

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

TRANSPORTATION OF DETAINED PERSONS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 17 NOVEMBER 2010**

SESSION TWO

Members

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

Hearing commenced at 11.44 am**HARDING, PROFESSOR RICHARD****Emeritus Professor, Consultant, sworn and examined:**

The DEPUTY CHAIRMAN: First of all, welcome. We look forward to hearing from you today. The first thing we have to do is ask you to take either the oath or affirmation.

[Witness took the affirmation.]

The DEPUTY CHAIRMAN: Please state the capacity in which you appear before the committee today.

Prof. Harding: As the former inspector, the inaugural Inspector of Custodial Services, now retired from that office. I am now an emeritus professor at the University of Western Australia, and I consult widely in the correctional business generally.

The DEPUTY CHAIRMAN: You would have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Prof. Harding: Yes.

The DEPUTY CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist both the committee and Hansard, we ask that you please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them; ensure that you do not cover them with papers or make a noise near them. They are just a tad sensitive. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I see that you have tabled a document, a copy of a letter to Mr Ian Johnson.

Prof. Harding: I hope you have got five documents there in the pile. That is to assist you if and when I refer to them.

The DEPUTY CHAIRMAN: Thank you very much. Are you happy for that document to be made public?

Prof. Harding: Yes. All these documents have already been tabled before the coroner’s inquest.

The DEPUTY CHAIRMAN: Would you like to make an opening statement to the committee?

Prof. Harding: Thank you very much. I could go back to the year 2000 and take you through the sad story of prisoner transport in this state, but I think, having listened to Professor Morgan’s evidence, the most useful thing I can do is to take it up in about 2006 and help you understand, I hope, the relative impotence of the office, even after it has identified problems, if the operational department chooses not to respond to the identification of the problem. This, in turn, I think will demonstrate why a show-cause notice, which is being discussed, as I understand it, would be extremely useful. Let me start by referring to the so-called Sandfire incident which occurred in October 2006 when an inter-prison van broke down at the Sandfire Roadhouse with 14 prisoners on board. It had left Broome at 8.30 in the morning and the temperature was about 40 or 41 that day. It

broke down. People were confined to the vehicle, and after various attempts to supply replacement vehicles and so on, the transport eventually reached Roebourne 20 and a half hours after departing from Broome. My office looked into this. The first document I have tabled is correspondence with the commissioner attaching a risk identification notice. You will see, if you look at the risk identification notice, which is the second page under the letter, that we ask six questions. First of all, we identify the level of risk—it is almost certain to happen again, we said; the consequence, severe, because of the overheating of prisoners; and the level, extreme. We rated this as an extremely high risk (a) in terms of what had happened and (b) in terms of the likelihood of it happening again. We suggested that the department should deal with the six questions we asked. The fifth of these is: what role did the department play during the incident to meet its duty of care to prisoners? I emphasise that because for a while in the department there was a feeling abroad that by contracting out this function, somehow or other they contracted out of their responsibility for the duty of care. Well, of course they do not—the prisoners are their prisoners; they always remain their prisoners. On this occasion the fleet was, and continued to be for a long time, their fleet. The things going wrong with it were things going wrong with their fleet. AIMS at that time did not own the fleet. I sent this off to the commissioner and waited for an answer, or rather my deputy did—I was away somewhere but we talked about it. I do not have the answer with me. It is obviously in the office of the inspector's archives. But in my second document, a two-page document, which is a letter to the Minister for Corrective Services, in which I informed her of what I had done in relation to the Sandfire incident, I also refer at the bottom to the fact that the departmental response received on 1 November 2006 was, at best, defensive in tone. I go on to make reference to the fact that in effect they are saying, "This is the problem of AIMS." Am I going too fast in terms of your following the documents?

The DEPUTY CHAIRMAN: No.

Hon PHIL EDMAN: Did you say you got a response back from the commissioner?

