to either the Police Act or this bill in the future, we will try that as well.

The consequent knock-on effect of extending the inspector's powers is also the capacity of the inspector to be able to then apply and implement those powers and the cost involved in applying and implementing those powers. There are two issues here. First, if we had the opportunity to expand the inspector's powers even further to those lockups that I referred to, which he currently does not have access to, that would require extra expenditure, time and effort by the Office of the Inspector of Custodial Services, never mind the inspector himself. That is one issue, and that will be an issue for a future date. The second issue is that the powers of the Inspector of Custodial Services being extended by way of this bill will also require greater effort and greater

expenditure by his own department—money that is available for the inspector to be able to carry out the functions that he will be required to undertake as a result of the passing of this piece of legislation. The government intended to bring in this legislation before this year's budget was handed down. The minister has clearly indicated a number of times that the government will be complying with all the recommendations that came out of the coroner's inquiry. In fact, even before this year's budget was handed down, the minister was on his feet saying that the government had done everything that was required of it during the Ward act. We had not introduced this piece of legislation, which was one of the key things that came out of it, but we are doing that now. There is no doubt that the government has complied with all those recommendations but the point I am making is that the minister was well aware that this bill was coming. He was well aware that this bill would require the Inspector of Custodial Services to have more powers, that his organisation would be required to do more things and would possibly be required to undertake more audits. Why then did the minister not seek to increase the budget for the Inspector of Custodial Services and his department in this year's budget—in the 2011–12 period—knowing that this piece of legislation was coming before the house? I ask the minister by way of this second reading debate: to what extent does he believe that the budget needs to increase? That is, how much does he think that the Office of the Inspector of Custodial Services will require to implement the provisions contained in this bill? Secondly, how will he find that money to ensure that the commissioner has the power to be able to carry out these functions as determined in the bill? It is not the type of organisation that we can go to and say, "You're going to have to find that money within your own budget." If that is the minister's approach, the powers of the inspector will be limited somewhere. Something is not going to be done. Some audits will not be undertaken or they will be put off to another period. It is not the type of organisation where we can go around and find savings. It is a very small organisation in the first instance that does not employ very many people and the nature of the work itself requires an expenditure of money. To get the results that both the government and the general public are looking for requires the expenditure of money. If we try to save money by putting some budget constraint on that office or require it to do more with less, something is going to miss out. That is the nature of the Office of the Inspector of Custodial Services.

I ask the minister two things. How much funding will be required to allow the Inspector of Custodial Services to carry out the new powers that he finds himself with as a result of this bill? Secondly, given that that money, which will be an increase in the budget for the organisation, was not in this year's Inspector of Custodial Services budget, so it does not appear that anything will be happening until July next year unless the minister puts his hand up in the midyear review —

Mr D.T. Redman: Unless you get a nice surprise in the budget.

Mr F.M. LOGAN: If we get a surprise in the budget, it will still not apply until 1 July 2012 unless the minister has some other money tucked away in a hollow log.

Mr J.M. Francis interjected.

Mr F.M. LOGAN: The word in the public service, member for Jandakot, is that the departments keep money in hollow logs. I do not know whether the minister has tucked that money away somewhere else or, as a result of the midyear review, his very close friend the Attorney General and the Treasurer will find more funding for the Office of the Inspector of Custodial Services.

They are the issues that I wished to put on the record about the Inspector of Custodial Services Amendment Bill. I reiterate that the opposition supports the bill and commends the government for bringing this legislation before the house and implementing the recommendations from the coroner's inquiry into Mr Ward's death. We believe that the powers of the Inspector of Custodial Services should be extended to cover the police lockups that are not within the provision of the Court Security and Custodial Services Act, and that the inspector should be funded to undertake that role because, at the end of the day, offenders who are detained will ultimately come under the jurisdiction of the Department of Corrective Services. Given that the Inspector of Custodial Services' powers are to be expanded, what is the cost of implementing those new powers? Also, how will the minister find the money that would allow the inspector to carry out the very important work that is contained in this legislation, given that the money has not been made available in this year's budget? I commend the bill to the house.

