

*Standing Committee on Environment and Public Affairs — Twenty-third Report —  
“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”*

Resumed from 7 March.

*Motion*

**Hon BRIAN ELLIS:** I move —

That the report be noted.

The Standing Committee on Environment and Public Affairs self-initiated this inquiry in response to the tabling in the Legislative Council of a petition that had more than 4 950 signatures. Mr Ward, a respected Aboriginal elder, suffered a tragic and unnecessary death while in custody on 27 January 2008. The State Coroner’s report on the death of Mr Ward made 14 wide-ranging recommendations traversing a number of important systemic issues for government action. The committee found that there has been action to implement the coroner’s recommendations, including the replacement of the custodial transport fleet. However, further action is required to fully implement a few of the coroner’s recommendations, as outlined in this report. The committee also recommends that the Coroners Act 1996 be amended to require the government to respond to coronial recommendations within three months, and that legislation require that the government response shall be tabled in both houses of Parliament.

Aboriginal people are grossly over-represented in the criminal justice system and are therefore more likely to be detained in custody. The committee considered and reported on strategies and views on action required to address the gross over-representation of Aboriginal people in the criminal justice system. The committee’s report contains 14 findings and 20 recommendations. I will touch on the terms of reference of the committee’s inquiry, because some people held the view that the committee was inquiring into who was to blame for the death of Mr Ward and they were not happy with the report because the committee’s terms of inquiry were not to look into or lay blame on people but to determine whether the government was responding to the coroner’s recommendations. The terms of reference were 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.

The Standing Committee on Environment and Public Affairs received the government’s response to the committee’s report this morning. I must say that I have not yet given it fair consideration. I have had a brief look at the response and, from what I can see, the government has agreed to the findings and recommendations of the committee, to a certain extent. It has agreed to and, in many cases, noted the recommendations and said that some of the recommendations will be progressed, subject to funding. The government has also said that there is still work to be done on a number of the recommendations. As I said before, I have not had a chance to fully study that response. However, it is encouraging that the government is noting the recommendations. I believe that this is still a work in progress and hope that it will be further advanced.

Getting back to the report, I note the Attorney General’s views at that time regarding the coroner’s recommendations. The Attorney General was of the view that the government’s proposal to legislate audit powers and show-cause notices would extend protections to all persons in custody and to all areas of the Inspector of Custodial Services’ jurisdiction. By implementing these measures, the Attorney General considered that the government would meet, and indeed go further than, the coroner’s recommendations. I state that because that was the Attorney General’s view at the time. As I said before, noting the government’s response, I take it that this is still a work in progress.

There is not enough time for me to go through the entire response, so I will touch on term of reference (3) regarding the over-representation of Aboriginals who are incarcerated and how we are dealing with recidivism. Although the committee was made aware of the number of intervention programs being implemented to address issues relating to the gross over-representation of Aboriginal people in the criminal justice system, the committee found that there is no comprehensive list of intervention programs available in Western Australia, which indicates a lack of a whole-of-government approach. Hence recommendation 18, whereby the committee

recommended that the Department of Corrective Services develop and implement a suite of intervention programs for juveniles and young adults in custody as a matter of high priority.

On a positive note, the government's implementation and expansion of regional youth justice services is a welcome development. This service, previously established in Geraldton and Kalgoorlie, is being expanded into the Kimberley and Pilbara. The regional youth justice service in Geraldton and Kalgoorlie has been widely praised by stakeholders, including the Chief Justice of Western Australia and Michelle Scott, the Commissioner for Children and Young People. The Department for Child Protection advised that the service in Geraldton and Kalgoorlie has 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.

Noting that I do not have very much time left in which to speak, I will skip ahead to recidivism. The committee noted with interest that when witnesses were asked to name programs available to 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 themselves. Hence, recommendation 19, which states —

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.

I suppose all this can be summed up by the Chief Justice of Western Australia who expressed the view that we need to encourage Aboriginal people to take responsibility for and ownership of these problems and to devise solutions themselves. If we do that, the solutions are likely to be much more effective.

