STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

TRANSPORTATION OF DETAINED PERSONS

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 22 SEPTEMBER 2010

Members

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

Hearing commenced at 10.18 am 10:18:21 AM

WARD, MS DAISY
Cousin of Mr Ward, examined:

NEWHOUSE, MR MARC
Chair, Deaths in Custody Watch Committee Inc, examined:

MACKAY, MS MARIANNE
Co-deputy Chair, Deaths in Custody Watch Committee Inc, examined:

CARBONE, MS ELIZABETH
Committee Member, Deaths in Custody Watch Committee Inc, examined:

The CHAIRMAN: Welcome to everyone who is attending this hearing today. We have Ms Daisy Ward on the other end of the line. I hope you can bear with me and with some of the difficulties that may occur. We have to go through a process, as anyone who has been in these hearings before would understand. Before I begin, I must ask you to take either the oath or affirmation.

[Witnesses took the affirmation.]

The CHAIRMAN: Hello, Daisy. Are you there?

Ms Ward: Yes.

The CHAIRMAN: Do you have an oath or affirmation there?

Ms Ward: No, I have not.

The CHAIRMAN: Can you affirm that everything that you state is a true record?

Ms Ward: Yes.

The CHAIRMAN: As an explanation, Ms Ward could not attend the committee today. We have arranged for this phone hook-up. She is in the Warakurna school and is attending the hearing from there. That is why we will have some difficulties, but at some stage, Daisy, if you do not mind, I will ask you for your statement. If you wish to say something or get me my attention, please speak up.

Ms Ward: I am near the Territory border.

The CHAIRMAN: Before you came in, you will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document that you refer to during the course of this hearing, for the record. Please be aware of the microphones and try to speak into them. Ensure that you do not cover them with papers or make noises near them. As we have more than one witness today, can you speak in turn so Hansard can clearly pick up your statements. 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.

Before I ask you to address the committee, I would like to introduce ourselves. I am Brian Ellis, the chair of the committee. Hon Lynn MacLaren, Hon Phil Edman and Hon Collin Holt are members of the committee. I have apologies from Hon Kate Doust, the deputy chair, who could not make it today. I would like everyone, including those in the gallery, to check that their mobile phones are turned off. There is nothing more disconcerting than having a phone ring during the hearing. I would like to point out that it is a privilege to be invited to a public hearing and that we are here to hear from the witnesses today. I would like to point out that unruly behaviour or inconsiderate noise will not be tolerated and I will ask anyone who does initiate that action to leave the room.

So that everyone understands what this committee is up to and what the committee is inquiring into, I will read the terms of reference so that everyone understands the structure that the committee is looking into. The committee is to inquire into and report on progress in relation to the implementation of the coroner's findings in relation to the death of Mr Ward; the feasibility of air transport or videoconferencing instead of long-haul vehicle transport; the scope and efficacy of government action to reduce Indigenous incarceration and recidivism rates to prevent further Indigenous deaths in custody; whether the Coroners Act 1996 WA should be amended to require the government to respond to coronial recommendations within a set time frame; and any other relevant matter. It is clear what the terms of the committee is. You are quite welcome to bring up any matter that you wish, but you must have an understanding of the guidelines within which we are working. Having said that, I now invite you to make a statement to the committee, if you wish.

Mr Newhouse: Thank you for the opportunity for the Deaths in Custody Watch Committee and for Daisy Ward to provide evidence. I would like to begin, of course, by acknowledging the traditional custodians of where we are today, their ancestors and people before them, as the traditional custodians of where we are today. I would also like to very briefly acknowledge Daisy Ward as the family spokesperson on behalf of the birth family and Mr Ward's widow and children. I acknowledge the profound sense of loss that this community has experienced.

What I was going to propose, if it is acceptable to the committee, is that I make a short opening statement. I have prepared a summarised presentation of our submission, which I can give to the committee members. What I thought would be helpful for me, at least, so that I keep on track, is to go through each term of reference in order and to give a brief summary and to point to the relevant recommendations that we make, if that is acceptable.