Prof. Harding: I got a response back. I do not have that with me. These are the papers I still have in my possession. The archive of the office of the inspector will doubtless have the commissioner's response. Obviously, I was very unhappy with it because it appeared to be saying, "Don't blame us; AIMS is responsible for these things." Accordingly, I wrote to the minister, attaching a copy of the risk notice and referring, on the second page of my letter to the minister, to the fact that there had been yet another incident of this kind—this time a vehicle leaking fuel but which was nevertheless used for a further five hours to complete a transport. What was the outcome of my identifying these risks? Essentially nothing. Essentially, even though it is on the record in terms of I told the minister, I did not make a public announcement about it or anything like that. It is on the record, but essentially it was all too hard to —

Hon PHIL EDMAN: Did you get a reply from the minister?

Prof. Harding: I got no reply from the minister; I can say that definitively. It is not a question of not having it with me. The minister and I used to meet fairly regularly. I doubtless would have raised this with her again, but I have to confess I do not recall any particular response she made verbally or in any other way.

Hon PHIL EDMAN: Or to the letter that you sent?

[11.54 am]

Prof. Harding: There was no formal written response. But what should have happened in this situation is that, at the very least, the minister should have been in a position to exercise leverage on the department. If the department ignores it, my chucking it up the hierarchy to the minister—it does not matter who the minister is or what party; this is the way our system works—should have brought about a result, a consequence, where the department responded. But it did not happen. I do not know why and I am not really going to speculate at this stage as to why, but of course we were

at the late stage of completing our thematic review—which I am sure you are well aware of; report 43 of the office of the inspector—of transport services. And perhaps the commissioner thought and perhaps the minister thought it could all be wrapped up in the response to that. I am not sure.

But another issue now started to manifest itself. It was apparent that the department was preparing to actually novate the contract, which AIMS was actually carrying out, to G4S, or GSL as it then was. I have not given you copies of this, but in April 2007—the industry rumours had been very strong—the acting director of the department of justice wrote to me, indicating that they were about to do this or considering doing it. I wrote back, and I also sent a copy to the minister, saying that I did not believe this was a course that should be done without due diligence as to the capacity of the system to deal with all the issues involved in the prisoner transportation system and the ability of the particular nominated new contractor to cope with this. Mr Warnes did not take any notice of this, and in July 2007 the novation went ahead. Knowing this was going to happen, and this is where we get to my documents four and five—not three; three is out of order—I interviewed the then head of G4S and in effect said to him, “Are you really aware of what you are taking on if you accept this novation? Are you aware that we have a clapped-out vehicle fleet that breaks down repeatedly, bearing with it great risk, and, in any case, what capacity and experience do you have for these long-haul land-based transports in extreme conditions? What is your experience in this?” So we had a long conversation one day in my office in Perth, and then I wrote to him —

The DEPUTY CHAIRMAN: Sorry, professor, what was their response in terms of their experience with long-haul transport?

Prof. Harding: I am coming to that.

The DEPUTY CHAIRMAN: Oh, thank you.

Prof. Harding: I wrote to him—and this is the document headed number four, proposed novation of the CSCS contract from AIMS to GSL—going through informally the six issues that I had raised with him, four of which do not matter today. But the first two were: the experience that GSL has for this kind of activity; and, “Are you aware you have a clapped-out fleet not fit for purpose? Are you aware what risk you are taking on?” With the best will in the world, I am sure, he wrote back expressing confidence in their ability to handle long-haul transports and referring to their experience in South Australia—not irrelevant at all—and then referring, secondly, to the fact that, in effect, the department had undertaken to replace the fleet and one should not rush at these things and so on. So I think I interpret that, in retrospect, as a sign that they wanted to do the best job they could, that they had confidence in their own systems in so far as their systems were relevant; and that they trusted the department to get on with the fleet replacement. Again, one cannot condemn that. That is somebody trying to do—hoping he can do a proper job. However, it was a source of great worry to me, and it really led almost immediately—led in logically, if you like—to the incident in which Mr Ward tragically died.