**Hon LYNN MacLAREN:** I am a member of the Standing Committee on Environment and Public Affairs and I want to speak to this report. It is ever so brief; it is really far too brief for the huge subject that it relates to. I want to make a couple of points. One is about the time line. Mr Ward died, as Hon Brian Ellis said, on 27 January 2008. A petition came to the Legislative Council, thanks to Hon Giz Watson, on 16 September 2009. The residents of Western Australia were still concerned that action following the widely publicised horrific death of Mr Ward was not acted upon quickly enough. They saw fit to raise 4 950 signatures on a petition calling for further action. They got that petition together by 16 September 2009. The Standing Committee on Environment and Public Affairs commenced an inquiry in April 2010. It is now March 2012. That is a long time for a family to seek justice. It is a long time for this system of government to respond to an incident of that nature. I know that the committee worked diligently with the resources that it had available to get this report together. It was a huge effort.

I want to acknowledge all the people who came in after spending hours investigating what their contribution could be to an inquiry into the transportation of detained persons. If members look at appendices 2 and 3, they will see a long list of submissions. The committee received 33 submissions. We had many hearings over many months, some were reported, some were public and some were reported in the newspaper. That was a really important process because people were able to criticise the system openly and transparently in a forum in which the committee actually took on board and looked at their comments. Among the people who came to us, answered questions and gave of their wisdom were the Chief Justice of Western Australia, the Honourable Justice Wayne Martin; Michelle Scott, the Commissioner for Children and Young People; Wayne Gregson, who was then the assistant commissioner of judicial services at Western Australia Police; representatives from the Department of the Attorney General and from the Aboriginal Legal Service of Western Australia; and many people from the Department of Corrective Services, the agency that was directly relevant to the transportation of Mr Ward. The Deaths in Custody Watch Committee made very comprehensive submissions and their representatives came to the hearings and presented evidence, as did G4S Australia, which is also one of the parties involved in this matter. I therefore want to express my personal thanks to these people who spent time and effort and contributed to the wisdom of this government in figuring out how to make sure this does not happen again. We as a committee have put together to the best of our ability the recommendations and the findings from that wisdom shared with us over that period. As members can see from the terms of this inquiry, we had to look at a tiny portion of the petition that was tabled. The petition is printed in this report in appendix 1. One of the things in the petition that the 4 950 people called for was the return of responsibility for custodial transport in WA to the Department of Corrective Services. That was deemed to be outside our bailiwick, but if members look at what we did deal with and what we could say about the petition, they will see that we did a chunk of work. Another thing is that I, as an activist and as someone who wants to see justice for Aboriginal people, and the committee could not deal with item 10 of that petition; that is —

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.

I would have loved to work on that and I am hoping that we will make a commitment to doing that sooner rather than later.

We tabled this report a while ago, as I have said, and only recently we have received the government response to the report's recommendations, which came later than we anticipated. It actually fell quite some time after we expected it, but it was a comprehensive response and required many departments feeding into it. However, I want to draw the house's attention to the fact that many of the things reported in the government response were done along the way of the committee inquiry. In my view, therefore, this committee inquiry and the fact that the Western Australian government focused on this really significant incident and how we could improve our systems generated action along the way. It is a good thing that the Legislative Council, the house of review, and the committee system can contribute to the Western Australian government. I think what we were able to do is kind of like that physics experiment of an atom that changes when you look at it! It was a moveable feast with committee members reading the government response and saying, "We've already done that." The government therefore supports a lot of the committee's recommendations. Guess what? We did something towards that. I therefore want to acknowledge the government for having acted on this issue. One recommendation is that the Court Security and Custodial Services Act be amended to provide that show-cause notices and audit reports will be done. We recommended that they should be tabled in both houses of Parliament and referred to a committee for consideration. But the government thought that that was going a bit too far. However, the committee has made its recommendations and is hoping that the government will see the wisdom of them over time. In the short time that I have remaining, I want to draw members' attention to two other responses to the committee recommendations. The first is recommendation 9, which states —

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.

It could be thought that a parliamentary committee recommendation would not have to be made in order to do that. But it had to, and we made it, and now we want the government to respond to it. The government has noted the recommendation. It has not accepted it. It has not supported it. It has just noted it and pointed to another review. Another review! How do members think that they would feel as an Aboriginal person if they heard that yet again there is to be another review, another report and another system to look at this very critical issue? The law reform review is a good thing to have happen. The Law Reform Commission of Western Australia will inquire into coronial practice and will probably come up with a bigger, wider scale outcome. However, I am asking how long we have to wait for justice. It has been a long time for Aboriginal people—as we can now see in the matter of Heirisson Island.

