STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

TRANSPORTATION OF DETAINED PERSONS

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 26 JULY 2010

SESSION THREE

Members

Hon Brian Ellis (Chairman)
Hon Kate Doust (Deputy Chairman)
Hon Phil Edman
Hon Colin Holt
Hon Lynn MacLaren

Hearing commenced at 1.30 pm

MARTIN, HON WAYNE
Chief Justice, Supreme Court of Western Australia,
examined:

The DEPUTY CHAIRMAN: Chief Justice, the committee indeed welcomes you to the hearing this afternoon. We certainly appreciate that it is unusual for you to meet with a parliamentary committee, and we appreciate you doing that because we understand that you have an ongoing interest in these matters. We thought that today we would invite you to make a statement on a number of the areas that we have canvassed in our inquiry and then maybe open it up to questions.

Mr Martin: Certainly. Thank you, Madam Chair; it is a great honour to be invited and it is a pleasure to be here this afternoon. The issues into which you are inquiring are, I think, vital issues of great public importance. They are issues upon which I have spoken many times since my appointment as Chief Justice. It is perhaps not inappropriate for me to commend the committee on taking the trouble to inquire into these very important issues.

I have been invited to make an opening address. I have to say that I could probably speak for days on the issues that you have identified. I will not do that, but I will speak for rather longer than is perhaps customary. If I go on for too long, please feel free to jump in to stop me—shut me down.

But running through the issues as you have identified them in the letter to me, the first issue that you have asked me to address is the incidence of Indigenous imprisonment and overrepresentation in the criminal justice system. I have said many times since my appointment that the gross overrepresentation of Aboriginal people in the criminal justice system of Western Australia is the biggest single issue that confronts the criminal justice system of Western Australia. You are probably familiar with the statistics, but at the risk of descending into tedium, they do, I think, merit some attention. The latest figures that I have seen suggest that the rate of adult Aboriginal imprisonment is 4 300 per 100 000. In imprisonment numbers, we always talk about figures per 100 000. That rate of 4 300 per 100 000 is larger than when I started talking about these matters only four years ago when I was appointed when it was about 3 800 per 100 000. Over the time since my appointment, which is, I think, only a relatively short time ago, that number has gone up by more than 10 per cent. That is comparable to the figure of 1 300 per 100 000, which is what the rate was about 25 years ago. Over the last 25 years, the rate of Aboriginal imprisonment in Western Australia has more than trebled. That of course is over a period during which the Royal Commission into Aboriginal Deaths in Custody reported and made a number of recommendations; the thrust of which was aimed at reducing the rate of Aboriginal imprisonment. We have seen the same phenomenon around Australia: in most jurisdictions, the rate of Aboriginal imprisonment has increased at a time when virtually all governments have had specific policies aimed at reducing Aboriginal imprisonment. If you go to regional variations, interestingly the rate in Western Australia 25 years ago of 1 300 per 100 000 was almost exactly what the rate in Victoria is today, so Victoria has done very well in containing its rate of Aboriginal imprisonment. That may not be surprising when you think about the demography of Victoria. But if you go to a more comparable jurisdiction, such as Queensland, the rate of Aboriginal imprisonment is only 1 600—I say only, it is still a very high figure, but relative to ours it is 1 650 per 100 000. In Western Australia, we are imprisoning Aboriginal people at 2.5 times the rate at which they are being imprisoned in Queensland. If you go to the Northern Territory, our rate is more than double the rate of Aboriginal imprisonment in the Northern Territory as well.

If you break that down into gender figures, the rate for adult Aboriginal men goes to 8 000 per 100 000. Those of you who are quick at maths will quickly realise that that means one out of 12.5 or 13 adult Aboriginal men in Western Australia will spend tonight in prison. It is interesting to compare that figure of 8 000 per 100 000 to international figures—they are a bit hard to get. The country in the world that locks up more people than any other by far is the United States. Its overall rate of imprisonment, roughly speaking—it varies, but very roughly speaking—is 1 000 per 100 000. Western Australia's overall rate is 280 per 100 000; Victoria is about 100 per 100 000. In very rough terms, the US has four times our imprisonment rate; we in turn have almost three times the rate of imprisonment of the state of Victoria. The US has 10 times the rate of imprisonment of the state of Victoria. If you break that down into ethnic groups within America, the most imprisoned group in America, predictably enough, is African Americans. The rate of imprisonment for adult African Americans in America is 8 000 per 100 000, which as I said earlier is almost exactly the same as the rate of incarceration for adult Aboriginal men in Western Australia. Interestingly, if you go back to the overall figures, the disproportion between Aboriginal and non-Aboriginal people in Western Australia is significantly higher than the disproportion between African American and non–African American people because America has an overall much higher rate of imprisonment. If you break down our rate of 280 per 100 000 into non-Aboriginal and Aboriginal people, one can see that the non-Aboriginal rate is about one twenty-fifth of the Aboriginal rate. An Aboriginal adult in Western Australia has about 25 times as much chance of being imprisoned as a non-Aboriginal person. That rate holds true for women as well. The rate of disproportion for women is very high indeed. Basically, that means about 3.5 per cent of our population is Aboriginal people, but almost 40 per cent of our prison population is Aboriginal people. The disproportion is enormous.