I will happily talk about that in more detail, but perhaps I can just make a couple more points. I actually put out a press release at the time of the novation—July 2007—expressing, now on the public record, my concern at the state of the fleet and whether or not it was fit for purpose. Let me just pause there and say why I think a show-cause power would be valuable—a power that should not be overutilised; should only be utilised in extreme circumstances of major risk. If I had had a show-cause power at that time—by which I mean once I had a departmental response, if I was not satisfied with it, I could send it not only to the minister, which is always my right, but to Parliament, and hope that the parliamentary scrutiny would work and really expose the department to the risk right there in public—if I had had that power at that time, I think it is quite possible, even likely, that I would not have been brushed off by, in effect, a response which says, “Don’t blame us; it’s AIMS’s problem.” If that had happened, the system could have commenced an improvement at a sooner point, we may well have avoided this tragic death, and, in addition, the unsatisfactory

conditions of prisoner transport may have been headed off at an earlier point. So, to me, the fact that I was trying to do without legislative power what a show-cause power would enable to be done formally shows the need for the additional power. I was trying to leverage a response in the department by a combination of persuasion, with an element of elevation, by saying this is a very serious risk, then trying to bring ministerial power down on the department. This did not work; we need more than that. I am a great believer in a properly drafted, properly applied power. You cannot over-apply these powers; you cannot do it with everything you disagree with in terms of what the department is doing. You do it when there is a serious risk to health or injury.

I will not go on too long, but there was one occasion where the risk notice kind of worked, and that was when I went to Roebourne and found a very volatile mix of Kimberley and Pilbara groups, and a fairly demoralised staff without sufficient fly in, fly out staff supporting them. I then put a risk notice to the department saying, “You have to get the numbers down in this prison during the summer period, and you have to try to minimise the volatility of the groups that are mixed together by getting some of the other groups back up to Broome or down to Greenough or whatever it is”, and they did respond reasonably well. So the leverage can work, but it would work better if there was a formal machinery for actually bringing it into the public domain and having parliamentarians as a whole, not merely ministers—the office reports to Parliament, not to a minister—saying, “What are you doing about this?” to the commissioner. “Why have you not responded?” Then you get some sensible kind of governance, in my view. I have said enough for my opening statement.

[12.05 pm]

The DEPUTY CHAIRMAN: Thank you for that. That is an interesting point you make about having parliamentarians ask the question, because I think on another occasion you came in and presented during an estimates hearing. But I am not sure whether that was an annual event or not, and it is quite restricted in terms of what you can discuss then. I am just sort of thinking what sort of a forum would that be. Would it be through an oversight committee perhaps, similar to that of the children’s commissioner or the CCC?

Prof. Harding: When I became inspector in 2000, I attempted to get one of the parliamentary standing committees to take us on as a regular item, and the first one I tried was headed by Mr Templeman. I forget its name. It was a lower house one; you may remember. Subsequently, one chaired by Mr Barry House —

The DEPUTY CHAIRMAN: The public administration committee —

Prof. Harding: Yes.

The DEPUTY CHAIRMAN: — which does have capacity in its terms of reference to do that.

Prof. Harding: Yes; they have capacity to ask questions and listen and understand the business better, and this obviously comes out in the wash in the long run. But they do not seem to have the capacity then to summon the commissioner and say, “What have you done about this specific item?” I do believe that if you have got a show-cause power, you have got to actually have a parliamentary structure, not some grand edifice—you have all got plenty to do—but some parliamentary structure that then makes the show-cause notice effective. And it may be that committees such as your own simply as a matter of course receive the show-cause notices and out of session can, even acting through the chair alone, actually summon the commissioner and say, “Let’s hear your side of the story. What have you done?”

Hon PHIL EDMAN: How would they know that you had not received a reply from the minister? In your letter, they reckon —

Prof. Harding: How would—sorry?

Hon PHIL EDMAN: How would they know that you did not get a response back in November 2006?

