

**STANDING COMMITTEE ON  
ENVIRONMENT AND PUBLIC AFFAIRS**

**TRANSPORTATION OF DETAINED PERSONS**

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

**SESSION ONE**

**Members**

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

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**Hearing commenced at 10.21 am****MORGAN, PROFESSOR NEIL****Inspector of Custodial Services, sworn and examined:****BRYDEN, MR JAMES****Inspections and Research Officer, Office of the Inspector of Custodial Services, sworn and examined:****HOLDOM, MR CLIFFORD****Inspections and Research Officer, Office of the Inspector of Custodial Services, sworn and examined:**

**The DEPUTY CHAIRMAN:** On behalf of the committee I welcome you to the meeting. Before we begin, I have to ask each of you to take either an oath or an affirmation.

[Witnesses took the affirmation.]

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

**The Witnesses:** 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 that you refer to during the course of the hearing for the record. Be aware of the microphones and ensure that you do not cover them with any paper or rustling. They are very sensitive and tend to pick up any other noise around them. I also 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.

Would you like to make an opening statement to the committee?

**Prof. Morgan:** Yes, and thank you for inviting us here this morning. I will start by placing on record my respects to the family of Mr Ward and my recognition of the anguish that the whole family and indeed the whole community have been through. I have been to Warburton; I have been involved in community consultations there with the WA Law Reform Commission. I met Mr Ward; I am very well aware of his status and his role and that he is a very powerful man who crossed both cultures. The coroner found, of course, that Mr Ward’s death was wholly unnecessary and avoidable.

When we released report 65 “Thematic Review of Court Security and Custodial Services in Western Australia”, I described his death as a jolt and a watershed. What I meant by that was that it was a jolt that sent ripples right through the whole criminal justice system and it was a watershed in that it has prompted some long overdue reforms and initiatives. Perhaps above all from my point of view, it has forced duty-of-care issues back to the forefront where they belong, and there was the

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risk that some of those issues had been lost at times in the past. We are certainly in a far better place in November 2010 than we were in January 2008 and I am happy to talk to the committee about some of those developments. The committee would have received copies of our comprehensive report 65, which was released in May 2010. That report straddles a whole range of activities that are conducted both by the public sector and by the private sector. I want to emphasise that the fieldwork for that report was done in the first part of 2009 and there are a couple of implications of that for the committee and for what I can talk to you about today.

The first point is that it is largely a record of what we found at that time. There have been many positive changes in the interim, most obviously the introduction of bus and then aeroplane transport. I know that you would have been given some comprehensive briefings by the Department of Corrective Services on those developments. We also do acknowledge those developments in the report, particularly in the inspector's overview at the beginning.

The second point is that I did not actually take over as inspector until the end of March 2009. Cliff on my right and Jim on my left had undertaken most of the fieldwork for that report, so I have brought them with me today if there are specific issues around that that you would like to discuss.

The third point is that, as you may be aware, our office generally conducts its inspections on a three-yearly cycle, so the next scheduled full-on inspection of transport will be in 2012. This, combined with the extent of the changes that have taken place in the period since 2009, does mean that in some respects our information is not bang up-to-date, so there may be some very specific areas that we are not fully across at this stage. But I do want to emphasise that we keep a watching brief throughout; with prisons or transport, we just do not leave it three years. We have regular inspections of prisons, detention centres and court custody facilities as part of liaison work. If we had been aware of any major areas of concern, I would have required that we conduct a targeted audit or inspection of those activities. I will give you two examples that may help illustrate the way that the office operates and the way that we do bring matters to the attention of the department when we come across them and how we keep a watching brief on developments.

The first of those is from August 2009. We were then conducting an inspection of Greenough Regional Prison. We were able to observe the arrival of one of the new coaches undertaking the long-distance transports at that time. We observed the unloading. We observed the movement of the prisoners through from the coach into the sally port in the prison. We then observed the following morning the loading of that coach as it continued on its way. We looked at the coach, we spoke with G4S staff, and we spoke with DCS staff. The coaches were clearly a great improvement. I guess that at that point our main concern related to the level of security that was being adopted. Most of the prisoners were minimum-security prisoners, yet they were in handcuffs and also leg restraints as they shuffled off the coach to go into the sally port. To put that in context, these buses do not fit in the sally ports in most of the prisons. But overall we were very pleased to see the condition of the coach, and talking to prisoners who had been on the transports, there was certainly a much better sense that their wellbeing had been respected and there was the quality of the journey.

The other example is that in June this year we undertook an inspection of the Rangeview Juvenile Remand Centre. That report has been completed and it is due to be tabled in Parliament on 15 December. We examined the new vehicles that were being used by the Department of Corrective Services and the improvements that had been made to an existing vehicle. Certainly there were some improvements, but one of the things that shocked me was to see young people being transported to and from court without any shoes, so they were shuffling along in socks. Now, I was —

[10.30 am] [10:30:14 AM](#)

**The DEPUTY CHAIRMAN:** Why was that the case?

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**Prof. Morgan:** The official reason is a safety reason that if you give people shoes that have got laces in, there is a risk that they will use laces and so on as a means to self-harm, but of course you do not need laces in shoes; there are ways to deal with this —

**Hon PHIL EDMAN:** You could give them thongs, could you not, or something like that?

**Prof. Morgan:** I think thongs are again possibly seen as a bit of a risk—are they, Cliff?

**Mr Holdom:** I cannot say.

**Prof. Morgan:** But there are certainly different forms of shoe wear that do not raise the risks. The important point about this, in part, was that was why it had happened originally. When I asked the question why this was happening, the response in part was, “Well, that’s because it’s always been done that way.” Now what has happened since then—I am pleased to report it to the committee—as soon as we raised that issue, a new superintendent’s instruction went out and that practice has now ceased. So what I want to emphasise is that we keep a watching brief; it is not just about what comes out in a final inspection report; it is about what we can do, if you like —

**The DEPUTY CHAIRMAN:** Sorry, can I just interrupt you? Can we please make sure that mobile phones are turned off? Thank you.