Recommendation 13 was also, I thought, a very sound recommendation and one that the government did not support. Basically, the committee recommended the use of Skype for people in custody to allow a lot of the administrative work to be done without having to transport someone thousands of kilometres to sit in a court for a morning. But the government did not support that recommendation. The committee suggested not only Skype, but similar, more secure technologies, and still the government pointed to the insecurity of Skype and said that it was not good enough because it was not private.

The last thing that I will mention in the remaining 35 seconds is recommendation 20 in which the committee calls for the government to support —

... the principles of justice reinvestment and recommends that the Government focus their efforts on early intervention and diversionary programs and ... further research ...

Again, the government has only noted this recommendation.

Recommendations 17, 18 and 19, which call for the coordinated, integrated approach of government necessary to deliver justice reinvestment, have all been noted. The government has more to do on this issue.

**Hon COL HOLT:** I served on the Standing Committee on Environment and Public Affairs and wish to reiterate and back up some of Hon Lynn MacLaren's views on the committee's twenty-third report, "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". I was really encouraged by not only the outcome of the inquiry, but also the process that brought about some outcomes from the inquiry. Obviously, a little focus and a parliamentary committee stating that it is going to be fair dinkum in looking at the issues has in itself brought about change. Reminding people that there is an obligation to respond in a timely fashion is well worth it and, in my view, a great outcome.

During the inquiry, we discovered that a number of the committee's recommendations were already being addressed. It was really good to work hand-in-hand and raise the issues, and have the government address them

or have something happen as a result of our work. I was really encouraged by the process of bringing about change. Obviously, this is a very important issue for the state of Western Australia and I think that the committee was always looking with a view to what it could do to ensure that such a thing never happens again. I know that I always looked through that lens or thought in those terms about my committee work—especially when questioning the witnesses who came to give the committee evidence or when reading the submissions to the committee. I always asked: as a government, what responsibility do we have to ensure that this sort of incident never happens again?

I think some real positives have come out of the committee report—some of which Hon Lynn MacLaren has already touched on and which I have supported by way of my few comments. However, a couple of challenges remain for the government to look at.

I remember quite clearly when the committee was gathering evidence that we talked about the training of police officers, of people working for the Department of Corrective Services and of people who transport prisoners, as in this case. We were trying to drill down to how we know that the training of people who fill these roles has been effective. How do we know? One of the responses I got was, “We know it works because we haven’t had a failure.” Does that mean, therefore, that if there is a failure, it does not work? That is a line below which we have to say, “We never want to get to that point at which training has been a failure because there has been an incident.” We need to be more rigorous with how we as a government, which employs others, or we, as members for that matter, fulfil these roles to ensure that we know that the people who are responsible for these areas are correctly trained and we have confidence in that training. I am not quite sure that message got all the way through. I think it certainly helped with some of the contracting negotiations in acknowledging that we need to lift our game. I am very encouraged by what the new contracts contain to ensure that those training requirements are pushed through. But I encourage some of the other recommendations about training on the Bail Act and those sorts of things to ensure that they keep happening in the way the committee recommended. I encourage the government to keep working on them.

The other point I want to touch on is recommendation 17, which reads —

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.

That is a fairly easy thing to write down but complex and a big challenge to implement. I understand that it is a big challenge. We all know the challenges we face trying to reduce recidivism and supporting families before they get to the justice system—before they get into Corrective Services. We need to look better at the proactive approaches we can take to stop those things from happening.

During the inquiry we heard little bits and pieces of information about some of the proactive programs available in Western Australia, including regional Western Australia, that are targeted at keeping young people and repeat offenders out of the court system. Throughout that whole inquiry, it was obvious to me that there was not a coordinated approach. I could go to Esperance and ask the people there what they were doing and they may be implementing a range of programs, but the people in Geraldton, Perth or even Broome would not know exactly what they were. How do we, as a government and a community, share those success stories and have a coordinated program that delivers great outcomes for those people? As I said, it is an easy task to identify but very hard to implement. We need to develop one body that is responsible for those actions so that we can develop programs that are successful in Esperance, Broome, Halls Creek or wherever it might be and spread that success into other areas. Groups that do coordinating exist now, but I think the committee made that recommendation knowing that those coordinating groups can do only so much and the core responsibility needs to come within the Department of the Premier and Cabinet so it can oversee all the activities.