Prof. Harding: The minister is not a key to this; the key is the response of the commissioner. The dealing with the minister is because all agencies have to deal with a minister and obviously you want to establish some kind of rapport. I brought the minister into this risk notice thing in the absence of any other suitable way of exercising pressure. My hope was that the minister would say to the commissioner, “Commissioner, get on with it”—nothing more complicated than that; “What are you doing?” Okay; let us take this a bit further. What are the minister’s problems? The minister’s problems are that everything that I am suggesting involves funds. I am not giving secrets away when I say that at that time there was a great resistance in the so-called Expenditure Review Committee of the Labor government to spending money on improving services to prisoners, as they saw it. It is not improving services to prisoners; it is being decent in your treatment of citizens who happen to be prisoners and passengers, and it is also avoiding vast political risk and great impropriety and unhappiness and misery and tragedy. That is what it is. So, the only reason the minister is brought in in the example I give you is there was no other process. The minister should continue to be notified about a show-cause notice, of course. But, in the end, Parliament can do something about it, and Parliament could actually summon the minister. A parliamentary committee can summon the commissioner, you can summon the minister and say, “What’s going on here?”

The DEPUTY CHAIRMAN: Thank you for that, and I think that might be something that we can perhaps canvass, because I know that when we dealt with the children’s commissioner and the establishment of a committee there, we did seriously look at the standing orders in relation to their capacity to call in that commissioner and how they would do it. I understand that there is that capacity there, so that might be something that we canvass for a future opportunity. Given the time, and there is a whole series of questions that we would like to take up with you, I was just wondering if we could perhaps go through some of those questions.

Prof. Harding: Sure.

The DEPUTY CHAIRMAN: If we run out of time, do we have the opportunity perhaps to provide some of those questions on notice to you?

Prof. Harding: Sure, or I will come back if you want me to, or whatever.

The DEPUTY CHAIRMAN: That is great.

In relation to the coroner’s recommendations that have been made, do you have a view on how they are progressing, or are you satisfied that enough change is going to be made as a result of those recommendations?

Prof. Harding: As you know, I am a bit out of the mainstream now and so my views are really views as to what I think should be done, and obviously I agree with recommendation 1 about the show-cause power. I can confirm the broad tone of the evidence you have already heard that the current fleet is being replaced. But I suppose I would just throw a slight spanner in the works here in that the contract which is out of the RFP, which is being bid at the present time as I understand it, does not actually require the operator, whoever it turns out to be, to use that fleet. It may well be —

The DEPUTY CHAIRMAN: That they could supply their own?

Prof. Harding: — that they could supply their own. But if they do not, they have to buy it from the department or buy such part of it as they want. Actually, this is quite a good check mechanism because it means that the incoming operator, whoever it turns out to be, should be assessing those vehicles individually for themselves. They may decide, “Well, we’re not going to buy that one because we don’t think it’s up to the job.” I do not know. I mean, I have no idea what the fleet exactly looks like now, but some of the smaller vehicles are not very good.

The DEPUTY CHAIRMAN: Is there some sort of standard benchmark or a national standard or minimum requirements for what is expected for the type of transport used, like the model or make or size?

Prof. Harding: No, not in quite that precise way. But in report 43, recommendations were made as to the amenities that should be present in all vehicles and as to the processes and procedures that should be followed in the long-haul transports and the short-haul transports. As you will be aware, in August 2008, seven months after Mr Ward's death, there was a national conference in Perth of New Zealand and all Australian operators and some British operators. And, as I understand it—and, again, I am a bit out of it here—there was a broad agreement to work towards some standardisation, though it will never be entirely standard. Perhaps I could talk a little more about report 43, because two of the things that we recommended—this came out in 2007, before Mr Ward's death—were coach transport and air transport, and both of those things were responded to in terms which essentially said, "This is far too expensive." It is very interesting that it is now no longer too expensive. And it is quite clear to me from my various contacts that the coach and the air transport side of things will continue. I heard you asking whether or not the state should buy an air fleet. I think people in the business would tell you it is always easier to charter and less expensive, and that there is no difficulty in getting charters.

The DEPUTY CHAIRMAN: That is useful that you say that, because I think that is the first time that comment has been made to us when we have raised that matter.

Prof. Harding: There really is no difficulty; there are plenty of people out there who do not regard taking prisoners as a no-no and are very happy to do so as long as the right price is paid. They do not actually load up their prices excessively either. I think you can expect air transport to increase. I should remind us, because I had forgotten myself, that it was, to a tiny degree, being used before all this, and this would be for very remote funeral escorts into the bush. I think we could see, possibly, an increase in that, though that is obviously going to be a lesser priority than the mainstream movements down through the state that are involved.