MR P. PAPALIA (Warnbro) [1.11 pm]: I, too, want to make a short contribution to the debate on the Inspector of Custodial Services Amendment Bill 2011. At the outset, I will say that if any good came out of the tragedy of Mr Ward's death, it is possibly the fact that the reputation of and respect for the Office of the Inspector of Custodial Services has been elevated. As a consequence, I believe that we can hope for better outcomes in the future as a result of the inquiries conducted by the inspector and that the recommendations the inspector makes will likely carry more weight than, sadly, they may have in the past. I believe that the incumbent Minister for Corrective Services has an opportunity to employ the weight of the inspector's recommendations and observations in the minister's efforts to receive an appropriate response from cabinet and government to meet the recommendations contained in the inspector's reports.

This was a terrible event and it is very difficult to find good things to have come out of it, but another good thing to have come out of it is the government's rapid response to replace the fleet of vehicles used to transport prisoners.

Ms M.M. Quirk: That was already underway.

Mr P. PAPALIA: As the member for Girrawheen said, that was already underway.

I believe that the enhanced respect for the Office of the Inspector of Custodial Services and its recommendations is a good thing to have come out of this event. The inspector's reports are a powerful tool. During my brief experience as the shadow spokesperson for corrective services, I learnt that the Office of the Inspector of Custodial Services and its reports and recommendations were viewed as incredibly valuable by oppositions, regardless of their political hue. Often they were viewed as an irritant, if not worse, by the department that was being exposed to the investigations. As a consequence, the recommendations from the department to the minister and the advice the department provided to the minister may sometimes have been coloured by that view. I hope that another outcome of the enhanced respect for and authority of the reports is that it will lead to a change in the department's response to the recommendations. I hope that the reports will be viewed more favourably by the department as an opportunity for it to wield the recommendations contained in the reports to garner the support of the minister to secure adequate resources.

I entirely support the observations made by the shadow Minister for Corrective Services. It is good that audits of individual prisoners will be undertaken. I am sure that the current and former shadow Ministers for Corrective Services are very familiar that once they get the shadow portfolio, they become the centre of complaint for parents, families and relatives of individuals who have a grievance with the system. It appears as though the shadow minister is ultimately the final call port of call. Frequently people have gone through the approved processes for making a complaint and seeking intervention and the shadow minister tends to be the last person they go to. In my experience, on a number of occasions I found that either writing to or raising a matter directly with the minister resulted in a response and a better outcome for those individuals. That suggests that quite often the unwieldiness of the system gets in the way. It is not the ministerial view that individuals should suffer as a consequence of the system, but the system itself prevents a free-flow of complaint.

Mr D.T. Redman: Generally, shadow ministers and ministers just want a good outcome.

Mr P. PAPALIA: That is particularly in relation to the welfare of an individual when the family or loved ones believe that the individual is under threat of self-harm or some other negative outcome as a result of the individual's situation. Whenever I raised that type of matter with the then Minister for Corrective Services, either he or his office responded, so at least there was some response.