The CHAIRMAN: That sounds acceptable to me and I think to other members.

Mr Newhouse: Thank you. I will call on Marianne Mackay and Elizabeth Carbone at various points to make contributions. Perhaps if I give you copies of —

The CHAIRMAN: Sorry, Marc.

Hon LYNN MacLAREN: I thought it would be good if Daisy could hear you give the report, so we will see if we can move the phone closer to you so that she can hear you better.

The CHAIRMAN: Daisy, can you hear Marc speaking?

Ms Ward: A little bit, Marc. Speak up!

The CHAIRMAN: We will shift the phone over to the middle. It is the logistics of trying to arrange it so that you can hear me as well as Marc. Bear with us and we will try to see if we can get you in a position so that you can hear Marc speaking.

Mr Newhouse: Thank you.

The CHAIRMAN: Can you ask Daisy if she can hear you?

Mr Newhouse: Can you hear me, Daisy?

Ms Ward: Yes; loud and clear.

Mr Newhouse: Through the Chair, would it be appropriate if Daisy made a statement now?

The CHAIRMAN: I can hear from here. If she is prepared to make a statement now, I am willing to listen now.

Mr Newhouse: Did you get that Daisy?

Ms Ward: Yes.

Mr Newhouse: If you want to make a statement now, that that would be good.

Ms Ward: I would really like to say that it has been really affecting me and my family because the DPP found that the two drivers in the vehicle that were not fit. They were just driving instead of checking the vehicle. The JP said that he did not look in the back. That is what I am talking about where the racism is coming from. When the court asked him, "Do you know this bloke?" and about the other thing about a woman [inaudible] we had a video link-up, he was walking to [inaudible] and left our home and came the city for questioning. His name [inaudible] he had dirt in his nose no [inaudible] and no shirt. My face dropped. All those things are spinning our mind. It has not gone away. Lots of things like how far, how long do we have to wait for the government to decide what to do with the road, with the video link-up and the people instead of pushing them around? A lot of Aboriginal elders say to me that they get pushed by the police. How long does it take for the family to know? The government—because it did not take long for the DPP to get the message and fly into Warburton and say that the two drivers are charged. And look at the duty of care that they were supposed to do from the start. From the police to the JP and all the way that they did not do their duty of care all the way to Kalgoorlie and opening the door a little bit and giving him water. They could feel the heat going into the hospital and just putting him on a wheelchair instead of a stretcher, as if he was likely to take off and run. He was finished. He was cooked alive and the families are so upset. We think so much, what are they doing? Why can they not give this thing back to the department? I will keep talking to my family and the family is talking to me and we are getting so worried. We think that they must all be laughing at me and my family, but they did wrong. There were mistakes from the start to the end. It has taken the government so long and it did not take so long for the DPP to come and say that the two drivers are not charged. The families are heartbroken. We are really broken down because the government should be doing its duty of care. We vote for government people to do their duty of care. The Aboriginal people like us are left out in the darkness, not knowing what is happening.

The CHAIRMAN: Thank you for your statement, Daisy. I think Marc will now make his statement.

Mr Newhouse: Thank you. To begin with, I want to say that Hon Giz Watson presented a petition to Parliament on behalf of the watch committee that was signed by a great number of Western Australians on 16 September 2009. The matters in the petition, as I understand it, helped shape the committee's terms of reference and came out of two public meetings that were held following Mr Ward's death. Over the past two years, the watch committee has been the community voice on the death of Mr Ward, along with many other organisations, to ensure that fundamental, systemic changes are made. Mr Ward has become a symbol across the country in relation to what is wrong with the justice system.