**Prof. Morgan:** We adopt a model—I can talk about this later a bit more, if you like—of continuous inspection, so we are keeping an eye on things as they go, but those are just examples of areas we have seen improvements in and where we have been actively involved.

Another point I want to make in this introductory statement is that your terms of reference are broad. There is no reference in the terms of reference to the question of public or private service provision, but it is clearly an issue that is never far from the surface in the debates at this stage. I want to place on record my view as inspector, which is absolutely consistent with the view of my predecessor, Professor Richard Harding, who I believe you are speaking to later this morning, and it permeates the work of the office. The point is for us that the question is not one of whether the service is delivered by the private sector or the public sector. The really important questions are, first of all, quality of service; secondly, accountability and transparency in the delivery of services; and, thirdly, value for money. What I mean by “value for money” is not just a dollar cost but the quality of service for the dollar that you have paid. Just to emphasise that, obviously, there have been a number of areas of concern with the transport contract.

We have just very recently completed the onsite phase of an inspection of Acacia Prison, which is privately operated; in fact, we completed that period onsite last week. It is not appropriate in this committee or in this forum at this stage to discuss in detail our findings because our report is the public document and that is a work in progress, but what I think it is appropriate to say is that Acacia is undoubtedly one of the best prisons in the state measured against those issues about quality of service, accountability and transparency, and value for money. It certainly is doing the business effectively, it is showing innovation and it has a very well evidenced commitment to improvement, so it can actually establish for me, it can give me, evidence of its sense of reflection and desire for improved services. In terms of accountability it is actually the most accountable in this state, possibly in Australia, because of the high level of monitoring by the Department of Corrective Services combined with the operations of my office. Simply put, I think the reality is this: that the private sector is actually just like the public sector at one level; that is, it is actually quite capable of delivering high-quality services and it is also quite capable of delivering poor services. The question is: What are the systems that you set up? What are the accountability mechanisms? What are the processes that you set up to ensure high-quality service delivery?

I think it is also important to place on record a brief comparison between the Western Australian model and the model that exists in some jurisdictions. Although there is no doubt always room for improvement, this state does have fairly robust processes. You may or may not be aware of the fact that in September this year, the Victorian Ombudsman released a report. You asked me to give full

details of everything I mention and I do not have the full details in front of me, but a September 2010 report which was into the operation of PPPs in prison accommodation. Victoria started privatising prisons before we did; they started in around 1997. That report by the Victorian Ombudsman said that the Department of Justice in Victoria was unable to show, first, that the state was getting value for money; second, that they were looking after the assets—in other words, the prisons. In other words, it was a very critical and very damning report. I think it is important to place on record that the whole point about an office like mine is that you cannot say that in Western Australia; we do have accountability mechanisms and monitoring mechanisms that should make people feel somewhat more comfortable about the operations of these prisons.

Now that is really, I guess, just an initial comment about some of the general matters. I am sure the committee will want to discuss progress with respect to the whole range of recommendations by the coroner, particularly recommendations 1 and 2, which relate directly to the inspectorate. I should just finally before we get to that place on record the fact that there is a bill, which is in the final stages of being drafted, which will reflect the government's commitments with respect to recommendations 1 and 2. It is slightly awkward timing. I have been consulted, as is appropriate, on the content of that bill, but it is subject to cabinet confidentiality at this stage, so I cannot go into the details of that. My understanding is that it should get to the house at the beginning of 2011. What I think would be quite appropriate is if I talk to you about how it is anticipated that the new functions and powers would operate without, obviously, getting into chapter and verse.

**The DEPUTY CHAIRMAN:** I think that would be very appropriate and I do not know if you want to start off by doing that now?

**Prof. Morgan:** I do not want this to turn into a lecture, that is my —

**The DEPUTY CHAIRMAN:** No, that is fine. I think that based on what you have already said it is an indication that there has been progress made, so I think probably at this point of view if we could have that information provided.

**Prof. Morgan:** You are at high risk because, as some people in the room know, I come from an academic background where if you turn me on I can talk for 45 minutes without stopping! I will try not to do that.

**The DEPUTY CHAIRMAN:** That is fine. This is about making sure that we do this better and so if you have information that could help us to do that, then go on your way; we will sit back and listen.

**Prof. Morgan:** This may sound just like the odd way round, but I might actually start with the coroner's recommendation 2 and the proposed new audit power and then I will talk about recommendation 1 and the so-called show-cause notice.

**The DEPUTY CHAIRMAN:** Yes, thank you.

**Prof. Morgan:** The coroner's recommendation 2 was that the terms of sections 34 and 39 of the Terrorism (Preventative Detention) Act 2006 be inserted in relevant legislation dealing with the inspector's powers so that those protections be extended to all persons in custody and to all areas of the inspector's jurisdiction. The coroner's recommendation 2 may have been born partly at least out of my own submission to the coroner in which I pointed out that under the Terrorism (Preventative Detention) Act, there are two main provisions. One is that if a person is detained under that legislation, the inspector must be informed of that detention. This is a very sparingly used power; I am not aware that it has ever been exercised in its existence.

**The DEPUTY CHAIRMAN:** Is there a time frame specified for when you have to be notified?

**Prof. Morgan:** I would have to double-check the legislation, but it is certainly expected that it will happen almost immediately on detention. The point behind this is so that the inspector is aware of where people are detained and what conditions they are detained in because they are not likely to be

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detained always in traditional places of detention. The second part to the terrorism act is that the point of the inspector's involvement, if you like, is to consider whether people are being treated with humanity and respect for human dignity and to ensure that they are not being subjected to cruel, inhumane or degrading treatment. That, as you would be aware, is the language of international law. It is the language of the ICCPR, which is the International Covenant on Civil and Political Rights. It is the language of the convention against torture and also of the optional protocol to the convention against torture. What was interesting when I assumed office was to look at that legislation and to see that that was in there for suspected terrorists but there was no equivalent provision relating to all the other types of people that we routinely receive into custody.