I applaud the power to show cause to the Department of Corrective Services. I hope that rather than view that as a threat, the department will view it as an opportunity to utilise the observations by the Office of the Inspector of Custodial Services in its ongoing battle to ensure that it is adequately resourced to do its job, which is to not only incarcerate people and prevent them from escaping, but also reduce the recidivism rates of those who go into the system. Ultimately, that is the only thing that will change the front-page headlines of the newspapers and have an impact on the rest of society. A relatively small number of individuals who get incarcerated reoffend consistently and repeatedly, and the perception among society is that they are doing so in an increasingly violent manner that lacks empathy. That is what concerns people. We can reel out all the statistics we want, and the Attorney General and Minister for Police do, but, ultimately, people do not relate to that. I listened to the Premier on the radio this morning claim that mandatory sentencing for assaults on public officers has resulted in a 30 per cent reduction in assaults on police officers. If I asked police officers whether they felt 30 per cent safer this year, they would not say yes. Their experience on the ground can only change in the long term when we reduce the rate of reoffending by the small band of ratbags who end up in the prison system. We will not reduce the rate of reoffending by increasing the number of prisons and locking people up in the hope that preventing them from being on the streets will result in them not reoffending. The same statistics that the Premier used to claim victory over assaults on police show that the number of adult people who reoffend is 40 per cent. We know that many of them are Aboriginal—about 40 per cent of the prison population is Aboriginal—and that 70 per cent of them reoffend within two years. I imagine that if those figures are extended to five years, the number would be even higher. The only way to change people's perception of their sense of safety on the ground is to tackle the recidivism rate and those individuals who are doing the most damage to our society. Reducing their rate of reoffending will make a difference and people will ultimately feel a little safer.

Like the shadow minister, I commend the proposed amendments in the bill for what they will do, but I also share his concerns about police lockups. There is a whole field of fertile endeavour that the Inspector of Custodial Services would happily get himself and his officers involved in given the appropriate resources and powers—should the minister so consider. I understand the minister's reluctance, because to do so would not necessarily impact on only his portfolio. However, this is another example of more effort required by way of a cross-

government or cross-departmental response. Rather than siloing his response by saying that he is responsible for the Inspector of Custodial Services and cannot possibly imagine or contemplate expanding those powers to incorporate police lockups, thereby implicating our very shabby police minister in the need to do something, a more collaborative and holistic approach is needed to tackle the problem. I do not think this minister—I do not think any minister in cabinet—can claim that our police lockups are not worthy of greater scrutiny and analysis by an independent authority. As I said at the outset, the Inspector of Custodial Services is a respected independent authority in this state with the ability—given the powers and resources—to make a valuable contribution and provide valuable support to the police minister and his department, in seeking appropriate resourcing from the cabinet process. Rather than viewing it as something to be defended against, and something that is to be feared, it could be a tool; that is, it could be leverage the department and minister employ in their calls for adequate funding from the cabinet process.

The point I will finish on is that of the cost associated with these additional roles being funded now, minister. The shadow minister made a very good point: there was no funding in this year's budget for the expanded role. I know from direct conversations that when the Office of the Inspector of Custodial Services was challenged by the rapidly and massively expanding prison population, it was desperate to get additional funding. As I understand, that funding is based on a formula that relates to the number of prisons and not prisoners. Because this government's response to expanding capacity was to double-bunk and cram in more and more prisoners to the same number of prisons, the inspector was faced with the challenge of having to try to inspect a far greater number of prisoners, with resourcing based on the number of prisons and not the number of prisoners. I hope that the minister has taken that into account and will ensure that a similar outcome is not imposed on the inspector in this case. If the inspector is to be given additional tasks, so that they can be done appropriately and adequately and responsibly and professionally, the inspector must be funded. The number of staff that he is provided with must be expanded accordingly, and all the funding needed to get around the state to comply with the requirements of this amendment bill must be allocated. That funding must be allocated the moment this amendment bill comes into play, rather than waiting for the next budget and the juvenile type of response we hear from the Minister for Police to "wait and see what is in the budget, because you will all be surprised on the day!" We need that funding now. These powers will come into force before the next budget; therefore, it is essential that appropriate funding and resourcing be given to the inspector and his office before the next budget.