I am very encouraged by the inquiry, the process, the report and the response, but there are probably a few challenges I would like to see this government take up. As I said, they are not easy, but let us take that first step. I would like to see a much more coordinated approach for addressing recidivism and for adopting proactive programs.

**Hon GIZ WATSON:** I want to make a few comments on this report and congratulate the Standing Committee on Environment and Public Affairs on a job well done. It is good that we now have a response from the government to the committee’s recommendations, which gives us, I guess, the full picture of where this inquiry has taken us. This matter of the death of Mr Ward has had huge ramifications. It was a truly tragic and awful event that should never have happened. It is to the committee’s credit that it took up some of the matters that were raised in the petition that was presented to this place to follow up exactly which of the recommendations have been taken up.

I want to touch on a number of the committee's recommendations and I concur with the comments of Hon Col Holt on the area of training, which was a significant factor in the circumstances that led up to Mr Ward's death: the inadequate training of police to deal with the situation and of the people from G4S who had Mr Ward in custody. It seems to me it is essential that we have some feedback mechanism to ensure that training is now being adequately provided. I note that the government's response, by and large, has been positive. It is also a credit to this government that it has taken this matter very seriously; it has replaced the entire prisoner transport vehicle fleet and it has introduced transport of prisoners by air and also the use of electronic communication. These are all good things and well overdue, but welcome.

Recommendation 3 of the report reads —

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.

Although the government noted that recommendation, stating that WA Police has implemented a review of training procedures in 2009, it goes on to say that WA Police does not intend to conduct a further review of its training procedures relating to bail, so obviously it is not tabling anything in Parliament either. That is unfortunate because that was a significant failure in the fundamentals around administering the Bail Act. It is something that I will press for more information on to be really sure that that has been adequately addressed.

We cannot deal with all of the committee's recommendations, but I will touch on the area of justice reinvestment. I have spoken on this issue a number of times in this chamber. I was pleased to see that the government has in effect acknowledged that justice reinvestment has a role to play. If members are interested, they can look more closely at the government's response to recommendation 20, which is quite extensive. The government responded by saying that it recognises that justice reinvestment is a strategy worth looking at, but it goes on to say that justice reinvestment is founded on the premise that there is appropriate infrastructure for the current requirements that has sufficient design capacity prior to consideration of reinvestment of future funds to alternatives to imprisonment, and that the Department of Corrective Services added considerable weight to this point. I would just like to point out that that is a misunderstanding of justice reinvestment, because if we always wait before we pay for everything that is needed in the corrective services area, for example, we will never have the money up-front to prevent people from re-offending. Again, if members look at what happened in driving justice reinvestment in the United States, which is the origin of the concept, it was fundamentally economic arguments that drove that reinvestment. They constantly had to build new jails and as soon as they were built they filled them, so they said, "Hang on a sec; not only is this an exceedingly expensive way to administer justice, but also it is not working." They found it was a never-ending trend of further investment in prison infrastructure and policing. So they actively made the decision that they would take some of that money and spend it up-front on things such as housing, alcohol and drug issues, parenting support et cetera. The argument about justice reinvestment is that if, for example, the government were looking at the need to build a new prison or expand an existing prison, which would probably have been planned at least a decade ahead, it could say, "Hang on a sec. Let us not invest in that; let us invest some of that money in a justice reinvestment approach, which would require a whole range of government departments to work together, and then we might not have to build that prison." That is the point that has been missed in the government's response. Having said that, I am pleased that it has at least responded to the proposition that we need to look at that. Again, I think that is at least a start in the right direction; the government has not dismissed it out of hand.

It is also worth pointing out to members the government's response to recommendation 9, which states —

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 ...