The chain of tragic neglect and poor decisions that led to the death of Mr Ward in January 2008 is, amongst other things, evidence of institutional or systemic failures in the corrective and custodial systems, especially as they relate to Aboriginal peoples. The Deaths in Custody Watch Committee is highly critical of successive governments' incremental approach to change in this area, and we argue, as many others have, for a whole-of-government approach that is inclusive and more directly accountable and responsive to the community for the provision of just, fair and inclusive outcomes.

We thank the committee for the opportunity to appear before it. We note that the inquiry appears to be very thorough. There have been many submissions. We urge the committee to leave no stone unturned in its inquiry, particularly in light of the DPP's decision.

I would like to now move on to the specific terms of reference. Our submission, the "Deaths in Custody Committee of Western Australia Submission to the Standing Committee on Environment and Public Affairs", basically makes a number of key recommendations, including in the areas of the Coroners Act, the Bail Act, the Inspector of Custodial Services Act and changes to the prisoner transport system.

The first term of reference is the progress in relation to the implementation of the coroner's findings. Whilst we acknowledge that there has been progress in the implementation of the coroner's findings, we note with concern that the information made available publicly from the government and relevant departments on the progress of the implementation has been scant. In our submission, I make reference to a number of phone calls that I made trying to prepare for the submission and received no response. This is a part of the problem. We are, however, concerned about the following matters: many of the government's responses to the coroner's recommendations appear to be superficially, in our view, based upon budgetary considerations. Of course budget considerations are important, but the scorecard needs to be reconfigured to measure the actual and real costs of the failure to act in this area. For example, the cost of this inquiry, the ex gratia payment and so on against the real benefits of taking positive action such as saving lives in the community and fewer deaths in custody and fewer coronial inquests. That is what we need to aim for, in our view. The lack of reporting to the public in regards to the government's implementation of the recommendations is really unacceptable. We had very little information. I would have thought that in the lead up to the preparation of our submission that that would have been made available to us. In the interests of transparency and public accountability, all stakeholders, including the watch committee, need to be provided with ongoing information on the implementation of the coroner's findings. As I understand it, that will happen over time. Regular stakeholder meetings must be convened and we call on the Attorney General to provide community stakeholders with a budget breakdown and a plan of how the $7.9 million will be spent over five years to implement the coronial recommendations and also how it will be evaluated. If it pleases the committee, I refer to recommendations 1 and 2 on page 15 of our submission. Would the chairman like me to continue?

The CHAIRMAN: Sure.

Mr Newhouse: I refer now to the second term of reference, which is the feasibility of air transport and videoconferencing instead of using long-haul transport. I want to bring to the committee's attention that on 7 July 2009, we met the Attorney General, the Minister for Corrective Services. We welcome the changes in policy and the introduction of air and coach transport as a huge step forward. That is something, in our view, that ought to have happened a lot earlier. Mr Porter indicated that the cost of using buses and air travel was comparable to using long-haul vehicles and was basically cost-effective. We therefore submit that by the government's own admission and evidence, air and coach transport is financially and logistically viable and, importantly, is a sustainable, safer and far more humane method of transportation. Our concern is that we are aware that a fleet of purpose-built vehicles has been built. I think that some of those are operational. We hope that the use of air and bus transport is not an interim measure and that it will not cease when the replacement of the fleet has happened, because it is a much more humane and safer way of transporting people when it is absolutely necessary.

Other information has come to our attention. I refer to page 71 of our submission. This incident happened in the metropolitan area and involved the collapse of a detained person, Mr James Yarran. We understand that he was transported in an older vehicle of the type similar to the one Mr Ward was transported in. We would have thought that those vehicles would have been taken off the road, but they had not. He was being transported to a funeral. From memory, he was a diabetic and had

had his insulin shot in the morning prior to being transported. He was transported not by G4S but by the Department of Corrective Services prison officers. On the return trip, they realised that he had collapsed. I understand that he was a big man. The prison officers acted quickly and swiftly, unlike in the case of Mr Ward.