MS M.M. QUIRK (Girrawheen) [1.23 pm]: The shadow Minister for Corrective Services has already indicated in his comments that the opposition supports the Inspector of Custodial Services Amendment Bill 2011. However, I have to say that the minister's comments about compliance with the coroner's recommendations from the Ward coronial inquest are not strictly accurate. In its response to the recommendations of Alistair Hope, the State Coroner, the government rejected the recommendation to put in place a statutory system that would enable the Inspector of Custodial Services to issue show-cause notices to the Department of Corrective Services in cases in which the inspector is aware of issues relating to human rights and the safety of persons in custody. The former Minister for Corrective Services, Hon Christian Porter, albeit supporting the recommendations in principle, made the point that it would be very resource intensive in the context of 10 000 persons going into detention and various forms of custody in Western Australia each year. He noted that given that protections of the nature provided by the terrorism act would be largely symbolic, and indicated that to merely insert the terms of sections 34 and 39 of the terrorism act into relevant legislation dealing with the inspector's powers would not oblige the inspector to do anything with those names; provide him with any investigative powers or additional resources; nor, indeed, would the approach provide the inspector with information to which he does not already have effective access given that the inspector can and does access information from the total offender management system database that details all persons going into custody. I think the problem was the number of prisoners going through the system, the cost and the resource implications.

I accept that this legislation represents the government's modification of the coroner's recommendations, and although in the spirit of honouring those recommendations, it is certainly not a literal enshrining in legislation of those recommendations. In terms of the observation that the inspector has access to the total offender management system database, from my experience that information is neither accurate nor comprehensive. For example, while minister with responsibility for this portfolio, I was contacted about the case of an Aboriginal death in custody, only to discover that the prisoner involved—albeit the matter is no less serious because the prisoner had taken his life—was not Aboriginal, but was in fact from Mauritius. That is the nature of the information recorded on TOMS. Much of the information that needs to be recorded is not recorded and clearly the robust and comprehensive manner in which the inspector conducts his inquiries means that the information contained in the total offender management system database will be insufficient for the purposes of his inquiries to ensure that the human rights of those held in detention and prisoners are adequately complied with.

On a number of occasions, I have made observations about Mr Ward's case, and I do not intend to expand on them in any great detail now. However, it was in part a series of errors that led to the tragic circumstances that

culminated in the death of Mr Ward. They were, I think, a manifestation of systemic errors over some time. However, as the shadow minister has pointed out, a number of other issues were outside the central inquiry of the coroner, including why it was that Mr Ward was put in custody for what was in the scheme of things a relatively minor offence. Because he was seen to be in breach of an existing court order, Mr Ward's security classification was such that bail was not allowed.

The coronial investigation did not focus much on what happened at the police lockup or on the undue haste with which Mr Ward was bundled into a van. Although not central to the issue, the level of care he received in the police lockup only compounded the problem. Finally, the general maintenance of the vans is an issue that has also been well canvassed. What I wanted to say, however, is that all involvement by the Inspector of Custodial Services is welcome. Both Professor Neil Morgan and his predecessor, Professor Richard Harding, have done an extraordinary job in raising issues about, and standards of, custodial services in this state. The whole system is the envy of many other jurisdictions that are emulating it in setting up similar kinds of inspection regimes. Of course, this will become even more necessary given that states have less than three years in which to make themselves compliant with the Optional Protocol to the Convention against Torture, which is a United Nations treaty that has been acceded to by the federal government. As I understand it, I think 18 months or so have expired, so we certainly need to have in place a comprehensive inspection regime. What is proposed in the bill will go a long way towards the custodial services area complying with the requirements of OPCAT. It may well be in that context that the amendments that we would support for police lockups may well extend the inspector's jurisdiction further.

I echo the points of my colleagues concerning resources for the Office of the Inspector of Custodial Services. I have to say that those resources are very, very underdone—with an increasing prison muster. The Office of the Inspector of Custodial Services is doing more with less and now these additional duties will need to be done properly and to the standard we expect and that we know the office can produce. That requires additional personnel and resources. I expect in response to these speeches that the minister will give some indication of the quantum of resources he anticipates will be required and will in fact be provided by the government.