So the coroner's recommendation as it was worded appeared to suggest that both of these aspects of the terrorism legislation be introduced; in other words, that there be a process of informing my office of every time a person came into detention and, secondly, that we examine that detention in light of these human rights standards. I am not sure whether that was the coroner's intent. That was not my intent. I wanted the second part to be reflected so that we have an explicit authority around the humane and decent treatment of people, but I was not particularly interested in being informed of every single time that a person comes into custody. In effect, if that had come in that would simply have required the appointment of more employees in my office who would have done very little other than sit at a computer and process data. It was not going to take us anywhere. The real issue is to get to this issue of humane and decent treatment. I think this is where in part the proposed audit function finds its origins. This was not part of the coroner's recommendations but it was part of the government's response to the coroner's recommendations.

As you are probably aware, the idea is that we should have the capacity as an office to audit the passage of people through the custodial parts of the criminal justice system. I think this is actually a really important initiative. In fact, in terms of the way that my office operates and the information it gets out to Parliament and elsewhere, this is going to be more important than the show-cause notice, which I will come back to in a while. Let me flesh that out a bit. At the moment our jurisdiction is largely, if I call it, horizontal; in other words, if you look at our act, it talks about inspecting places, it talks about prisons, it talks about juvenile detention centres, and it talks about transport facilities and court custody and so on. In other words, it is very much site-based. When we go into prisons, we talk to people all the time; we talk to prisoners, staff and management. Of course, we also try to help facilitate individual prisoners if they have issues, but we are not actually an individual complaints authority. If prisoners have individual complaints, then they really need to take those up through other avenues, such as the department's own internal mechanisms, the Ombudsman, and if it is a health issue, the Office of Health Review.

Perhaps I can give you an example of the difference. There was a decision some time ago by the Department of Corrective Services to remove computers from people—personal computers. This created a great deal of angst in the prison: we have a significant number of people who are trying to study and it is very difficult to do essays and so on these days without a computer and they had invested their own resources in their own computers. The department withdrew them for security reasons. As far as we were concerned, the systemic issue that we were interested in was: why were the computers withdrawn? What were the reasons for that? And what was going to be put in place to compensate? If it was no longer considered appropriate for people to have their own computers, what was the system going to do to assist people to actually study and do that type of activity?

That is a good example of where there might have been individual complaints by prisoners but there was also a systemic issue coming up that was a matter of concern to us.

[10.45 am]

We have generally not really examined in our reports specific cases in depth. There is one exception to that, and that was in 2004. The committee may wish to talk to Professor Harding a bit more about this report, but it was report No 22, which was entitled "The Diminishing Quality of Prison Life:

Deaths at Hakea Prison 2001–2003”. Now what this review did was to look at eight deaths in custody that had occurred at Hakea Prison over a relatively short period of time. Some of those deaths were from natural causes; some were not. The interesting thing about this from understanding the working of the office is that this review was undertaken by Professor Harding under a direction from the minister. So there is provision in our act—the office is independent, but the minister can give us directions to look at particular issues, and we are really obliged to do that unless we explain why we will not do it. So ultimately I have the authority to say no. But this was a ministerial direction, worked out, obviously, in conjunction between the then minister and Professor Harding. That is probably one of the few exceptions in our history where we have really gone into what I would call a more vertical jurisdiction, where you drill down, if you like, into what was going on in a number of particular instances. Again, the aim is to draw lessons out for the whole system.

The government response to the Ward inquiry said that we will be given enhanced power to audit the passage of people through the custodial system. You might say, “Well, could you not do that anyway; did you not already do that in report No 22, ‘The Diminishing Quality of Prison Life’”? I think the answer is yes, we could have done, but statutory clarification is most welcome. What it also clearly means is, firstly, that I as an inspector am able to do this. Secondly, I am expected to do this. It is not optional any more; it is an expected outcome from the office. Thirdly, it is not a matter for negotiation with the minister. It is actually a matter that of course I will talk to the minister about, and of course I will talk to the Commissioner of Corrective Services. But at the end of the day, it will be my call what we look at.

**The DEPUTY CHAIRMAN:** Before you go on, just so that we have a clear understanding, when you talk about auditing persons who go through the system, what does that actually involve?

**Prof. Morgan:** Well, I was going to talk a little bit about that. It is a bit hypothetical at the moment because we have not even got the legislation in yet, and you guys have got some control over that; so it depends a little bit on how it pans out. But the basic idea is that—I guess there are a number of ways you can do audits. One is just to take a random sample of people. A ballpark figure has been put out by the minister of one per cent of the prison population, which is about 50 prisoners or people in custody. If you took a general sample like that, you are not actually likely to learn very much, because when you go into any custodial situation, you have got such a wide variety of different groups of people and different sets of issues. So just to name a few obvious ones, you have got Aboriginal and non-Aboriginal. You have got women as opposed to men. When you talk about the women, one area that I think would be really interesting at some point to have a thematic audit of would be the treatment of pregnant women. That is a really interesting area. So you have got subgroups. You have got people from remote, regional and metropolitan areas. You have got people from remote areas who are stuck in a prison in Perth, whose issues are going to be different from the issues of the people from the remote areas, who are at least at home in prison, if I can put it that way. Foreign nationals is an interesting area. We know that there are a very large number of Indonesians prisoners in our prison system at the moment. When we did the report on Hakea, which came out earlier this year, we made some public comment about that. Very important questions arose in that report around whether those prisoners were getting access to halal food and whether they were getting access to their religious accoutrements and so on. These are federal prisoners in the state system, and ultimately the feds need to take some responsibility for this. But these are the issues that we confront. So there is a whole series of subgroups. Another example is people with mental health needs. That is a important group. And of course they overlap, a lot of these categories.

The other area is that you might come across specific issues. You would all be aware very much of the debate around Taser use. Again, it was interesting that the minister said to the department that he wanted an audit done of Taser usage. The department can do that. But, again, that is the sort of thing we as an office might be interested in.

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Another area where we have been very active in the last few months is around the safety of the double-bunk beds that have been put into prisons. You may have seen some of the publicity around that from our previous reports. I have got very serious concerns about the safety of access, and the lack in some beds of any rollout protection. So if you are on the top bunk, there is basically no side protection to stop a rollout. Those are areas where again we could go in and we could do an audit of cases where people have claimed that they have fallen from a bunk.