[10.45 am]

They opened the vehicle and administered first aid, as I understand it. They were later admonished, according to the information we have, by the authority, which said that they had breached protocol by not ringing through first and saying, "This is what we're going to do." They acted swiftly, and, in our view, they saved his life; that is the view of his family as well.

Following the incident, one of the officers went on stress leave and made a comment that, "No-one is dying on my watch." On arrival at Casuarina, the medical staff tried to normalise his temperature because he was overheating. He was also observed as having seizures. They could not normalise his temperature and they rushed him off to RPH in an ambulance. It has been reported to us that he had stopped sweating, which is a sign that the body is overheating and starting to shut down. This is very similar to the case of Mr Ward, but different circumstances.

They managed to get his temperature down—we have a copy of the discharge form, but I do not have it with me now; I can submit that later if that is important. He was returned to Casuarina, from the information we have, in a vehicle that was used to transport police dogs, which was reported to us as being in better condition than the van that he had been transported to the funeral in.

It has been reported to us from two separate sources that, shortly after the incident, refrigeration repair vehicles were seen at Casuarina, attending to the vehicle, and, within a few hours, they had left and the old Mazda van had been replaced with a new Mercedes transport vehicle. It has also been reported to us from another source that prison officers had complained about the state of the vehicle that they were required to use, and that they were reluctant to use them. So, yes, I just wanted to bring that to the committee's attention.

In terms of the matter I have just addressed, if you refer to recommendation 4 and 5 of our submission, we would urge the committee, as a part of this inquiry, to request from the department a breakdown of the number and types of faults that have occurred with detained-person transport vehicles, including breakdowns, problems with air conditioning and so on, that that information be publicly available, and that a directive is issued that older-type vans be withdrawn as a matter of urgency.

In relation to videoconferencing, we know that there have already been many submissions made on this, and, specifically, we are concerned about lack of progress in the increase of videoconferencing in WA, particularly in remote and regional areas, where the majority of detained people are Aboriginal people.

It appears that, over a long period of time, following working groups, the implementation and the actioning of videoconferencing facilities have really been bogged down, and that, we hope, needs to change, because the effect of this on Mr Ward was that he died a tortuous death. If videoconferencing had been available and had been an option at that time, his death may have been avoided.

We support the government's response to the Coroner Hope's recommendations 7 and 8, but we are concerned about the implementation of the government's proposal to establish a centrally located judicial service via audio–visual infrastructure in regional and remote communities. Again, we are concerned that it will get bogged down and that it will take a long period of time to actually implement. It is an important initiative and it needs to be prioritised, in our view. If you refer to page 19 of our submission, recommendation 6 relates to that.

The other matter that we thought was relevant under the terms of reference is the amendments to the Bail Act. Would you like me to deal with that now, or under any other relevant matters?

The CHAIRMAN: No; you can deal with that now.

Mr Newhouse: We essentially believe that amendments to the Bail Act are closely linked to reducing the need to transport detained persons. That is really at the centre of it. Reducing the need to transport people is critical and fundamental, as is the use of videoconferencing. It is submitted that, in order to ensure the rights of an accused person in remote areas to have bail considered in accordance with that act, urgent amendments to that act are required. We understand that the Bail Act is currently under review, and we have been asked to make a submission on that. However, as you will see in terms of the recommendations, we make very specific recommendations about amendments that have already been drafted. They were prepared by a senior barrister—Belinda Lonsdale—on behalf of the watch committee. The essence of it, really, is a proposal to reduce the accused's time in custody before being brought before the court. We submit that the right of an accused person to have bail considered according to the law is so fundamental that it is inappropriate that an accused be allowed to remain in custody for any substantial period of time without appearing before a court presided over by a magistrate or a judge.

There needs to be a requirement that once a person has been arrested, she or he will not be transported to another location in the absence of an order from a magistrate. We propose that the Bail Act be amended to reduce the time within which a person must be brought before a court after arrest by prescribing the use of video and audio-link facilities in circumstances where a court cannot be convened at the place of an arrest within a prescribed period of time.