I think that was the comment you made, Mr Deputy Chair (Hon Brian Ellis). The Law Reform Commission's report on the office of the State Coroner is now available, and there are a considerable number of recommendations in that report. I advise members to look at that bit of the jigsaw puzzle because I think there are some good outcomes from that report. It is certainly something that I will pursue to ensure that the recommendations in that report have the attention of government and that some action is taken. That is welcome. I also add that the office of the coroner will receive some substantial additional funds. Again, I acknowledge that this government has acted appropriately to provide that money. I think that will also help the coroner to deal with inquiries, such as that involving the death of Mr Ward, in a way that is more timely and more supportive of the affected families. That is also a plus.

Again, I thank the Standing Committee on Environment and Public Affairs for an excellent report. I am encouraged that the government has taken on board a lot of the recommendations and seems to be progressing some improvements in the system.

**Hon LJILJANNA RAVLICH:** I, too, rise to support the motion that the report be noted. In doing so, I want to make a few statements. Firstly, this is a very sad chapter in the history of this state. Secondly, it goes to show how horribly wrong things can go when private entities are involved in the delivery of services and there is insufficient scrutiny of the services that are being delivered.

The coroner made a number of recommendations about the events surrounding the death of Mr Ward in January 2008. I do not intend to canvass all those recommendations. I want to put on the public record that I am pleased that G4S Australia Pty Ltd lost the contract. I know that Serco Australia now has that contract. I am pleased to note in the report that, as part of the new contract, there are certainly more stringent requirements on the service provider. That is probably one of the positive things. The G4S contract certainly was not rigorous enough in its accountability. As a result, I think, in large part, people may well have been left to their own devices to some extent, and, of course, without the appropriate scrutiny, one of the consequences was the sad death of Mr Ward.

I am pleased to note that the new contract includes reporting requirements as they relate to work standards and service standards. There is a clear operating manual for the contractor to prepare, and to review and comply with. There are more stringent reporting requirements under which the contractor has to report critical incidents to the Department of Corrective Services within 15 minutes and major incidents within an hour, and provide situation reports. There is a provision for the termination of the contract in the event a default occurs. These are really good provisions to ensure that there is greater accountability and better scrutiny of what happens.

There was an interesting debate. As governments move to increase the amount of privatisation that occurs, there is an issue of whether private entities and individuals should also be subject to mandatory response reporting, in particular mandatory responses to coronial recommendations. I note that in the Law Reform Commission of Western Australia discussion paper for project 100, it was certainly one of the issues that was canvassed. I have not looked at what the Law Reform Commission has said in its final report, but I certainly believe that there is an issue here about whether there should be an obligation for private entities and individuals to respond to coronial investigations. The fact that they do not leaves the job half done. I say that because of the fact that so many of the services that were once delivered entirely by government agencies and departments are no longer delivered by them; they are delivered by private service providers. Whilst there is some division amongst those who have been consulted as to whether mandated responses should apply to private entities as well as public entities, that question will continue to be put out there. I know that it is difficult to get the private entities to want to be treated like public entities because it would mean a greater level of accountability on their part, but there is no doubt in my mind that this is a question that should be given serious consideration. In fact, the question of whether private entities and individuals should be subject to the same mandatory reporting requirements as public entities in response to coronial recommendations should be up for discussion, because it is unsustainable for the coroner to make a series of recommendations and only some of the recommendations can be implemented purely and simply because it will be only the government sector that will respond to those recommendations.

The other issue is that the coroner makes an enormous number of recommendations through the work that he does. In fact, we had the coroner at the Standing Committee on Estimates and Financial Operations committee meeting on Monday. I guess from his point of view one of the frustrations is that he cannot force government agencies, let alone private entities, to take up those recommendations and fully implement them. Given the serious nature of the work that he is involved with, it raises the question of whether government agencies should be compelled to implement all the recommendations made by him. One of the problems is that the coroner makes recommendations in terms of what is in the public interest. However, he does not give consideration to the financial impact of the recommendations that he puts forward as a result of the work he does. Unfortunately, given that some of the recommendations involve considerable financial impact for governments, it makes it very difficult for governments to implement his recommendations in totality. As I see it, they are some of the issues that make this whole area very complex and there are interesting questions deserving of discussion and full consideration, because we want to advance from where we are and try to come up with the best public policy to deal with some of the challenges that this committee report highlights and that the work of the Law Reform Commission also highlighted.

**Question put and passed.**