**Hon COL HOLT:** Can I ask a question? I do not want to interrupt your flow of thought —

**Prof. Morgan:** Please do.

**Hon COL HOLT:** I am very encouraged by your story about the prisoners with no shoes on and how you actually brought about change pretty much immediately. You may want to answer this later down the track, but I am interested in the resources that you have now, and your ability to do more of those sorts of things that you are talking about right now and to make those immediate changes. Is there a need for more resources for you to maximise those things? If you want to talk about that now, that is fine, or if you have some thoughts later on, I am easy about it.

**Prof. Morgan:** I am happy to say that we could always do with more resources!

**Hon COL HOLT:** I know that, and I probably should not ask that!

**Prof. Morgan:** Every department is going to say the same thing.

**Hon COL HOLT:** It is about driving change in the system. That is what it really is.

**Prof. Morgan:** We would certainly see the audit function as giving us another valuable tool in that regard. But we are still also faced with doing our existing work. One of the difficulties that we have faced over the years is that we are funded essentially by site; so the number of prisons is essentially the basis of our funding. We could provide you with more detail out of session if you like. This does cause us some difficulty, because, to give two examples, obviously there are now a lot more prisoners in the same prison. So Casuarina will soon have an official operational capacity well in excess of 900, whereas it was originally designed for about 400.

**Hon PHIL EDMAN:** Has it not been extended as well?

**Prof. Morgan:** It is two things, really. It is, first of all, that they have double bunked a lot of the cells. Then, on top of that, they are constructing two new units on the same site. They will be two double-bunk units, which will hold at full capacity another 256 prisoners. Obviously the numbers in the individual prisons move up and down as the capacity changes across the system and as the numbers change. But it does mean that we are essentially being funded on a site. The other aspect of that is one of the most positive developments over recent years in our view—the introduction of work camps that are minimum-security facilities operating outside of the prison. We get no separate funding for those. They are seen as part of the prison, if you like. The difficulty is that we all know that if you want to get out to Bungurun, which is near Derby, it is a long way from Broome, which is where our prison is. So it is adding costs in terms of transport and staff time and so on. Millstream outside of Roebourne is at least a one-day trip. There is going to be a new work camp opened at Warburton, and again there is no separate funding flow for that.

[10.54 am]

**Hon LYNN MacLAREN:** Professor Morgan, I want to drill down a bit more for some data on how much resources might be required, because we do have a figure before us from the 2010–11 budget of around \$600 000 for prisoner auditing. Is that a figure that enables you to do your current role, or would that figure enable you to do the expanded role that you might have?

**Prof. Morgan:** That figure is allocated essentially to the audit function. But it is also obvious that if, for instance, I decided that we would do an audit of prisoners at work camps, that is going to assist us in the more general role. So although it is for the audit function, it will have some

consequential benefits into our general role. But nevertheless it remains the case that we have more prisoners in existing prisons, and there are some sites that we are not traditionally funded for. So we will continue to put up budget bids.

**Hon LYNN MacLAREN:** So if you talked about expanding your audit role, would you have to put in an additional bid to the one that is there now?

**Prof. Morgan:** I think I would. I would have to think about it. It would depend on how we expanded the audit role. But, yes, the more roles you take on, the more funding you need to support that. But I do not have figures. I am happy to talk again out of session if you like on some of that.

**Hon LYNN MacLAREN:** But with the expanded audit role, you talked about what it should be; that is, that it needs to be much more targeted. Do you have an example of what might be a decent and thorough audit, so that you would feel confident that you have fulfilled the task that you have been set?

**Prof. Morgan:** What I think we will probably do is combine the two. So we might do a kind of cross section. We might get some random cases, or take individual cases that have for some reason caused us concern that we have become aware of. We will also go for what I would call thematic audits. This is where I think the real value comes. To take an example, I would be very interested in looking at the pregnant women example. So you would be raising issues about where they are, the quality of medical treatment, the process of those people through the system, the issue of what happens once the babies are born and so on. That is a classic example of looking at an area that sometimes does become controversial. Another area would obviously be looking at—I say obviously—one area that I think would be an area of great interest to me is looking at the passage of a number of people with serious mental health issues through the system. I think that, again, we are at risk sometimes of storing people like that in our prisons. As we know, mental health services are stretched across the whole community.

**Hon LYNN MacLAREN:** So what is your view of the recommendation that your office be empowered to continuously monitor and audit custodial transport services?

**Prof. Morgan:** Well, with the notion of continuous monitoring, we cannot be out there. We are not running the show. The department monitors, and the department must always have the responsibility for the primary role of monitoring. If it does not, then in effect you deflect the risk onto us. The risk has to lie with them, because they are responsible for monitoring that delivery. But, yes, certainly we will, again through the audit function, probably have a somewhat increased capacity to continually monitor. But as I say, we do it through our three-yearly cycle, plus at every site we go to. So next time I go to Kalgoorlie, the primary purpose of the visit will be to go to the Eastern Goldfields Regional Prison. But I will also be going to the court custody centre. So that is why I say we are keeping a watching brief, without necessarily reporting things in public. But, again, things we become aware of can be brought to the attention of people and acted on.

**The DEPUTY CHAIRMAN:** You have given us some really good examples of the types of issues you would look at in an audit. We also want to talk about the issue of show cause.

**Prof. Morgan:** Yes, I can certainly talk about that. The show cause, I guess really to understand where we are coming from on that, it is probably important to think about a bit of context about how we operate at the moment. We are not an enforcement agency. We are not a sort of quasi-judicial body. We are a parliamentary inspectorate. So if you want to conceptualise what we do, it is closer to the Auditor General or the Ombudsman than to a classic enforcement agency. It is obvious that there are areas of risk in every aspect of custody. There is risk to staff as well as to people in custody. We saw that over the weekend at Hakea, where there was an incident and a prison officer was badly injured. So, risk is everywhere. We do try to alert people to risk at every conceivable stage when we identify it. There can be different levels of risk and different types of risk. Let me talk a bit about the processes we use so that people can understand that show-cause notices are not

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the only way in which we operate. First of all, we will always give feedback to superintendents and other managers when we go on regular liaison visits to sites. Sometimes this can be something as simple as having observed in a workshop that there does not seem to be very good management of the tools. It is things that they might simply not have picked up on within the prison—they generally do, but there are obviously areas that we notice and we bring to their attention. To be fair to the superintendents, they are very responsive to what we do generally, and there is an attempt usually to respond to the issues that we raise.