If you go to juveniles, we see the same degree of disproportion and the same very high rates of Aboriginal incarceration. Moving to rates per 1 000, which is how we talk about juvenile imprisonment rates, in Western Australia the most recent figure for Aboriginal young people is 8.11 per 1 000 on an average day. That compares to 6.1 in New South Wales, 2.86 in the Northern Territory and 7 in the ACT, which is anomalously high—I do not understand; it must be a very small base. However, the rate of detention of Aboriginal juveniles is extremely high. If you look at the proportions, as I said earlier, an Aboriginal juvenile in Western Australia has about 43 times as much chance of being in custody as is the case for a non-Aboriginal juvenile. That compares to the adult ratio of 25 times. If you look at juveniles, Aboriginal kids are even more disproportionately represented in custody than are Aboriginal adults. So, on any given day in Western Australia, about 160 kids are in detention, of whom—it varies—between 65 and 75 per cent will be Aboriginal. Those numbers are significant. More kids are in custody in Western Australia than are in Queensland, even though Queensland has a population more than double ours. We have more than twice as many kids in custody on any given day as the state of Victoria, even though Victoria has a population 2.5 times ours. I think we have a very significant issue in relation to the overrepresentation of Aboriginal people in our criminal justice system. I will come back to the reasons for that and what we might do about it under some of your other headings.

The next issue that you have asked me to address is that of Indigenous imprisonment arising out of drivers' licence offences, particularly in remote areas; that is also a very important subject, if I might say, with respect. One of the things that we have seen over the past four or five years in the Magistrates Court is an enormous increase in traffic offences coming before that court. The number of traffic offences coming before the court has more than doubled from 26 000 to about 57 000 over the years between 2004 and 2008. Again, if I can just go to the stats, in 2008–09 traffic regulatory cases with dangerous driving and driving under the influence accounted for more than a quarter of the custodial sentences imposed by Magistrates Courts. That is, about 1 000 of the 4 000 imprisonment sentences imposed by Magistrates Courts were for driving cases. It is interesting, when you look at those, to put those figures in a comparison, the Supreme and District Courts of Western Australia over the same period sentenced about 1 200 people to imprisonment. People went to prison for driving offences at almost the same number as people imprisoned by all the

superior courts of our state. In relation to Aboriginal people, excluding cases of dangerous driving and driving under the influence, about one-third of the charges brought against Aboriginal people were brought in relation to driving offences. Including dangerous driving and driving under the influence, about one-quarter of the Aboriginal people who were given a prison sentence in Magistrates Courts were sentenced for driving offences. Therefore, a quarter of the Aboriginal people who were imprisoned by magistrates were in prison for driving offences. One of the interesting things about that, of course, is that although there are a number of Aboriginal people who are sentence for dangerous driving and for driving under the influence—unfortunately they are overrepresented in those who are imprisoned for driving under the influence—a very significant number of those people have been imprisoned for driving whilst under suspension or whilst disqualified from holding a licence. You have probably heard that there are some very significant systemic issues in relation to driving licences for Aboriginal people, particularly in remote areas. Those systemic issues are, I think, multifaceted. They start, for example, with the difficulty of simply getting a licence. If you are in a remote community, you have to make your way to a place where you can take the test that you need in order to get your probationary licence—to get your P plates or, more particularly, your L plates. You have to answer a questionnaire administered in a language with which you are not particularly familiar, and it might ask you about things like freeway on-ramps and off-ramps and how you deal with traffic lights. Many of these kids will never have seen a freeway or a traffic light, and they are answering a questionnaire in a language with which they are not familiar. Of course, in order to get a licence, they have to be supervised for a certain number of hours by drivers who meet the requirements of the Road Traffic Act. In a lot of these remote communities, people who meet those qualifications are very thin on the ground; there are just not enough people to supervise the driving. Quite commonly, a 16-year-old person, before they are even eligible to get a licence, might be asked to drive the car because a family member is too drunk to drive themselves. They will drive the car and be apprehended. Under the Road Traffic Act, apprehension for driving without a licence leads to automatic disqualification from holding a licence. If you live in a remote community, it is not as though you have the option of getting around by taxi or bus, and so practical necessity will often require that person to drive again. They get apprehended again, and another period of automatic disqualification follows. It is not uncommon to see quite young Aboriginal people in our courts up on their eighth, ninth, tenth or twelfth charge of driving whilst disqualified or under suspension who have never had the opportunity to get a licence because they have never been in a position in which they were free to apply for a licence. Again, there might be pressure placed on them by another family member to drive. It becomes extremely difficult for those people to get licences. They keep on offending. They get to the point at which the court becomes exasperated with their repeated offending and a custodial sentence eventuates—even though they have never driven drunk or driven dangerously. Of course, whilst they are disqualified from holding a driver's licence, generally speaking, it is almost impossible for them to gain employment because, for example, the mining companies, which are usually the only source of employment in these areas, will generally require a driver's licence as a condition of employment. So there are some really serious issues confronting driver's licensing in relation to Aboriginal people.

The committee, under the chairmanship of Ben Wyatt and which contained a number of people from government and non-government organisations, reported on these issues about three years ago, and came up with a number of solutions. I would, with respect, commend that report to this committee. I think a number of those solutions were very prudent. They included things like sending out teams to address lack of licensing in these areas. I think that that is a very important initiative. I should mention that some of the mining companies have been very prominent in addressing the lack of licensing in some of our remote areas. I think they are to be commended on that. There are other propositions around that I think merit serious consideration, including making it easier for Aboriginal people in remote areas who are disqualified to obtain extraordinary licences. If you are disqualified for life, as many of these people are, it becomes extremely difficult to obtain

an extraordinary licence. I think that we ought to make it easier for people who can demonstrate to the court that they have mended their ways and that they do understand the obligations that go with having a driver's licence to recover their licences.