I want to talk briefly about police lockups only in the context that we should be under no illusion that this legislation will apply to all custodial settings. At the moment, the Inspector of Custodial Services does not have jurisdiction over police lockups. I had a conversation with the Commissioner of Police about this, and he is largely supportive of the inspector's jurisdiction being extended. That is something we believe the government should support. We had the situation, as I said, that arose not only in the Ward case, but also, for example, in recent times, in which prisoners who were under the influence of alcohol in the Wiluna police lockup had their photographs taken and put on Facebook. That is completely unacceptable and I am pleased to say that the officer responsible for that is no longer with Western Australia Police. We also had the much publicised case of Mr Spratt in the East Perth lockup. I believe that there is no real distinction between a custodial setting, such as a prison, and a police lockup in extending basic human rights and the oversight of the compliance of those who place persons in custody with those rights and obligations. Certainly as a matter of principle, we say that the government needs to consider that down the track. If that is not done in the near future, the opposition will consider introducing a private member's bill to that effect. But there needs to be assurance. Although the public might have certain views about people being put into custody, I do not think any member of the public would want situations in which a person is likely to be exposed to torture, unfair practices, violence meted out by officials and degrading practices—all those things the inspector, I think, oversights the prevention very well. There is an artificial distinction, because of some legislative complexity or purely on a resourcing basis, that some custodial settings are excluded and others are included. Therefore, I think, in terms of the justice system generally, that the minister should be talking with his colleagues about the prospect of the inspector's jurisdiction being extended to police lockups.

On that note, I certainly support the legislation. It is worth noting that the State Coroner's recommendations came down in July 2009, I think; is that correct, minister—or was it June 2009?

Mr D.T. Redman: What's that?

Ms M.M. QUIRK: When were the coroner's recommendations put in? I think it was about then.

Mr D.T. Redman: As I understand it.

Ms M.M. QUIRK: I note that a response was given to most of the coroner's recommendations within a reasonable time. I think I have the date here —

Mr P. Papalia: June 2009.

Ms M.M. QUIRK: It was in June 2009. Although most of the recommendations were acted on promptly, partly because some of them were already in train—for example, the replacement of the fleet—this one seems to have

fallen through the cracks. In fact, at the estimates hearings this year, we asked the minister where this recommendation was at and he said it was the responsibility of the Attorney General. We asked the Attorney General where this recommendation was at and he said it was the responsibility of the minister. Therefore, it seems that this recommendation had fallen through the cracks, and I suspect also was subject to some fairly robust examination of the cost implications. I think the Ward case illustrates that frankly the cost implications of not doing anything can ultimately be substantially greater, given not only the human side and the tragedy of a needless death and the implications that that has for family and friends of Mr Ward, but also the amount of time bureaucracy has spent in having to defend its conduct, to implement new systems and to look at alternative ways of doing things. The costs of doing all that are frankly far greater than having a system in the first place that is more vigorous and robust.

I certainly support the legislation. I ask the minister in his broader role as a member of cabinet and as someone who obviously has a key role in determining the government's long-term law and order strategies—he is also the minister responsible for the Inspector of Custodial Services, so he has some responsibility for changes in the legislation—to also give further consideration to extending these powers to police lockups. With that, I conclude by saying that I certainly support the legislation.

MS J.M. FREEMAN (Nollamara) [1.37 pm]: I also support the Inspector of Custodial Services Amendment Bill.