When we do a formal inspection, the process that Richard Harding adopted, and which I have continued, is that at the end of any formal inspection, we actually deliver what we call a debrief. That is a detailed account of where we are at in our thinking at the end of that week or two on site. So last Friday at Acacia, I delivered a debrief reflecting on what we had found out in our two week up there. That is not a public document, and it must not become a public document, because it is a work in progress and the final report may differ from that debrief. But it is giving them—the prison and the management team—the opportunity to respond to that if they think we have got things wrong and for us to modify that. What is very interesting is that, generally speaking—the example of the children with no shoes is a good one—when something is raised in a debrief which is accepted by the department and which can be solved, they will do it. They do not await for the final report. We also make recommendations in our reports. Again, we try to monitor the department's responses to our reports and whether it has truly implemented what we have recommended. I quite often engage in correspondence on specific issues, particularly from me to the commissioner of DCS or the senior team. We will hold meetings as necessary. I also have regular meetings with the minister so that the minister is apprised of areas that I have identified as being a risk, or, indeed, areas of good practice.

I suppose the final elevation in the system at the moment is what we call a risk notice. I am not sure whether you have seen reference to these. The risk notice originated—again, you might ask Professor Harding about some more background on this—in 2004 or 2005 when the then minister was not confident of the information she was receiving through her department. So I think there was an agreement that where the inspector had identified issues of particular risk, there would be a specific notice given of that risk. When I took over the office, I did a bit of a review of these, because as you would appreciate I took over at the end of March 2009 when the Ward inquest in particular was well under way, or the preliminaries to it were well under way at that stage. The role was really, as I say, to highlight issues that did not appear to be being raised to the satisfaction of the inspector through other mechanisms. I found that there had been just four or five risk notices in the period before I took over, and these had all been issued in the period between 2004 and 2006. You will see reference to some of these, I believe, in the coroner's report on the death of Mr Ward. Since I took over, I have issued two risk notices to the department. One was in June last year, and this related to health services across the system, and especially to health service delivery at Hakea Prison. I do not necessarily need to go into detail—I can if you want—but in essence, at every prison I went into in the first few months, everybody was complaining about health services and seeing it as a risk point for the prison. So I sent a risk notice to the department.

[11.05 am]

**Hon PHIL EDMAN:** Can you elaborate on the health services? What sort of health issues were they?

**Prof. Morgan:** It had really got to the stage where there were issues of service delivery and there were issues of conflict within the various health centres and conflict between the health centres and head office. I do not want to say really any more than that, except in closed session, perhaps. But the basic point was that it had reached the point where I thought this needs to be elevated to that level. The pleasing thing is that there was a response. Now 12 months on I go into the prisons, and, yes, there are still service delivery issues, but a lot of the conflicts have been resolved or are in the

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process of being resolved, so I think we can start to see a way to a better outcome. I emphasise that it is not about individuals. It is about the fact that the system had reached a point where —

**Hon LYNN MacLAREN:** I do not mean to interrupt, but we are conscious of the time, and although there is so much that we can learn from you, I want to bring this back to the vehicle fleet, if you do not mind. There are some questions that we really need to ask of you. I am referring, for my colleagues' benefit, to questions 6 and 7 on this page, which are really important to find out. Question 7 is: what is your view of the current condition of the prisoner custodial transport fleet and the juvenile custodial transport fleet, particularly the long-haul vehicles? Do these vehicles give any assurance that a death in similar circumstances to Mr Ward will not occur again?

**Prof. Morgan:** I should say I have not seen the questions.

**Hon LYNN MacLAREN:** I thought you had been provided with the questions.

**Prof. Morgan:** I understand they were due to come through, but they did not. It does not matter.

**Hon LYNN MacLAREN:** If you are not able to answer it, it is fine to take it on notice.

**Prof. Morgan:** It is quite a long question, but the gist of it is: what is the state of the fleet, and can we be confident?

**Hon LYNN MacLAREN:** You have mentioned that we have achieved some tremendous progress in shifting the transport volume to buses and to planes. But this is really taking us back to the fleet that still exists and is still in use. We want to know how it is faring.

**Prof. Morgan:** The first point is that as far as we are aware, and as far as we can validate, it is on target for complete replacement by the end of this year. It is not just a case of getting a vehicle; it is a case of getting all the technologies operating. So if there is a risk to the vehicles not being fully operational—my colleagues here might wish to say something on this—I think it would be to do with the electronics. But we have no cause to be particularly concerned about that at this stage, I think. The time frame should be met.

**Mr Holdom:** I am actually unsure about what the state of play is in relation to a couple of the long-haul vehicles, which just do not seem to have been ever quite fixed up properly. But, having said that, these are vehicles that for the most part have been replaced by using buses and planes. They have simplified the electronics for most of the smaller vehicles that have subsequently been developed, and we have a high measure of confidence in the technologies that are being used for those,

**Hon LYNN MacLAREN:** Do you know if any of the vehicles that are still to be upgraded are in use now? Have they been grounded like an aircraft, or are they still being used?

**Mr Holdom:** My understanding is that there is still a good handful on the road at present.

**Hon LYNN MacLAREN:** So do we have some assurance that a similar circumstance will not occur?

**Mr Holdom:** Only in so far as those vehicles that are the second-hand vehicles from the original 2001 fleet are not to my knowledge being used in those regional situations.

**Hon LYNN MacLAREN:** So they have been brought to the city?

**Mr Holdom:** That is right, and there have been modifications made to all of those old vehicles in terms of testing of temperatures and intercoms and duress alarms and things like that, which certainly increase the safety of use of even those old vehicles. Prone as they are to breaking down and what have you, they are not going to be in a situation where that breakdown is going to be out in the bush somewhere.