A slightly more controversial suggestion is that licences might be issued on a regional basis; that is, you might get a remote area license that does not authorise you to drive in a built-up area. That gets a little more problematic, but again it seems to me that because of the magnitude of the problem to which I have referred, all of those things are worthy of consideration. So, drivers' licences are, I think, a very significant problem.

You next asked me to comment on the cost and effectiveness of current punitive and correctional strategies. One thing that we can say about imprisonment is that it is very expensive; it is by far the most expensive of the solutions that we apply. In general terms, as you are probably aware, it costs about $275 a day or about $100 000 a year to incarcerate an adult.

For juveniles, the figure is about $610 a day or $220 000 a year. That is in terms of recurrent expenditure. If you go to capital, in order to provide a prison bed, in very rough terms, it is about $1 million per prisoner. A 150-bed prison is going to cost the state $150 million; a 250-bed prison $250 million and so on. Every time we increase the prison population it is $1 million in capital and $100 000 in recurrent if we are to accommodate those prisoners adequately. Of course quite often we do not accommodate them adequately.

[1.45 pm]

Turning then to juveniles, some of you will be aware of the Auditor General's report issued a couple of years ago after his inquiry into the juvenile justice system. After looking carefully at the figures, the Auditor General estimated that the 250 children who would have the most number of intersections with the juvenile justice system as they pass between the ages of 10 and 17—which are the ages of criminal responsibility for juveniles—those 250 kids would cost the state of Western Australia $100 million between them. Again, if you are quick at maths, that is $400 000 per child for each of those 250 kids. One thing we know is that about 75 per cent of those kids are likely to be Aboriginal kids. There is an awful lot of money—$75 million—being spent on those Aboriginal kids going through the juvenile justice system. Unfortunately the only thing we can say with confidence about the outcome of that process is that it is significantly more likely than not that each of those children will graduate into the criminal justice system. We have a lot of money being invested in juvenile justice. I think the question is whether there might be more effective ways of changing behaviours. I will return later to perhaps the notion of proactive investment.

In relation to expenditure, the figures I have been given suggest that the annual budget for the Department of Corrective Services went from $473 million in 2007–08 to $771 million for this financial year, which is growth of about 63 per cent. I have not done the comparative figures but that suggests to me that it would be one of the fastest growing areas of state expenditure. Again, one wonders just how effective that is in terms of reducing crime. The numbers are very hard to get but the best estimate from General Sanderson's committee, just in terms of the state—leaving the commonwealth out of it—is that probably around 50 per cent of the money that is spent by the state of Western Australia on Aboriginal people is spent in the criminal justice system. Again, you really wonder whether that expenditure is shutting the stable door after the horse has bolted.

The next question you have asked feeds on logically from that; that is, strategies or programs that might be effective in reducing Indigenous imprisonment rates. I think that necessarily begs the question of what is causing the high Indigenous imprisonment rates. Of course a fairly simple and superficial answer to that is: because Aboriginal people commit many more crimes. That is just a simple fact. It is an unpalatable fact but it is not a fact from which we ought to move away. It is also a fact that most of those crimes are committed against other Aboriginal people. Whilst Aboriginal people are grossly over-represented amongst offenders, they are also grossly over-represented amongst victims of crime. If you are going to reduce the Indigenous imprisonment rate what you

have to do is address the causes of Indigenous offending. If you ask yourself what they are, it seems to me, again fairly self-evidently, that they are all the areas of social disadvantage that Aboriginal people suffer and about which we have known for so long. They include social dislocation, cultural alienation, dispossession from land, very poor standards of health at all ages, very low levels of participation in employment, very poor housing standards and very low levels of participation in schooling. It has been estimated that only about 35 per cent of Aboriginal kids in Western Australia attend school regularly. That necessarily feeds into low levels of participation in employment. There are significant issues of substance abuse, both alcohol and other illicit drugs, which in turn feeds into things like foetal alcohol spectrum disorder, which is a significant issue in a number of parts of our state. Substance abuse leads in turn to mental health issues and overall health issues. All of these things feed off each other. All, I think, work together to produce such enormous levels of general disadvantage that almost inevitably Aboriginal people are going to be over-represented in the criminal justice system.

What that means is that the solution to the gross rate of Indigenous imprisonment is not easily found. It also means that because the causes are multifaceted and interrelate with each other then the solutions must be multifaceted and must also interrelate with each other. They are not going to be arrived at overnight. In other words, what we need is programs that address all these areas of social disadvantage. I think that means that solutions to these problems are still some way away. It also means—I hope this does not sound like a cop-out—that the solutions to these problems are more likely found outside the criminal justice system than within it because if the causes are outside the responsibility of the criminal justice system then so must be the solutions. That is not to say that we should not be using the techniques that we have available within the criminal justice system to address this problem—far from it. We need to do everything that we can. There have been some very positive and very important developments in this area in recent times. There were programs developed in Kalgoorlie and in Geraldton addressing the over-representation of Aboriginal juvenile offending and making it easier for those kids to remain in the regions rather than be sent down to Rangeview. Happily, the government has announced that those programs will be extended to the Kimberley and the Pilbara. The last budget allocated $43 million to enable those programs to be extended in the Kimberley and the Pilbara. This is very positive. I think the government is to be commended very strongly on those initiatives.