Hon LYNN MacLAREN: There are so many things I would like to ask you. The current inspector indicated an opinion—well, a non-opinion really—about whether public or private prisoner transport could be done more effectively. I wondered, in your experience, if you had a view that you wanted to express on that.

Prof. Harding: Well, I am actually, in broad terms, a supporter of the notion that it is better to get specialist private services for what I call non-core business than use your trained custodial staff or your trained police staff to supervise and arrange transport. The private sector, at its best, has logistical systems that are far ahead of anything the public sector can offer. The fact that it has failed in terms of producing the results that gave rise to the formation of this committee's term of reference is to do with an inadequate understanding by all the parties involved of their responsibilities and how they meld. I would hope that the new contractual arrangements are clearer about that. I think the mere fact that the operator is going to have to own the fleet gets rid of that foolish anomaly whereby one person owns and nominally has to, therefore, maintain, and somebody else is operating it. This is ridiculous. The person who is providing the service should actually service and maintain the fleet. I think that the model is the correct model, but it needed a hell of a lot of tidying up, and that became progressively more apparent over the years.

Government departments are not very adept at contract management, and when you get a response from the commissioner that basically says, "Oh, we've contracted that service out, therefore we don't have a duty of care", you can begin to see that they have an awful lot of learning to do, but they are getting better at it. I think we will find it works reasonably well.

Hon LYNN MacLAREN: One of the recommendations we have been discussing today, even, is continuous auditing.

Prof. Harding: "Continuous"; what does that mean? When the CSCS contract generally—including the transport—started, Department of Justice monitors went out into the field and checked things; that included checking the transport. Progressively, that was thought to be a waste of money, missing the absolutely crucial point that when you contract out, you have to keep an eye on the

service. I entirely support the coroner's proposal for much more active monitoring by the contract managers. I endorse entirely what Neil Morgan said about that being the first line of monitoring; the second line is the more strategic monitoring that can be done by his office. His office cannot, in a day-to-day sense, supervise a contract. It can recognise when it is going right off key, as I did with the Sandfire incident and so on, but it is the job of the department, as the purchaser of services, to make sure that it is getting those services to an acceptable standard. I entirely support what you call routine monitoring. It cannot be looking over the shoulder of the operator in a day-to-day sense either, but regular, or ad hoc, raids—let us see what the condition is like on that vehicle; let us stop it on the road, if you like, and talk to the guys in it: "How did you get your sandwiches? Did you get a sufficient amount of water? Did you have a two-hour stop for a toilet break?" That kind of thing, I think, is very valuable.

Hon LYNN MacLAREN: Perhaps if I could get a feel for what happened before Mr Ward's death, from station to transport, and what would happen if we instituted the new auditing process that, in a sense, you are promoting. Would we have seen a different outcome?

Prof. Harding: I think what happened originally is that the peripatetic monitoring done by the department was mostly of regional court custody centres. While they would check the transport arrangements that were about to happen, I do not think, in the early days, they ever actually stopped a vehicle. They did not do what I did in Broome in 2001—check the condition of prisoners at the end of a long journey. In 2001 I was present at the end of a 12-hour journey from Kununurra; the guys were getting out dehydrated, barely knowing where they were. That is on the record somewhere in one of my reports. The department, in its early days of monitoring, was more concerned that there were good conditions in the court custody centres and that the beginning of a journey was being appropriately done, but they did not really check what was happening during the transport. I have to say that the maintenance of the vehicles was disgraceful. I recall being in Broome one day and an AIMS vehicle came limping back from the beginning of a transport down south, with the driver holding a piece of string out of the window that was attached under the bonnet to what controls the accelerator. That had been fixed up for him by a prisoner once the vehicle broke down. The then minister, Michelle Roberts, was with me at the time and I hoped she did not notice it, but she did. There was no real monitoring, but it was better than nothing. Then they withdrew that altogether; we have to reinstate it and reinstate it properly.