I stand because I seek clarification from the minister about an issue that I dealt with in my office with the previous Minister for Corrective Services. My question is about the audits of individual prisoners. In particular, I tried to represent a constituent, a Vietnamese gentleman whose English is very limited, who came into my office as a result of the difficulties he faced advocating on behalf of his wife who has medical issues and was in Boronia Pre-release Centre for Women, and also because of his frustration. To get a feel for this, I will give the minister some background and context to this issue. I have been trying to get permission to use my constituent's name in Parliament, so I would prefer not to at this time. However, I am happy to write to the minister about that. There has obviously been correspondence with the previous minister about this matter; in fact, when I wrote to the previous minister, he told me that he was not able to give me any details because it was a prison issue. That seemed to be a really closed and not transparent operation. I then got a signed authority from the prisoner's husband and the prisoner that I could ask questions, yet still it seemed that I was unable to advocate on their behalf. Just to put it into context, the prisoner in question—let us call her "Mrs M"—underwent aortic valve surgery in September 2008. She had a mechanical valve inserted, and as part of her long-term treatment she was prescribed Warfarin, which is a blood-thinning medication. When she returned to Boronia prison, she was living in a two-bedroom unit, instead of the normal four or five-bedroom house. The unit was frequently utilised for inmates with health concerns and it had air conditioning. She had her blood pressure monitored on an ongoing basis and her Warfarin was adjusted at the discretion of the doctors, as it was her blood pressure medication.

In January 2009, after Mrs M was told she had to be moved to another house, she went to see the management of the prison and said that, with her health concerns, the current house would be best for her, but she still had to move. On the same day that she was told she had to move she started to feel numbness in her leg, whereupon she went to the medical centre and was told, "Don't play games", and directed to move to house 15. On the same day she shifted to the house, she had a stroke. She was exhibiting the symptoms of a stroke, and when another prisoner went to get the prison nurse and a prison officer, I think, they again took it that this was her way of protesting against her movement. They also treated the report made by the other prisoner in a manner that really lacked due diligence and care. They did not check her blood pressure and they did not administer any other treatment. Only after Mrs M passed out in the toilet and they had to remove the door to get her out did they call an ambulance.

On 6 January 2009 at 6.00 pm, after having complained at one o'clock about numbness in her leg, and having had surgery previously, she was admitted to the Royal Perth Hospital emergency department. She now suffers the consequences of a stroke, and they have caused her some difficulty during her period of incarceration. Having served her period of incarceration, she has returned home with serious disabilities.

Her husband has tried to find out what occurred by writing to the department and doing various things. He was told that he was not allowed to have the information. Around the time her husband wrote to the superintendent of Boronia prison asking what had occurred, prison officers and prison authorities held an interview with Mrs M, without the knowledge of her husband. It has been documented that at this time she was suffering significant amnesia, and the authorities came away from that saying that she had no complaints about her treatment.

The upshot of all of this is that Mr M feels that the treatment of his wife, and the treatment at the time she was suffering symptoms, has contributed to the level of her incapacity; in fact, he believes it was negligent. He has tried to deal with this through the Office of Health Review. The Office of Health Review was denied access to Mrs M's medical records by the department on the grounds of privacy and confidentiality. He wrote to the

Western Australian Ombudsman about this, because he believed that there was a lack of transparency and a lack of capacity for him to advocate on behalf of his wife and to find out what had occurred; frankly, he felt bullied and harassed. The Ombudsman said that the refusal of the Department of Corrective Services to provide Mr M with the information about Mrs M's medical condition had been unreasonable. The department subsequently gave that information to the Office of Health Review.

There was no other way that the Office of Health Review could deal with this issue; it could not deal with it with the Department of Corrective Services because of the lack of transparency and its inability to obtain the details. The Office of Health Review actually had to lodge a complaint to the Nurses and Midwives Board of WA in relation to the conduct of the nurse on the day. One individual worker in a system that is supposed to protect prisoners had to be attacked and taken before a tribunal to investigate whether this prisoner had been dealt with in an unfair and unreasonable manner, and whether there had been negligence and whether there were things to answer for. I think it is appalling that the Office of Health Review had no capacity to investigate this other than to take this particular nurse to the Nurses and Midwives Board. On 27 August, the nurses board found that the complaint against the nurse could not be substantiated because some witnesses were unable or unwilling to provide statements. Again, the lack of transparency meant that a systemic problem about how an ill prisoner is treated was not able to be explored because some people—I do not know who those people are—were unwilling, or not in a position, to give witness evidence.