Increase diversion: one of the other things that the Auditor General found, as you may be aware, was that rates of diversion—that is, movement away from criminal justice into non-court-based outcomes—for children had diminished significantly since the Young Offenders Act was introduced in the mid-90s to most recently. Happily, the government and the police department are working strongly to try to get those rates of diversion back up. I received a presentation from senior officers of the police department about the steps that are being taken there—which are supported by government—which are aimed at increasing rates of diversion away from the court process. Unfortunately, one thing we do know with kids is that the more you involve them in the court process, the more likely it is that they will return to court. Anything you can do to keep them out of the criminal justice system is advantageous. Government has also been very proactive, and I think again is to be commended, for improving the level and delivery of programs. The Minister for Corrective Services has implemented requirements for his department to improve program delivery and has also introduced mechanisms for measuring the efficacy of the programs that are being delivered. Again, I think those are enormously positive developments.

There have also been developments outside the criminal justice system in relation to things like community-based alcohol restrictions at Fitzroy Crossing, Norseman and Halls Creek. They are very interesting to me anyway because they reveal an essential prerequisite to effective means in these areas; that is, the responses have to be supported by the Aboriginal communities themselves. I think a lot of the things we have done in the past have been imposed upon Aboriginal people by well-meaning non-Aboriginal people. We need to encourage Aboriginal people to take

responsibility for and ownership of these problems, and to themselves devise the solutions. I think if we do that the solutions are likely to be much more effective. We see that particularly in places like Norseman and Fitzroy Crossing where some very strong members of the Aboriginal community were themselves responsible for taking the initiatives in relation to alcohol restrictions that have been so beneficial in those communities. Of course those instances also reveal the problem of displacement. As you would be aware, when you have a localised solution, unless it is a regional solution there are going to be problems. Although the displacement factor was not as high as some had predicted, it is undeniably the case that some of the people from Fitzroy who were drinkers in that town have moved to other places in the Kimberley, such as Broome. Some of the people in Halls Creek who were drinkers and some of the people in Balgo who used to go to Halls Creek to get a drink have relocated to Kununurra and are causing some problems in these areas. What that reinforces is that although local initiatives and local support is important, problem of alcohol needs a regional solution, not a localised solution. That means that we need to look at all the regions in which there are problems.

Reverting back to the criminal justice area, the Kalgoorlie Community Court has been in operation for some years. You would be aware of its general nature. It involves a magistrate sitting on sentence issues with a number of senior representatives of the local community. There was an evaluation carried out of that court, which reported last year. The figures that were analysed suggested the rates of reoffending were in fact higher for those who went through the Community Court than those who went through mainstream Magistrates Court. A moment's thought would suggest why that is likely to always be so; that is, if you are representing an Aboriginal person who is not at risk of going to prison, then it is going to be easier for you to take them through mainstream court where they are likely to have a fine imposed, which they will probably be unable to pay and have a community service order. Community Court is a much more traumatic experience for the offender because they have to answer to members of their own community, sometimes in language, and explain their conduct. It is a more traumatic experience. They and their representatives tend to only undergo it if they are at risk of imprisonment as a consequence of the seriousness of their offence or as a consequence of their prior record. Almost by definition, Community Court is going to select those who are more likely to be problematic. A difference in outcomes is only to be expected. Despite this difference in outcomes, I think it is to the enormous credit of the government that they have announced continuing support for that program. It is also very important that they have recognised that in order for courts such as the Community Court to be successful, they need to be supported by community-based programs so that the magistrate and the court have a greater range of options and a greater range of support within the community to try to address the causes of offending that have brought that person before the court in the first place. Again I think it is very positive and the government is to be commended for continuing its support for the Kalgoorlie court and providing it with additional resources in terms of community-based solutions that it needs to be effective. There have been a number of other strategies. I do not mean to exclude those. Those are some very significant, very important and very beneficial ones. I will talk some more about holistic approach when we come to that topic.

There are important things happening, but we should not sit around waiting for that rate to drop overnight. As I said, unfortunately in the four years I have been talking about these things the rate has gone up rather than down. All the indicators are that the rate is heading in the wrong direction.

The next topic you have asked me to address is court action to reduce the time an accused spends in custody. We have done a lot of things to try to reduce that period of time. We have tried to expedite trials. We have been quite successful in that regard. There are still some inevitable obstacles; that is, forensic testing takes time, prosecutorial disclosure obligations inhibit those sorts of practices. In terms of bail practices, there has been a very important development in the Children's Court whereby as a result of procedures introduced by the President of the Children's Court, juvenile offenders are not transported away from their place of arrest unless and until a bail decision has

been made by a Children's Court magistrate. They are brought before a higher level in the bail system. As you may be aware, bail decisions cascade upwards. They are made initially by the sergeant of police in the station at which a person is arrested. If they are refused bail, they can seek review by a justice of the peace. If they are still refused bail, they have to be reviewed by a magistrate. What they have done in the Children's Court is effectively go straight to the magistrate. Magistrates sit around the clock if necessary to deal with those issues. I think that is very important. What I would like to see is the same procedure available for adult offenders, so that before any adult offender was removed from the place of their arrest and transported—sometimes over long distance to another place—the bail decision should be reviewed by a magistrate.