The DEPUTY CHAIRMAN: Professor, one of the areas of interest we have on the committee as part of our terms of reference is not only looking at air transport, but also looking at videoconferencing. You will have heard the earlier discussion about Skype and other technologies.

Prof. Harding: Yes.

The DEPUTY CHAIRMAN: Do you have a view on how that can be used or whether it should be used?

Prof. Harding: Look, I endorse everything that Neil said. It is something that, again, very early in my time as inspector I started to take up; the Chief Justice is absolutely supportive of it. Perhaps an angle that you will not have heard is this: that, actually, most prisoners do not like being moved from prison to come to court for a call-over or whatever it is. This is very disruptive to their education, to their general sense of dignity and living in the place. They do not want to do it. Most prisoners will do a videoconference if they get a chance. Neil is absolutely right; new technology now, not old technology. We could actually be a kind of a leader in the pack instead of a follower in that regard if we went straight into it.

[12.26 pm]

The DEPUTY CHAIRMAN: Do you think the department is at the point where it would be receptive to adopt that sort of technology?

Prof. Harding: Again, it is two years since I have dealt with them directly, but they have always been a very cautious department. There are always more reasons for not doing something than for doing it. So they really need some guidance and support and, I guess, some reassurance that this system is not somehow or other going to be turned into prisoner access to the internet or whatever. They have all these sort of phantoms in their head of how things can go wrong. They need reassurance and support. I think the officers would be glad and I think the prisoners would be glad and it is as cheap as chips.

The DEPUTY CHAIRMAN: Hopefully, it would reduce the number of occasions that we would have to put people in the back of a van.

Prof. Harding: Absolutely. It would take so much strain off the now overstretched prison-to-court movement system and perhaps leave a bit of spare capacity for prison medical escorts or hospital funerals and so on. It would take a lot of stress off this.

Hon LYNN MacLAREN: I do not have anything more on that subject. I want to go back to the way that the auditing works and how an improvement in auditing might change the situation. Currently, an audit is done and, as I understand it, there are recommendations that improvements be made. If the Department of Corrective Services does not change the practice, does the inspectorate have the power to cause a change, to enforce a change?

Prof. Harding: You have to be very careful, as an accountability agency, not to try to run the service and if there is something they are doing that you might do differently, it is not a sufficient basis for trying to enforce them to do it your way. We really have to prioritise the things, which are relatively few, where you want to compel this change, it is so important. It might be important for human rights reasons, it might be important for safety reasons or whatever, but if every single recommendation you made was the subject of a mandatory power as opposed to persuasion on the merits, then you are trying to run the department and that is not your job.

Hon LYNN MacLAREN: In the event that it is a very good change that we want to occur and the inspectorate does not have the power to enforce that, who is best placed to enforce that?

Prof. Harding: If it is a non-emergency thing of the type that I have illustrated, which would bring about a show-cause notice, it is really a ministerial responsibility. You are talking about this endless issue of how ministers and departmental heads relate to each other and who is wearing the trousers, frankly. In some of them, the departmental head wears the trousers and in some of them the minister does. I do not know that there is any way of finessing that. It is governance. Sometimes ministers seem impotent, sometimes they seem to be too involved in the way the department is running. There are these endless balances. I would reiterate that there are some things that go beyond the ministerial – departmental head relationship and those are things that are serious risks of injury or to life, and these should be subject to a show cause and subject to parliamentary oversight and, if necessary, instruction.

The DEPUTY CHAIRMAN: Can we perhaps jump ahead and talk about programs in prison? We touched on that earlier and I thought, based on your experience, you might have some views on the current status of programs, how we compare to other places and what more could be done.