Finally, we also propose that section 5 of the Bail Act be amended to make it compulsory for a person making an arrest to consider a person's case for bail within 12 hours of a person's arrest, and for the accused to be brought before a court within 24 hours of that arrest. If you refer to page 20 of the submission, the proposed amendments are detailed there.

The other matter that relates to the Bail Act is the proposal for the provision of a duty magistrate to service remote areas and sit outside traditional court times. Whilst we acknowledge that it may not always be practical to convene a court within the time frames that we have contemplated under the proposed amendments to the Bail Act, we therefore propose that Parliament make provisions for a duty magistrate to hear bail applications for accused people arrested in remote areas where it would not be practical to bring them before the court within 24 hours, or where the distance to the nearest court is greater than 50 kilometres.

Thirdly, we want the Bail Act amended to make it a requirement to convene a court with a video link, or, in the alternative, an audio link, to the location of the arrest.

The other point is that in the event that it is not practical to convene a court at a building or structure dedicated for that purpose, the definition of court be expanded to allow a duty magistrate to convene a court from another location, provided the magistrate adjourns the matter to the nearest dedicated court sitting date. Recommendations 8 and 9 of our submission relate to that, and the amendments are on page 21.

Another relevant matter is the presumption in favour of the granting of bail, which clearly did not happen in the case of Mr Ward and many others, for offences under the Road Traffic Act and other prescribed minor offences. Our view is that, in the vast majority of cases, a refusal of bail on charges under the Road Traffic Act, or for a number of minor offences, is inappropriate. In urban areas, a magistrate would only, in very rare circumstances, refuse a person bail altogether on a charge under the Road Traffic Act; there would have to be exceptional circumstances.

The watch committee notes that a magistrate has very broad powers to impose conditions on the granting of bail to prevent the risk of an accused reoffending, should that risk of reoffending be established. We are, essentially, proposing there that the Bail Act include a presumption that a person charged with an offence under the Road Traffic Act, and certain prescribed minor offences,

be granted bail, unless there are exceptional circumstances. Page 22 of our submission, recommendation 10, relates to that point.

The other important matter is access to legal advice for people in custody following the refusal of the granting of bail. We are very concerned that people in remote areas are particularly vulnerable in that they lack access to legal advice. Again, my understanding of the case of Mr Ward is that he had no legal advice. We propose that it be made a requirement of the Bail Act that when bail is refused, it should be mandatory for the arresting officer to facilitate an accused having access to legal advice and representation. That is recommendation 11, page 22 of our submission. Daisy?

Ms Ward: I know the gentleman in the [inaudible] camp in Warburton. He was taken.

Mr Newhouse: The work camp in Warburton?

Ms Ward: Yes. When are they going ahead?

Mr Newhouse: What was that, Daisy? When is it going ahead?

Ms Ward: Yes.

Mr Newhouse: The committee does not know.

The CHAIRMAN: We do not know.

Mr Newhouse: Are you concerned about that?

Ms Ward: I am just concerned about the amount of people who are [inaudible] the families [inaudible] they have got no ways of coming down in [inaudible]. There are other things; there are other problems as well.

Mr Newhouse: Yes.

Ms Ward: A lot of Aboriginal people—men—complain that even though they are in prison they are [inaudible] equal; they are like [inaudible]. They all get upset and they say something to me—talk about it. I am just an educator; that is all. We are not treated equally.

Miss Mackay: She is talking about the lack of equality and is worried about people being moved to the work camp and taken from home.

The CHAIRMAN: As far as the work camp at Warburton goes, we have no information on the progress of that.

Miss Mackay: As soon as we do, Daisy, we will let you know; all right? It is Marianne; hello.

Mr Newhouse: Are you finished, Daisy? Shall I continue?

Ms Ward: Go ahead.