We have had far too many occasions upon which, for example, a person will be arrested in Kununurra. Before we had a magistrate in Kununurra, they would be transported to Broome in order to be brought before the magistrate—a distance of about 1 000 kilometres. The magistrate would then grant the person bail. They would then have to be sent back to Kununurra or wherever they came from. There are significant issues in relation to that. We have the techniques now to enable bail decisions to be made by audiovisual connection. We ought to be utilising those. We are doing the best we can. It gets problematic over weekends and at night, but I think we can do better in terms of reducing the amount of time people spend in custody prior to going to court. There are a number of committees that are aimed at that. There is the transport of persons in custody working group which I formed after the tragic death of Mr Ward, which has that as one of its key objectives, and the strategic criminal justice forum, which we have also formed, which has the heads of all the criminal courts, DPP, police and others. It also has this as one of its agenda items. We are doing our best to try to reduce the amount of time spent in custody.

The next issue you have asked me about is the holistic approach issue, if you like. As I suggested earlier, because the causes of Aboriginal offending are multifaceted so must the solutions be and so must they be interrelated. I have said many times, as have many others, that government needs a holistic approach to these issues. General Sanderson has said that many times. It seems to me that the message has got home—people are listening.

[2.00 pm]

I have had the benefit of addressing the meeting of directors general group of the main departments involved in this area and I came away with the firm impression that they understand that their agencies have to work with each other effectively and that they have to devise community-based solutions. Roebourne is a classic example. Those of you who have been to Roebourne know that it is not in the best of condition; it has not been for some years. Rather than having for Roebourne a housing solution, a health solution and an education solution, they now get, I think, that there has to be a Roebourne solution involving housing, health, education, schooling—all those things on the same page—and it has to be a solution that addresses the particular problems of Roebourne and not just be sanctioned and approved by the Aboriginal people, but in fact be the initiative of the Aboriginal people themselves. So you need to strongly involve the Aboriginal people of Roebourne in the development of that holistic approach to the problems that confront Roebourne.

As I understand it that is happening and that is the model that needs to be followed for each of our communities. There are different problems in different communities. We need a community-based approach with all the agencies working productively together. But as I say, critically, I think, it is also required for the Aboriginal people to take ownership of and responsibility for the problems. I think that is a very important part of the strategy. I think, really, the need for a whole-of-government approach and interagency cooperation is, with respect, self-evident. I get the sense that that is happening. I think the Minister for Indigenous Affairs is very alive to that issue as is his director general, Pat Walker. I know that other agencies are very much on top of it too. I know from discussions I have had with the Premier that he is very alive to the need for this sort of multi-facetted and interagency approach.

The next issue you asked me to comment on is recommendations in the coroner's report and progress in implementing the recommendations. Many of those recommendations lie outside the justice system, so they are not really within my area of expertise. But I am pleased that from what we see of course with what happens in terms of the vehicles that are coming into our courts, the standard of vehicle has improved immeasurably. I think the steps that have been taken to substitute air transport for road transport have been enormously beneficial. Those are terrific advances. I think the move to take juvenile transport from police and give it to custodial services will be another positive step forward. From what I see of the responses to the coroner's recommendations, I think some very positive things have emerged from that report and things have happened that are, I think, beneficial and very significant.

As I have already mentioned, the main focus of the transport of persons in custody working group—you asked me about it—is to reduce the transport of persons in custody, obviously enough. We try to identify ways in which we can reduce it. There is still, I think, too much prisoner transport happening in Western Australia. Happily, because of the steps that have been taken, it is not quite the same degree of discomfort and risk as has previously been the case, but there are still unnecessary movements occurring. I still hear of stories about a prisoner being taken from custody in Perth to Broome to appear by video link before a judge in Perth, and that is obviously crazy. Sometimes the prisoner has an interest in doing that because while he is in Broome he can at least be reunited with family through a visit. But very often it is just administrative mix-up because we in the courts often do not know where a prisoner is when we issue the warrant. We need, I think, systems whereby every proposed prisoner transport is interrogated to see whether it can be avoided. One of the recommendations of our working group was to create a position within every significant custodial institution where the officer would be charged with the responsibility of, if you like, interrogating the need for a prisoner movement to see whether there is a way it can be avoided. Unfortunately, that proposal has not yet been resourced by government. Allied to that are the other proposals we have made to increase utilisation of audiovisual facilities to reduce the rate of prisoner transport. Again, we have not received the budget support we would have liked for those proposals.

In courts we are well advanced in relation to audiovisual links. Most of our courts are audiovisually equipped. We could do better. The court in which I mostly sit, court No 1, which is the biggest court in the Supreme Court, is not audiovisually equipped. If it was audiovisually equipped we could make much better use of it because, for example, the Court of Appeal could hear criminal appeals while the prisoners attended from their institutions rather than being brought into court, which is something they do not like because they have to get up very early. Quite often if they are held up late, they get back after dinner has been and gone and so on. We could do better, but it is fair to say that the Department of the Attorney General has been very proactive in using the resources it has to improve the audiovisual links in the court houses. The problem with that is that unless and until those facilities are matched by the same extended facilities in the prisons, there is no match-up. If at 10 o'clock every morning we have the different courts around Western Australia wanting to have 20 prisoners from one prison linked into court by audiovisual link, unless those facilities are there in the prison, it is not going to work. Many of the prisons simply do not have the number of audiovisual links that would be desirable to make the system work as effectively as it could. That is quite often because of the very significant space problems that already exist in many of our prisons. There is just not the physical space available to put the facilities in and, of course, the facilities are not cheap. Nor is prisoner transport cheap so, in the longer term, I think any study would show that improving those electronic facilities will save money in the long run. I think it is happening, but not quite as quickly as I would like. There are things we could do better in that regard. Certainly, the focus of our committee has been to improve use of audiovisual links to reduce prisoner transport.