Mr M was still in the position of having no greater information about whether his wife's health was compromised by her treatment at Boronia. He is strongly of the belief that the Department of Corrective Services acted neglectfully and failed in its duty to his wife. He argues that that was demonstrated by the officers' refusal to examine Mrs M when she first complained of the symptoms, the bullying of her during the episode, and their failure to correctly give medical treatment when they attended. He is strongly of the belief that the actions of the nurse, as an officer of the Department of Corrective Services, were questionable because Mrs M was not offered treatment. He also argues that the actions of the Department of Corrective Services in denying him access to information, not responding to his concerns, and interviewing his wife while she was still suffering the effects of her stroke without him present were an abuse of its position. I think at the heart of the matter, minister, was the lack of transparency.

My question to the minister is whether the Inspector of Custodial Services Amendment Bill 2011 will provide the capacity for a person to get answers. This is a specific case, but I am sure many people are in the same position of being additionally hampered by their grasp of the English language and their grasp of process. But, more than anything, he was hampered by the lack of transparency and the lack of the capacity to say whether the actions and the system that applied to his wife on the day that she suffered her stroke, and her consequent disabilities, were as a result of the processes in place. If this was a workplace, people would be able to go in and see whether the systems were in place to ensure that that did not happen. This has gone unaccounted for by the department, simply through a failure to provide information and a failure to give evidence. The only way the Office of Health Review could pursue the issue was by pursuing an individual worker. I think that shows a real failing in the system to ensure the health of the prisoners so that they are well when they return to their families. Prison is deprivation of liberty; it is not deprivation of health. Prisoners should be in the situation of returning as healthy as they possibly can given the circumstances. Will audits of individual prisoners address this matter?

MR D.T. REDMAN (Blackwood–Stirling — Minister for Corrective Services) [1.50 pm] — in reply: I am sure that between now and question time I will not be able to cover all the matters that have been raised by members opposite on the Inspector of Custodial Services Amendment Bill 2011, but I do want to thank members opposite for their support of the bill, and I will work through a number of the issues that have been raised.

The member for Warnbro probably best highlighted this issue when he made the comment that no-one in this place wants to see the circumstances that occurred with the death of Mr Ward occur again. But, if there is a bit of a silver lining to what happened to Mr Ward, it is the fact that, if I can use the member for Warnbro's words, there has been an enhanced respect for the importance of the independent Office of the Inspector of Custodial Services and the role that it plays as a third party that has autonomous authority to look at the services that are provided by this government to those who are unfortunate enough to finish up in prison and come under our custodial services. I think that point is well taken by governments of all persuasions, because when the opposition was in government, it also highlighted the importance of that inspectorial role.

Under the Inspector of Custodial Services Act, OICS is required to inspect each prison, detention centre, court custody centre and prescribed lockup in Western Australia at least once every three years. Therefore, there is a role for the inspector with regard to prescribed lockups. The opposition has also highlighted, quite rightly, that not all lockups in Western Australia come under the jurisdiction of this act. The other important point that must be made about the inspector's role is that the inspector has the autonomous authority to decide which facilities to

inspect, and in what order. However, the act also provides for the responsible minister to make directions as to the inspection or review of a particular custodial service.

The view of the State Coroner, as brought down on 14 June 2009 in his recommendations, is that the independent Office of the Inspector of Custodial Services has historically performed its responsibilities well under the act. However, he goes on to say that the recommendations and observations of the inspector have not always been acted upon in a timely manner. Nothing brings that to the fore more than the tragic outcome in the Ward matter. It was certainly the view of the coroner that the powers of the inspector needed to be enhanced in order to put pressure on government to make the necessary changes to the system to ensure that there was not a repeat of those tragic circumstances. It was also the view of the coroner that a delay in responding to the recommendations made by OICS was a factor that contributed to Mr Ward's death. I am sure no-one in this place would take those comments lightly.