**Prof. Morgan:** Perhaps I could add to that as well by saying that there is a human element to this. I am confident that Mr Ward's death has embedded in staff a much stronger risk awareness and a

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much stronger commitment to duty of care. So there is an issue about the fleet, but there is also an issue about how the staff conduct this. I do not think anybody can be complacent. Nobody can ever give a cast-iron guarantee that there will be no deaths in the back of transport vehicles.

**Hon PHIL EDMAN:** But you would be making sure these vehicles are in good working order and are being serviced regularly, would you not?

**Prof. Morgan:** We would. Again, in terms of the service history, you really would need to get chapter and verse from the department on exactly what that service history is, and documentation. I do not know whether Jim or Cliff can add to that.

**Mr Bryden:** No, other than as the new ones have been coming on line, the old ones are getting taken off line and being put into positions where they are not used to transport prisoners. I am not sure whether all of the old ones are going to go out of service or not. But those that are in service have been upgraded, and, as Cliff said, temperature monitors et cetera have been put in.

**Hon LYNN MacLAREN:** One of the things that has come out of the committee is that you are in a position to be aware that these vehicle were lacking in some maintenance. So I guess that begs the question: should the transport fleet, in your view, have been upgraded before this point? Also, had you been in a position to actually identify any problems ahead of time, and had you had enforcement powers, would this fleet have been upgraded earlier?

**Prof. Morgan:** I think it would be interesting for you to ask Professor Harding about that as well, because he started to raise concerns as long ago as about 2001–2002, so there is a long history to this. Some of those concerns became about maintenance, but some of them initially were just that these vehicles just seemed inherently unsuited. So if you look at the earliest report that came out of my office on prisoner transport, there is picture there of six Aboriginal guys cramped in the back of a little van. It beggars belief to me that that ever was an accepted form of transport, irrespective of the condition and maintenance of the vehicles. As time went on and the maintenance deficits did become rather obvious—some of this was quite vividly exposed by the coroner—it certainly was the view of Richard, and it would have been my view, that the fleet should have been replaced earlier. But, obviously, there is a serious of reasons why that did not occur. It meant that the issues, as you appreciate, became very complex in the coronial inquest, because there were issues around the service provider G4S. But there were also issues about the fact that the fleet was decrepit. When I went to Kalgoorlie shortly after assuming office and I went to the police station, I talked to the police in Kalgoorlie—I am not sure that this is very *Hansard*-like language—but they said, “We wouldn’t take the fucking things on the road.” This was the police view of the G4S vehicles. So, yes, if we had had enforcement powers, would it have been any different? What I would like to think is that the show-cause process, if it is solidified in statute, would require me to be posing much more specific questions of the department. There was one risk notice around the vehicle fleet after what was called the Sandfire incident, but it was very general notice from the then inspector, saying, “This is obviously a high risk.” But there was not a requirement on the department to respond. What I have in mind with the show-cause process is that we would identify much more specific questions. Some people may say that this is with the benefit of hindsight. But it is not. I believe that if Richard or I had had been in the chair at the time and we had had the statutory power of this sort, we would have been able to ask: Why is there no padding in some of these vehicles? Why are people sitting on an unpadding bare bench?

[11.15 am]

Why are there no seat belts or other forms of grab rails, for instance? What are you doing about the maintenance—if we had heard specific concerns about that? What about the air conditioning or the airflow? Why are you not stopping every two hours for comfort breaks? You could pose a series of specific questions. You could require a set of specific answers. This is not being adversarial. This is just trying to say, what can we do to improve? Now, some people see that as being very weak and say that is not really an enforcement power. But the benefit of that process is that it actually puts the

department on notice of our interest. And it puts the minister on notice, and if this legislation takes the form that I would like to see, then it would also mean that I can report to Parliament on this. I would hope that if that type of detail became public that parliamentarians, ministers and departments would actually respond to it. To me, this is a better way forward than an enforcement power. On some models that have been suggested, the enforcement power would mean that anything that I decide would then be subject to an appeal to the SAT, and then obviously from there on you could go further upwards in the system. There might be an attraction to that in some respects, but the difficulty is it actually changes the nature of my office. I am no longer really what I call a parliamentary inspector in all of my functions; it is also making it an adversarial role. Although we get frustrated sometimes about whether the system does respond to our recommendations, I would also be a little bit worried that a kind of enforcement power locks you into quite a long-term adversarial process, whereas I would rather see something happen.

The other area I have issued a risk notice on relates to the safety of the bunk bed designs that I mentioned earlier. The department is actioning that as best it can, but it is a very difficult area to start saying there is an enforcement notice. I would have to go around every prison and say, "That bed is suitable, that is one is not; that one is and that one is kind of okay." It does not quite gel with our role.

**The DEPUTY CHAIRMAN:** We do have a lot of questions and, given the time, we may have to provide some of them on notice, if that is okay.

**Prof. Morgan:** Yes, that is fine.

**The DEPUTY CHAIRMAN:** One issue that we are very interested in, and an issue that has come up on a number of occasions during this inquiry and has been referred to in recommendation 12 by the coroner, is about G4S and the provision of training. I know that in one of your earlier reports you were quite scathing about the standard of training provided by G4S. We would be interested in your views as to whether, as a result of the coroner's recommendations, that issue is being sufficiently addressed or whether you think there is more to be done.

**Prof. Morgan:** I think we can say that it is, certainly to some extent, being addressed. Whether it is being sufficiently addressed, I do not think we are in a position to give a definitive answer on that. The department has been well aware of the training deficits within G4S and they have conducted, I believe, at least two full-on reviews of this over recent years. The latest review that the department did was completed, I think, earlier this year.

**Mr Holdom:** Correct.

**Mr Bryden:** There is another one due in December.

**Prof. Morgan:** There is another one due in December. We have not seen copies of the second one —

**Mr Bryden:** Not as yet.

**Prof. Morgan:** I think this is one where the department is well aware of the issues and is attempting to look at them. Certainly there were some examples, which G4S gave us, of additional training that they had done, and we refer to these in the report. The issues really are: were those additional training exercises rather ad hoc or have they been sustained; and, secondly, have they been at all parts of the state or are they somewhat metropolitan focussed? I do not express any opinion, let me emphasise that. I am not expressing an opinion on that, but those are the sorts of questions, I am sure, that the department would have been addressing in depth.