You next asked me to comment on that specific issue and the judiciary's view on the use of audiovisual links. We very much support the use of audiovisual links. The position of all the courts

in Western Australia, adopted some three years ago I think now, is that, it is our view that where people are in custody, they should be physically present in court only if they are going to enter a plea, are going to be sentenced or are going to be tried. Otherwise they should stay in the institution in which they are and their appearance should be by video link. We are very supportive of that, and that is the default position in all our courts. It is much easier now for the District Court to achieve that since it moved into its new building where they have much better audio–visual gear than they used to have in the old Central Law Courts. Part of the refurbishment of the Central Law Courts has also involved an upgrading of the audio–visual link. The courts, as I say, are in a position in which we could probably achieve that, but the prisons are not. That is where we need the prisons to catch up with us in terms of the facilities available. That is not for want of trying in the prisons; they agree with that approach. They are represented on our working group. They want to do it too, but there are resourcing issues they need to address.

The specific questions you asked me are —

> Which courts use audio visual links …

We all do as much as we possibly can. You also asked me —

> In what circumstances is audio visual …

I think I have answered that. Every circumstances in which there has not been a plea, a trial or a sentence. We all support audiovisual appearances and we all want that to be our default position. You also asked about —

> Court action to facilitate the use of audio visual links.

As I say, the committee I have convened is proactively promoting that. We get regular reports on the extent of audio–visual utilisation in our various courts and try to look at ways of improving the extent of that utilisation, encouraging judges and magistrates to use the facility wherever possible. Factors limiting or impeding the increased use of audiovisual links is essentially the problem of where the prisoner is, be that a custodial institution. Sometimes in remote communities there will not be a link there, although, increasingly we find happily that many of the multifunction police facilities that are being built in the remote communities are audiovisually equipped. It just depends on what area of the state they are in in terms of whether there is broadband available to them. The next question is —

> What action should be taken, or practices implemented to increase the use of audio visual link?

Again, I think that follows from what I have said. Improving the other end of the linkage in the prisons and in the police stations is what is really required.

On the use of audio link, we do that. We will do that if we have to. It is less satisfactory than an audiovisual link obviously because you cannot see the prisoner and he cannot see you. If it is a toss-up between using audio link only or having a prisoner transported over a long distance, we will and do use audio link only for bail hearings if we have to. That I think has got me through the list of topics.

The DEPUTY CHAIRMAN: Thank you very much.

Mr Martin: I am sorry to have gone on for so long.

The DEPUTY CHAIRMAN: I think you have provided some fabulous information and feedback to us. You talked initially about Victoria and how our rates are so much higher—double those in the Northern Territory. Given the differences in population, what are the Victorians doing better than we are?

Mr Martin: I think the demographics of Victoria are different in terms of Aboriginal people. They do not have the remote communities that we have. For example, they have wider spread Koori

courts, as they call them—community courts—in not only the Magistrates Courts but also the Children's Court and the County Court of Victoria. They have that approach. Probably more relevant demographically is Queensland, which has a lot of communities that are not dissimilar to our remote communities. Our rate of imprisonment is still double what is occurring in Queensland. I have made some inquiries about why that is and a study is being conducted by researchers at the Queensland University of Technology on just this issue because it has also noticed how high our rates are. The preliminary outcome of that research seems to be that Aboriginal people in Western Australia commit a lot more crime and a lot more serious crime. Whether that is because our living conditions or social disadvantage are worse I do not know. It does not appear to be because the judiciary in Western Australia is a lot more savage on sentencing, although, the judiciary of Western Australia sends a lot of people to prison. There is no doubt about that. More than anything else that seems to be as a consequence of the nature of the offending that is coming before the courts. It is a very interesting question and something upon which much more information would be very useful in working out just why these rates are so different and what the causes of them are. Happily, there is some research going on. It will be useful to see a bit more of that research.

Hon COL HOLT: I know a group who are trying to teach Aboriginal men to drive—even in the south west in Bunbury. One of the biggest issues is that they do not have a roadworthy vehicle to go to the drivers' licence testing. If you cannot rock up with a working car, you cannot get a driver's licence.

Mr Martin: It is a big problem. It is one of those areas in which the old saying "an ounce of prevention is worth a pound of cure" applies. If we spend a bit of money on encouraging Aboriginal people to get a driver's licence, it is so much more effective than spending a lot of money locking them up as a consequence of them not having licences, not only because locking them up is not effective, but also because, as you say, it gets them job ready so they can get into a job, they can get some income, they can develop self-esteem and address all the areas of disadvantage we have been talking about. I think government is realising this. As I say, the Wyatt committee report investigated this some years ago. We really need to get onto it. We have to be delivering these services right at ground zero and making sure the facilities are available.

Hon COL HOLT: That is being driven by an Aboriginal employment agency in the south west. It sees the gap. I agree.