Prof. Harding: Well, let us start by getting rid of one of the old shibboleths—programs do work. The right programs targeted at the right people—the risk–need–responsivity triage that everyone talks about—do work. I have recently come back from the Netherlands and I was present at the most wonderful talk by Friedrich Lösel, who is head of the Cambridge Institute of Criminology. Friedrich went through 20 or 30 meta-studies, analysis of everybody else’s studies, about program effectiveness. It was so very cogent that I wished every minister I knew who runs corrections departments had been locked in the room to listen to it. Programs work. Some work better than others, but you are not actually throwing away money. You are making an investment in a safer community down the track. The question is the conditions in which they are given, the people to

whom you give them—they do not work for everybody—the time at which you give them, the reinforcement, and so on. All this stuff is very well understood and very well written up and I am sure Friedrich's article will be coming out. It is the neatest sort of 40-page overview of this I have ever seen.

When I read that people are not getting parole in this state because they go to the Parole Board and the Parole Board rightly says, "You have not done your programs," and they say, "Yeah, but there were not any to do", it really makes me think we have slipped back 10 years. It was not like that four or five years ago. It reached a very low point in about 2007–08. That is referred to in a report my then office did on classification of prisoners. I think it is report 55, or something. It reached a very low ebb. I do know the present minister is trying to increase the commitment to programs, but it actually needs a quantum leap, not just a few shillings, a few dollars here and there.

The DEPUTY CHAIRMAN: How do you make that quantum leap? Is it a whole-of-government approach or is it doing things totally differently?

Prof. Harding: The whole-of-government approach helps in as much as when people are released, if they are immediately homeless or whatever, then this immediately starts to undermine the impact. Frankly, much of this stuff is capable of being done within the Department of Corrective Services by either a reallocation of resources and priorities or putting up a proper business case for additional resources. It has been allowed to run down. The present minister, I understand, is trying to beef it up, but I would say that there is a long, long way to go, but it is worth doing.

Hon LYNN MacLAREN: Do you want to comment on programs specifically for Aboriginal juveniles?

Prof. Harding: I think I would be getting a little out of my depth if I did so, except to say that that is the time at which to get them.

Hon LYNN MacLAREN: Did you express a view on justice reinvestments?

[12.36 pm]

Prof. Harding: I share Neal's view. It has become a bit of a slogan and people pour into that slogan whatever their favourite idea is, but for me what it really means is making hard decisions as to who you can divert to what. We have made some efforts with the Drug Court, for example, but basically it is an old idea dressed up with a new label. Diversion away from the system, whether it is through the cautioning system or the drug courts or some other approach to things, usually has some payback. But again you have to recognise and measure whether that payback is really there. A lot of figures get trotted out. A lot of American work says that for every dollar you put into drug programs you are saving \$7 of subsequent crime costs. These are very easy figures to trot out. I do not know that it helps to quantify it like that, but it is good policy to try to safely divert people. We all recognise that some people cannot be safely diverted. One does not have to become too dewy-eyed about this stuff, but there are a lot of people who should be given a second or third chance before the stigma of prison is imposed upon them.

The DEPUTY CHAIRMAN: Professor, we touched on the issue of training for G4S staff earlier. I am interested in your views on that issue. We talked about how they have modified their delivery for rural and regional staff, and we had some interesting evidence provided to us at an earlier stage about training by that company. We are interested in your views on the training aspect and perhaps ongoing monitoring of training.

Prof. Harding: I think, again, I am two years away from the detailed knowledge of exactly what they were doing. As I recall, following Mr Ward's case, they revised their kind of checklist of things that had to be done. I guess that when we talk about training of staff of course it is crucial; it has to be done. But what worries me a little in this particular context is that there is a tendency for people to then look to the failures in that particular event of those particular staff. To me that is not the point. Those particular staff are at the bottom end of the totem pole dealing with a system where

they probably had not been adequately trained, where they were summoned by a police sergeant or police officer, not by their own people, to report to the police station in Laverton, where they are given a clapped-out vehicle, which they believe has been serviced—that is as I understand it—and then they try to drive it back. Yes, doubtless they should have done better—of course they should have done better—but they were at the tail-end of a totally flawed system. This is why I am really concerned—it is still happening, not with you people but out there in the community—that there is a wish to kind of scapegoat the particular people. This death was the result of failures by four or five agencies and people; no single one of them caused the death but between them they caused the death. I will go further and say it would have happened to somebody anyhow—the system was so flawed. It was an accident waiting to happen, as our own risk notices say. So when we talk about training of staff, there is a kind of implication that these people really did not do much of a job—maybe you do not mean that; I am sure you do not. But of course better training, better support generally, better ability to refer issues back to base and all these things are very important. As I understand it, the current RFT puts a lot of emphasis on what the people bidding for the contract are going to do by way of training, so that is a good thing.