Mr Newhouse: Okay. Thank you. I am also going to call on Marianne to assist with this section, which is the scope and efficacy of the government action to reduce Indigenous incarceration and recidivism rates to prevent deaths in custody.

We would like to acknowledge and support the various submissions made to this inquiry on this term of reference. Some of them are very comprehensive, and in particular we endorse the Aboriginal Legal Service of Western Australia's submission, that of the Chief Justice, and Hon Giz Watson's submission on this matter. We note that the Attorney General and the Department of Corrective Services have reported various initiatives to address Aboriginal incarceration rates and recidivism. It is acknowledged that a small number of these initiatives have had some success, and that is a positive. But we submit that, really, what is required, and what others have made submissions on, is that it is fundamental that there be a whole-of-government approach, together with locally based and Aboriginal directed and controlled initiatives from local communities. These two factors combined are a critical factor in significantly reducing the terrible Aboriginal incarceration and recidivism rates, and it is urgently required. The idea of government departments

acting in silos—"It's not our responsibility; that's your responsibility"—really, that just has to end. It really is not acceptable. We are a civilised society and we should be able to get across government departments and with communities and work out the solutions. The solutions are there but they need to be acted on; we can do this.

The CHAIRMAN: Just a moment, Mark; Hon Col Holt has a question.

Hon COL HOLT: Just a quick question on that. You talk about locally based Aboriginal directed and controlled initiatives. Are you guys aware of any that are occurring anywhere in Western Australia?

Miss Mackay: The Department of the Attorney General has spoken about the Aboriginal justice agreement, and I will just read to you what it says on the department's website.

Hon COL HOLT: I understand that that is a government initiative.

Miss Mackay: Yes, that is a government one.

Hon COL HOLT: What about a community initiative?

Miss Mackay: Yes, there is RAW, which is a youth-based program.

Hon COL HOLT: Where is that?

Miss Mackay: It is through Kim Collard. They take the young boys who have been released from Banksia and Rangeview out and they participate in cultural activities and workshops. They are actually coming down to my area to work with some of our boys in Kwinana soon; they are going to be conducting some workshops. We have actually got NITV doing a bit of a documentary on it.

Hon COL HOLT: Any others?

Miss Mackay: Halo; yes, Halo is a very sad story. Halo was a community initiative where one of the coordinators had actually mortgaged her own property to get the funding to provide this program to youth as well. This contract was handed to, as I am aware, the City of Cockburn, which is very sad. The lady who started the Halo program has just lost out. She mortgaged her own property because she could see the problems that were going on, and she has just been kicked aside by the government taking over a program that actually worked.

Hon COL HOLT: Any locally based programs out in the regions?

Miss Mackay: Yes. I am the coordinator of the Yonga Boys Aboriginal Dance Group. We found that a lot of the young ones were bored in our community in Kwinana, and as we are a very close-knit Aboriginal community, we tend to come together a lot. Two years ago, Alcoa funded some workshops for us, and we continued that on a volunteer basis with all the parents. We have 12 eight to 16-year-olds who participate in weekly cultural workshops. They also perform around Perth as well.

Hon COL HOLT: Any other regional and remote programs?

Miss Mackay: Yes, in the regional areas they do have—I am not sure of the specifics—stud farms and stuff where they work with the kids. They take them out onto farms and stuff; some of them are Aboriginal controlled and some of them are non-Aboriginal controlled. That is throughout the state and the Northern Territory and New South Wales, I think.

Hon COL HOLT: Thanks.

Mr Newhouse: Thank you for that. We would also like to submit to the committee—this is a very important factor, but possibly one that might be a bit hard to accept for some—that the Aboriginal incarceration rates in WA are clearly the highest in the country. As the Chief Justice has alluded to, Australia probably locks up Indigenous people more than any other country in the world. That fact clearly represents compelling and undisputable evidence, in our view, of institutionalised racism in

the administration of justice, and of successive governments' failures to implement measures to reduce Aboriginal incarceration and recidivism rates that actually work.