Mr Martin: That sort of initiative is terrific and needs to be supported and resourced.

Hon PHIL EDMAN: Chief Justice, in relation to Indigenous population offending, did you say it is on the increase compared to the figures over east?

Mr Martin: Yes.

Hon PHIL EDMAN: Why is it happening?

Mr Martin: I wish I knew the answer to that. All I can say is the anecdotal evidence is that the levels of violence that are being exacted by Aboriginal people on each other are increasing. The levels of reported sexual abuse seem to be increasing. You might recall that some years ago we had a major outbreak of reported sexual abuse in the Kimberley, where the figures went over the moon. One never knows of course because I am talking about the gap between reported offending and actual offending. Only a proportion of actual offending is reported. In the area of sexual offending, it is reasonable to suppose that it is one of the areas in which a lot of offending goes unreported. When you get a significant increase in reported offending in an area like that, you do not know whether it is an increase in actual offending or whether it is simply an increase in reports. I think in the Kimberley it was the latter; it was an increase in reports. I say that because it happened about two to three years after we had implemented the recommendations of the Gordon inquiry, which had resulted in permanent police presences in a lot of the remote communities and in sexual health workers being posted to a lot of remote communities. For the first time in a long time you had a

situation in which women and children in these remote communities felt safe and felt in a position whereby they could disclose offending behaviours. I suspect that was what resulted in disclosures. Once you get some disclosure it encourages other people to disclose as well.

[2.15 pm]

So in a perverse sort of way, although the reported rate of offending went up, it was because we were doing something right because we were providing women and children with the opportunity to make the reports, so in a roundabout almost bizarre way it was actually a positive sign that the reported rates went up. I do not know how that fits in to other levels of offending, like assault. I get continually depressed by the levels of violence that I see Aboriginal people exerting on each other, often alcohol and drug-fuelled, it just fills me with despair about how we can address those sorts of issues.

The DEPUTY CHAIRMAN: I was just curious in terms of the use of the audiovisual equipment, is that fairly widespread in other states as well?

Mr Martin: Not nearly as widespread as Western Australia; we are by far the most advanced in that area in Australia. I think that is out of practical necessity because we have such a large state with so few people we simply had to use it and we are much better advanced than other jurisdictions in that area, which is good.

The DEPUTY CHAIRMAN: It was put to us—I am not sure whether it is coming through written submissions or verbal submissions—that the video link facilities in some of the custodial institutions are impeding the capacity of the courts to use the video link. Is that just a case of the resourcing issue —

Mr Martin: Yes.

The DEPUTY CHAIRMAN: — and making sure it is up to date?

Mr Martin: From recollection when I was at Bandyup a couple of months ago, I think there were two audiovisual links. That is the main women's prison so if you have more than two women appearing in a court at the same time, you cannot do it. It is just as simple as that.

The DEPUTY CHAIRMAN: How do you manage with using audiovisual equipment? How do you manage issues of privacy?

Mr Martin: You cannot, basically. There are problems also for legal representatives communicating with their client. If the legal representative is in court, the client is in prison and they need to take instructions, it becomes problematic. The way we tend to solve that at the moment is that we clear the court and allow the legal representative to use the video link to talk to their client. Whether they are completely confident that they have confidentiality, I think there is an issue about that. In the County Court of Victoria they have like a telephone booth at the back of the court which has a direct line to the prison facility, so counsel can go into the telephone booth and have a conversation that he or she knows will not be overheard with the prisoner on the telephone at the other end. Again, that I think is a bit of an improvement on the way we do it, so those sorts of facilities would, I think, be desirable.

The DEPUTY CHAIRMAN: So I suppose it is a case of having a look around and seeing what happens at other places and picking up the best of that.

Mr Martin: Yes, and learning from it. The County Court of Victoria has for a number of years now—I say we are well advanced—in the regional areas got to the point where nobody appears in that court in custody unless they are going to be tried or sentenced. They have got to that point with their new court building, they have the facilities and they have the arrangements and they manage that very well. We are getting there in our District Court; we still have a bit of a way to go because of the prison facilities' problems.

The DEPUTY CHAIRMAN: You talked earlier about the United States and the high level of incarceration, are they using these facilities? Because I imagine there would be some similar places with issues of remoteness there as well, is there any evidence that they are using these sorts of facilities?

Mr Martin: I do not know the answer to that, I am afraid; I would just be speculating. I am sorry; I cannot help you with that.

The DEPUTY CHAIRMAN: I was just curious.

Mr Martin: Again, when one talks to colleagues from other states and other countries, I think we are as advanced as any jurisdiction of which I am aware in terms of the use of audiovisual facilities, again, out of practical necessity.

Hon PHIL EDMAN: Chief Justice, out of all the issues in relation to Indigenous people in Western Australia, what would be the top priority that you think needs to be looked at right now? I know they are all a priority but if you had to put one at the very top.

Mr Martin: I do not think much can happen of benefit in those communities until you have solved the alcohol and substance abuse problem because if the people are drunk or stupefied, then not much can happen. So that to me is the first starting point and then from there if I had to pick priorities I would say they are employment and school participation rates. Because if you have, as we have tragically in a number of our remote Aboriginal communities, lots of people with nothing to do, then trouble is inevitable. If you give people employment, you give them the pride that comes from a fulfilling occupation and you are at the same time helping them but you are also giving the kids an incentive to go to school. At the moment in a lot of our communities the kids say, "Why would I go to school? There are no jobs. What's the point of it?" So if you can get some employment in some of these places, the kids can see the reason. If somebody is coming back from a job every week or fortnight with some money in the pocket and drives a nice car, then all of a sudden you have a role model for those kids to encourage them to go to school. Grog, jobs and schooling seem to me to be the critical factors.