The DEPUTY CHAIRMAN: You just said that perhaps this was something that was going to happen, and we are looking at a range of matters that we would hope we could take to government to ensure that it does not happen. What in your view needs to be done to ensure that we do not have a repeat situation?

Prof. Harding: I think we are on the way now. I mean, we have reduced long-haul land-based transports in very extreme conditions by using air transport. There are still some happening, but we have reduced them. We have put in place rules as to how the people should be supported before they get here; on what their water levels should be; we have improved the internal electronics, as I understand it, the cameras actually see what is going on; there is, I believe, a call button now—that is what I was informed, I am not sure if that is correct; and we are using coaches more. I think belatedly actually the system is going to be almost failsafe. I think it is going to be very good. So when I said it was an accident waiting to happen, I mean in those conditions as they then were. If it had not happened to Mr Ward, there would have been some other air-con breakdown somewhere in extreme conditions. The whole system was flawed and the department above all was responsible for that, G4S was partially responsible, the police, in unnecessarily moving somebody, contributed to it and so on and so forth, so scapegoating the two lowly paid under-trained people who were doing that particular transport that day is not going to put the system right. The system has started to be put right as a system. I know there was a lot of talk of “Why aren’t they being prosecuted” and so on. To my way of thinking, the DPP made an absolutely correct decision.

The DEPUTY CHAIRMAN: Probably the last question I would raise is the one of our terms of reference, term of reference (3), is that the committee is looking at —

the scope and efficacy of government action to reduce indigenous incarceration and recidivism rates to prevent further indigenous deaths in custody;

We have had submissions to the committee going through that term of reference and talking about how things could be done. Have you got any idea of what can be done to improve interagency cooperation? What mechanisms can be put in place to deal with these types of issues that we are looking at—or any suggestions?

Prof. Harding: Again, I am a little later date with the interagency coordination. I did set up in my last year as inspector a broad-ranging committee to consider juvenile remands and everyone was represented—the courts, the police, the health department, and of course corrective services, several NGOs and so on. I think that we actually made a bit of an impact. We had three meetings. The key people are always the police. We actually managed to produce an environment where the police seemed to understand the points about unnecessary arrests or arrests which were made at a time of night when the only thing you could do was to try to dump them over at Rangeview and so on. I

think the police are key to this. It is a very difficult kind of challenge, but they do arrest far too many people for far too many relatively trivial things. You will have been told over and over again about the driver's licence stuff; it is true. It simply is silly; it is not what our criminal justice system is there for; it is distorting the criminal justice system. Let us think laterally: Why can we not have driver's licence systems and testing systems that actually take into account the reality of bush systems? Why is this actually done according to a Perth metropolitan model? It is insane! Given that we do it that way, why in any case are the police occasionally rounding up a lot of people on bush tracks? That is one small example. Again I am a bit out of date with what is happening in regional policing, but I think that is where we are going to make the big difference, and really you have got to be talking to the police commissioner about this rather than me; I am an observer, not somebody who can do anything about it.

The DEPUTY CHAIRMAN: Is there anything else you would like to add?

Prof. Harding: Not really, I just hope you take to heart the fact that an enhanced role for Parliament is actually what it is all about.

The DEPUTY CHAIRMAN: We will take that on board. Thank you very much for your appearance before the committee today. I think that has been very useful evidence for us.

Prof. Harding: Okay, good. It was my pleasure and thank you very much.

The DEPUTY CHAIRMAN: Thank you, and if the committee, upon reviewing the transcript and the evidence, needs to seek some further answers, will you be able to do that for us?

Prof. Harding: Absolutely.

The DEPUTY CHAIRMAN: Thank you for that.

Hearing concluded at 12.49 pm