**The DEPUTY CHAIRMAN:** It would be interesting for the committee to see that report and how they measure the competencies that people are expected to attain during that training.

**Prof. Morgan:** Yes. My colleague also had a point.

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**Mr Holdom:** I think the fundamental issue is really about the training of the regional people—those recruited at a local level in the regions. That in some ways has been a strength of the contractor, that they have recruited locally where they can; but that has not always been possible because of the mining boom. Still, the fundamental way in which those people are trained is by working through a workbook of instructions, essentially under the supervision of the local supervisor, who then signs off that they have read that section. That is complementary with a very brief visit to Perth at some point in the early weeks or months that that person has commenced. I gather it is a matter of some three days or so that they have in Perth to —

**Mr Bryden:** I think they have just increased that to two weeks.

**Mr Holdom:** You see, unfortunately, we cannot always track all the detail of that. Two weeks is certainly better than three days, but compare that to 12 or 17 weeks for prison officers and police officers and things like that, one still questions whether or not we are even in the ballpark yet of guaranteeing that these people working in the regions have the kind of in depth training we would want them to have for a custodial officer working more or less autonomously out in the bush.

**The DEPUTY CHAIRMAN:** I would imagine in those situations where there would be pressures applied to get somebody into the job fairly quickly, and I suppose coming from a training background myself I am fairly cynical about a quick sign-off on a self determined training program signed off by a supervisor, I would hope that process would be changing with the two weeks of assessment. We are just trying to work through this and unfortunately Professor Harding's evidence might be delayed slightly.

**Prof. Morgan:** He can wait over in the corner there!

**The DEPUTY CHAIRMAN:** There are a lot of recommendations, and we are finding the information very valuable. Is there anything else you would like to add to the training issue before we do move on?

**Prof. Morgan:** I think that is all we can really say at this stage.

**Hon LYNN MacLAREN:** I will go on to the topic of resourcing. The department advised in July that funding was increased to allow three additional monitoring officers. I wanted to find out if that was working better, now that you have three more officers.

**Prof. Morgan:** As far as we can tell, it is certainly working better. With more hands, there should be a better monitoring process.

**Hon LYNN MacLAREN:** In your view is that sufficient to ensure that the fleet is maintained in a safe manner and G4S staff are complying with company policies and procedures?

**Mr Bryden:** I think what has happened is with this extra increase in staff, DCS now has the opportunity to go into the regional areas more often. Before they had very few monitors and basically concentrated on Acacia, whereas now they have expanded out to the transport areas plus the court custodial area. Without doing an in depth look at it, I think we can safely say that it has improved. But as far as a guarantee, we certainly could not comment on that.

**Hon LYNN MacLAREN:** Do you have any recent examples where G4S staff have caused concern or they have risked prisoner welfare?

**Mr Bryden:** Not to my knowledge.

**Prof. Morgan:** Not that I am aware of. In terms of the monitoring, one strength—Jim said it implicitly—is the ability to have a team that can move between the prison and the transport area as well, so that you can have an expertise in contract monitoring develop. But, no, we are not aware of any particular instances recently.

**The DEPUTY CHAIRMAN:** The other issue that we are looking at under our terms of reference is video conferencing. We are interested in your views about how that is currently operating, and

whether it has been effective. We have been given a raft of information about the various sites where video conferencing is available to certain degrees—particularly in the regional areas, it is quite a mixed arrangement. We are interested in your views on how that is going or how it might be done differently or better and how effective it is.

**Prof. Morgan:** Our position would be, obviously, that in principle if you can do some matters by video, then they should be done by video. It should never be a substitute for where you need a proper face-to-face hearing. I think the facilities within the different prisons and so on are somewhat mixed, but I gather there has been a pretty substantial investment in, for instance, Greenough—you went recently—and they have a much better video-link system operating there. The long term of course is that videos are old technology. The really interesting challenge or question is about the new technologies around the internet and around Skype-type technology. We as an office take the view that this has opportunities for court matters. At the moment, clearly video link is required because of the quality—hopefully it is a reasonable quality—and the size of the screen, the quality of the sound and picture and so on. This is perhaps slightly indirectly related to your terms of reference, but we feel there is scope for this modern technology, like Skype and so on, to be rolled out more widely. A couple of areas that I am really interested in are the use of Skype and video links for family visits where people cannot get to see their families because they are imprisoned in Perth and their families are in Kununurra. There are real opportunities I believe around Skype technology. It is cheap. It is not the best picture in the world, but if I can talk to my kids in France, then they should be able to set up something like this for family visits.

The other aspect that is important is in terms of legal consultation. I dream of the time when a lawyer can sit in his or her office in St Georges Terrace and have an internet Skype link to a prison to talk to prisoners. One of the other things we find is that lawyers are complaining that they do not get to see their clients enough, and the clients are complaining they never get to see their lawyers before the court day. I believe this sort of technology has enormous potential in that regard. Quite apart from formal court hearings, there are heaps of other things, and the department is starting to look at these areas.

**The DEPUTY CHAIRMAN:** Is the department currently doing some sort of investigation?

**Prof. Morgan:** You would need to get a detailed briefing from them about exactly where they are at. A lot of this stuff is occurring—developments happen and I cannot keep across absolutely everything that happens in the department, but certainly Hakea Prison has been trialling the use of Skype for visits for foreign nationals in particular, who may not have seen their children for years. That was a very small trial. Acacia Prison, three years ago or so, was wanting to trial Skype but nothing happened for some significant time because of concern around security and so on. They have now recently signed off on an order that will allow Skype technology to be used, and I believe other prisons are trialling it. For us, the question is: let us have a look at these trials and see how they go. Again, it is a relatively cheap technology. It can meet security requirements and it can be a very valuable tool.

**Mr Holdom:** Telehealth.

**Prof. Morgan:** Yes, telehealth as well. You can make much more use of technology probably around health.

**The DEPUTY CHAIRMAN:** We are just waiting for the NBN to be rolled. I think that will assist with a lot of these issues.