With the exception of some specific comments that were made by the member for Nollamara, which I will try to capture, the opposition has indicated its general support for the bill. One issue that has been raised by the opposition is that the government consider extending the scope of the legislation to cover police lockups. Section 3 of the Inspector of Custodial Services Act 2003, headed "Terms used in this Act", states in part —

> ***Lock-up*** has the meaning given to that term in the *Court Security and Custodial Services Act 1999* section 3;

There is a note under that that says —

> Note: "lock-up" in this Act does not include a lock-up that is managed or controlled by the Commissioner of Police.

So, quite rightly, although the act does cover prescribed lockups, it does not cover all lockups. I will come to that point in a moment.

The other point that was raised by members opposite, again with the exception of the member for Nollamara, was about the resources that will be necessary to enable the independent inspector to undertake these expanded powers. I highlight that provision has been made in the 2010–11 budget onwards for increased resources in response to the coroner's recommendations. Those resources are $600 000 a year recurrent from 2010–11. Therefore, I am pleased to say that this government has provided—indeed, ahead of time—the additional resourcing that the independent Office of the Inspector of Custodial Services will need.

The comments by the member for Cockburn certainly highlighted the tragic circumstances surrounding Mr Ward's death. He supported the investment in new vans for the prison vehicle fleet. Such an investment is most appropriate to ensure that a similar circumstance does not occur again. The vans have now all been replaced, I think at a cost of about $17 million.

The member for Cockburn talked also about show-cause notices. Of course the issuing of show-cause notices is in essence the teeth that sit within this amendment to the legislation. The independent inspector will have the power to issue a show-cause notice to the Department of Corrective Services. In other words, the independent inspector will have the power to say to the department, "Give me a reason as to why I should not raise this directly with the minister." I highlight that the act refers to a minimum period of three days within which the department must show cause. The independent inspector would no doubt use his judgement as to what was a reasonable period within which to show cause. The member for Cockburn rightly highlighted also that if a show-cause notice had significant financial implications, pragmatism would prevail. Clearly the replacement of a vehicle fleet is not going to happen overnight. The government and the minister would have a responsibility to respond to such notices, and they would, therefore, stand or fall politically on the decision that they make, and that would certainly create some pressure. We therefore agree with the member for Cockburn that we expect that this would play out in a very pragmatic way. As I have said, the government of the day will stand or fall on its response to the show-cause notices that are issued and on providing the resourcing that is necessary to ensure that the issues that are raised are dealt with.

I want to talk now about the scope of the proposed amendments to the act. Currently the act covers every prison, detention centre, court, custody centre and prescribed lockup. The amendments that are proposed in this bill are not intended to increase the scope of the current act. However, I might highlight that the Australian government is a signatory to the Optional Protocol for the Convention Against Torture—OPCAT is the acronym. Because the commonwealth is a signatory to that convention, this state has some formal responsibilities. The first is that all our custodial facilities must be subject to inspection by United Nations inspectors. The second is that all our custodial facilities must be subject to inspection by an independent body. Of course, as the member for Girrawheen highlighted, Western Australia is the only state that has established this independent inspector role. Therefore, we are significantly down the path of being able to meet those requirements. No doubt there will be a

level of harmonisation between the states in response to those requirements, and I am sure that over time those issues will be addressed, as they quite rightly should be.

The two key issues there are the resourcing of the independent office, which is being considered and dealt with under the 2010–11 budget onwards, and of course the scope that will not be widened beyond the scope covered by the current Office of the Inspector of Custodial Services. However, at a national level we are a signatory to international conventions that carry a responsibility over time to have that covered, and that is something the state government will be considering in its responsibilities as a signatory at a national level.

Debate interrupted, pursuant to standing orders.

[Continued on page 8358.]