The DEPUTY CHAIRMAN: I was just wondering: the committee that you have set up, the transport of persons in custody working group, is the work that is being done there all public?

Mr Martin: No, it is not, but if you wanted further information there is no reason why we could not provide it.

The DEPUTY CHAIRMAN: I just thought, Chief Justice, there might be things that you are doing there that might be very important to us in terms of what we put forward.

Mr Martin: It sounds wrong, but that group has pretty much gone about as far as it can go with the resources we have until we get more resources, most notably in terms of audiovisual resources and the human resources that we would need. A key initiative, I think, would be to offer a round-the-clock bail service for adults. We are doing it pretty much for juveniles, if we could get to the point where we had sufficient resources to have a magistrate on standby, not necessarily 24/7 but a chunk of 24/7 that would be a giant step forward in terms of reducing the transport of prisoners in custody.

The DEPUTY CHAIRMAN: Do you have any reports that have come out of that committee or recommendations that perhaps we could look at?

Mr Martin: Yes, certainly, I will go through our minutes. I cannot see any reason why we could not give you a set of our minutes.

The DEPUTY CHAIRMAN: That would be very helpful.

Mr Martin: A full set of our minutes I think would be useful, so I will ask Jeannine to organise that.

Hon LYNN MacLAREN: Chief Justice, I was just going to ask about the Bail Act because one of the recommendations that the coroner made was that the police may have an incomplete understanding of that. Is that your experience as well?

Mr Martin: Firstly, for the police it is an issue but also with the justices of the peace it is an issue as well. Certainly, the Ward case revealed that starkly, I am afraid. One of the proposals that have emerged from government in response to that is to have differential levels of training for justices of the peace. Not all justices of the peace sit in court. The proposition is that if you are going to sit in court, then you need a further level of training than is presently available. That seems to me to be highly desirable. As I said earlier, what I would prefer really is to get the bail decision made by a legally qualified magistrate as soon as possible so you overcome those problems, so that if anybody is going to be detained for any significant period of time or shifted over a significant distance, then the best solution is a bail decision to be made by a legally qualified independent magistrate. Those other things are very helpful but the blue ribbon outcome I think would be a bail service available pretty much around the clock for people wherever they are.

The DEPUTY CHAIRMAN: So aside from the cost factor, perhaps, of implementing that, is there any other opposition to bringing that change?

Mr Martin: Not that I am aware of. I have spoken to the Aboriginal Legal Service and Legal Aid WA. One is concerned of course about putting them in the position where they have to do deal with these issues around the clock as well, so there would be resourcing issues for them. But so far as the issue about having to deal with their clients who are not physically present—you might have a Perth-based ALS officer representing somebody in Balgo—they would rather that than have the person detained in Balgo or transported, so they are quite prepared to live with that. But there would be resourcing implications for those agencies as well because they would have to produce lawyers around the clock, as well, for the process to work. In this whole area you cannot—the Commissioner of Police has made this point very eloquently—just fund one area of the criminal justice system and increase its resources without funding others. So if you put 500 more police on the beat, that is great, but that means a lot more work for courts, more people in prison and a lot more work for legal aid agencies. So every time you resource one part of the system, you have to resource all parts of the system.

Hon COL HOLT: You have probably touched on it anyway, interagency cooperation—obviously, there is an appetite for doing things differently. Often in my experience, someone has to lead it and pull all those ends together and say we are going to sit in a room and we are going to sort it out. Have you any thoughts of who could be there?

Mr Martin: The directors general group to which I referred is driving that. One of the obstacles to it and indeed the problem in the past has always been the budgetary silos, so that the notion of cooperation is fine but then the question is: who is going to pay for it? There has been reluctance in the past for one agency to assume responsibility that involves expenditure that it thinks ought to have been paid for and contributed by another agency. I think the directors general group to which I have referred is aware of this problem and they are adopting a much more collaborative approach, even to the point of taking budgetary disadvantage from time to time on the basis that swings and roundabouts will pretty much even it out. I know, for example, that one of the problems we face in the area of prisoner transport is that expenditure by the Department of the Attorney General in the courts saves money for police and prisons, so there is reluctance. One agency will say, “We’re going to spend money; the savings, however, are going to be in other areas.” So you really need to do a whole-of-government business case to assess just how expenditure in one area can result in savings in other areas and address it on a whole-of-government basis. I think we are getting better at doing that but there has been some reluctance in the past, but I do get the sense that there is much greater willingness to adopt that approach.

The DEPUTY CHAIRMAN: Thank you very much for giving your time this afternoon and you have certainly provided us with a lot of information I know will be very helpful.

Mr Martin: Can I just say that if there is anything further with which I can assist, any data or statistics, please do not hesitate to ask. Jeannine here is very good at producing that sort of material; she would be terrific, so I am very happy to offer her services.

The DEPUTY CHAIRMAN: Thank you very much. There will be a transcript provided to you, as well, so thank very much.

Hearing concluded at 2.26 pm