**Hon LYNN MacLAREN:** We mentioned Skype a while ago. They said they did not have the internet out there, so it is going to be hard.

**The DEPUTY CHAIRMAN:** That is an issue that we have been canvassing. It has been interesting to see the responses back on that. The other part of that second term of reference is, of course, air transportation. We talked this morning about the improvement in the area of buses and vans. We

would be interested in your views on the current situation with the standard of air transport available and whether or not you think there needs to be more done in that area with more routes made available in the transport of prisoners.

**Prof. Morgan:** That is a difficult one for us in the sense that, as I said earlier, our detailed field work is now a bit out of date. We have heard good things about the air transport generally—no areas of real concern.

**The DEPUTY CHAIRMAN:** Are prisoners normally quite comfortable with that form of travel, particularly those from distant areas?

**Prof. Morgan:** They appear to be. There may be one or two people who are not, but I do not think we have encountered that that I am aware of.

**Mr Holdom:** We certainly have encountered some individuals who are deeply uncomfortable about having to travel by air, particularly in places like the Kimberley and so on and people who are from quite traditional backgrounds. Certainly that is outweighed by the many more—even on a bus, you are on a bus for many hours sitting there by yourself. You might have a DVD to watch, but it is not exactly productive time. Whereas a plane, it is all happening and there you are at the other end where you need to be in good time and in safety. Certainly our agency and our 2007 report strongly suggested air transport for various reasons. One of them was to bypass that rather dreadful Carnarvon police lockup. It was very encouraging to hear that the commissioner had made a courageous decision to bypass the Carnarvon police lockup by air. But also we had seen it operate in Queensland very effectively.

**The DEPUTY CHAIRMAN:** They have their own dedicated fleet, do they not?

**Mr Holdom:** Yes, the police air wing.

**The DEPUTY CHAIRMAN:** Do you think that is something the state government could look to in the future—having their own dedicated fleet for the transport of prisoners around the state, given the size and tyranny of distance that people have to deal with here?

**Prof. Morgan:** They will obviously, I imagine, be looking at that as one of the options, but I do not have a position on that.

**The DEPUTY CHAIRMAN:** I know from reading your submission that you are probably not in a situation to be able to comment on terms of reference three and four.

**Prof. Morgan:** I would not comment on four, but a brief comment on three would be that at least as far as measuring the effectiveness of imprisonment and programs and so on, I think that we are probably in the early days in terms of having effective measures, and in the committee of the other house that was looking at prisoner employment and training and so on there is some very interesting hard evidence about the effectiveness of programs. All I would like to say is that we need to develop some better measurement tools. I know that the current minister is pushing that very hard. I was at a conference recently where there were some very interesting debates about this. We used to measure inputs; we would measure how many people were put into a program. We then started to measure outputs; we would measure how many people completed a program. What we are really interested in is outcomes, not outputs—outcomes in terms of how many people go into employment on release if they have done employment training programs. But the flipside to that is, of course, that is not a very effective measure because the market may fluctuate; the job market may be different at different times. There is very interesting work going on in Canada, New Zealand and Singapore. They quite separately came to this conference using different language but driving at the same point, which the Singaporeans expressed as developing key risk indicators as well as key performance indicators so that you measure your outcomes, not in terms of the number of people who went into employment because if the job market was very buoyant that may not be a particularly great result. You have to have a measuring point that is much more sophisticated than at

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present. That is a really interesting area, but at the moment I am afraid that we are not in a very good position to know whether, in the current jargon, “what we do works”.

**Hon LYNN MacLAREN:** Do you have a view on the reason for the high rate of incarceration of Aboriginal prisoners?

**Prof. Morgan:** It is a whole series of complex factors around social disadvantage, history—you can never forget history—around early contact, often, with the justice system. There is a lot of evidence—again, Richard Harding and I worked on some of this at the Crime Research Centre some years ago—that the earlier the contact and the formal contact that people have with the justice system, the more likely they are to get enmeshed in that system. When you look at the proportion of juveniles in custody who are Aboriginal, it is very high. It is a whole series of factors. There is no silver bullet in my view, but certainly there are opportunities to try to explore other ways of doing business.

**The DEPUTY CHAIRMAN:** I was interested in how we compare with other states in terms of the provision and diversity of training programs available to prisoners. Is there any sort of data on that?

**Prof. Morgan:** I am not sure that I am in a terribly good position to compare with other states. But Western Australia, in terms of education and training, does seem to stand up well nationally. We certainly win a number of national awards in that area, but I think they would say to you yourselves there is always more that can be done.

**The DEPUTY CHAIRMAN:** Another issue that has been raised with the committee is justice reinvestment. I know there is quite a lot of talk, certainly in the Parliament and out in the community, about that. Are you in a position to share your views on this with the community?

**Prof. Morgan:** I will try not to be simplistic about it. Justice reinvestment is becoming a label. Rather than talk about whether I support justice reinvestment as a philosophy—because that has now got political overtones to it—what I do support is the investment of money and resources into diverting people out of custody and into crime prevention. However that is done—whether you call it a justice reinvestment model, which has a particular connotation in the US about targeting high-risk areas and so on, I believe we should be trying to build local capacity. I believe the regional youth justice service initiatives that the government has pioneered are a very good example of an attempt to divert and keep people out of custody. I am not particularly interested personally in whether you label that “justice reinvestment”; I think it is just sensible use of resources. But, at the moment, we spend an awful lot on imprisonment and we do not spend anything like as much on community justice and some other areas. As I said, there is more to be done, but there is actually a few promising signs as well.

**The DEPUTY CHAIRMAN:** Before we wrap this up is there anything else you would like to add that you think might be of some assistance to the committee in looking at their terms of reference?

**Prof. Morgan:** I have probably said more than I should already. I can see Richard champing at the bit over there.

**The DEPUTY CHAIRMAN:** We might go through our document, and if there are questions we have missed, if it is acceptable, we will send those to you and seek a response on those.

**Prof. Morgan:** Thank you very much for your time.

**The DEPUTY CHAIRMAN:** Thank you very much for your attendance today. That has been very useful information to us.

**Hearing concluded at 11.38 am**

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