Miss Mackay: Sorry; I just wanted to take on from what Mark said. When he stated that that fact represents compelling and undisputable evidence of institutionalised racism in the administration of justice, we attended the law and order forum at Notre Dame University earlier in the year. Mark had to leave for work, so he handed me a question, and it asked what the impact of institutionalised racism was on the government's ability to provide effective services for Aboriginal people and to lower the incarceration rates. Chief Justice Wayne Martin actually said, "We don't have institutionalised racism; what we have is structural discrimination." So that was coming from the Chief Justice. I got back up and responded to that and said, "Well, hang on; so what you just said to me was, basically, institutionalised racism, but you used different technical terms to explain it back to me." I said, "A structure is an institution, and discrimination is a form of racism, so the two go hand in hand. So if you're telling me that there is not institutionalised racism but there is structural discrimination, well, then, you're basically accepting what we've said." I put that back, and, as an Aboriginal person, it was a bit of a shock to see the Chief Justice stop talking for about a minute. I just wanted to put that forward, because this is coming from the Chief Justice. I basically just wanted to put that to the committee while Mark is on that note.

Mr Newhouse: There does appear to be, in Australia, a kind of denial of the existence of institutionalised racism. I would hope that we are mature enough to actually tackle it and address it, because it results, consistently, in unequal outcomes for many Aboriginal people who come into contact with not only the justice system, but also many other parts of our institutions.

The other factor that we would like to draw to your attention is the current law and order approach of this government. A central contributing factor to the unacceptable incarceration rates in WA is, we believe, this government's approach to law and order—in some ways it is actually beyond belief. We have seen an unprecedented increase in the rate of incarceration for Aboriginal people, and there is serious, serious overcrowding and inhumane conditions. This is a death waiting to happen; I do not think we are overstating that. There are daily breaches of basic human rights that have a disproportionate effect on Aboriginal detained people, particularly in regional areas.

Hon PHIL EDMAN: Is the serious overcrowding the main reason for the inhumane conditions?

Mr Newhouse: That is correct. We get a lot of phone calls from family members who are concerned about detained relatives. They are in cells designed for one person and there are two—sometimes three—people in a cell, so if they need to use the toilet, they have to step over someone's head because their head is next to the toilet bowl, because if their head was the other way, it would be where the door opens and you would not want to get cracked on the head. You can just see that it is really undignified, and you can imagine trying to deal with your circumstances, your situation, because we know that a lot of people in prison have mental health problems.

Hon PHIL EDMAN: Would there be any particular prison that would be worse than others?

Mr Newhouse: The inspectorate for custodial services recently put out a report on Greenough prison, where, I think, late last week a young 31-year-old Aboriginal woman from Jigalong was found doubled up in a cell, was taken to hospital and died.

The other effect of overcrowding is that all the other affiliated services—things like health, medical, access to medical care, programs, education, employment, basic things like bed linen, clothing, through to the kitchen facilities—then go under. It is difficult to meet the demand because you are over capacity. According to the WA Prison Officers Union, 11 out of 14 prisons are already holding far more inmates than they are designed to. Since the beginning of 2009, the prison population has increased 25 per cent, and that is a similar level of growth to the previous eight years.

Miss Mackay: Just on that note, a lot of that would have to do with the appointment of the new chairperson on the Prisoners Review Board. Parole has gone down 600 since Narrelle Johnson's

appointment. A lot of people who have committed minor offences, even though they have a whole history of reoffending—which, to me, shows a failure by the government to provide effective services to lower the recidivism rates, and if the person is reoffending, obviously programs and services are not being put in place to support this offender. If someone can continue to do what they are doing and there are supposed to be mechanisms in place to stop this kind of behaviour, obviously the mechanisms are not working in the first place. On the parole, we have so many examples of people—under the mandatory sentencing laws—who have gone and done what the government want and have detoxed off amphetamine use or whatever substance use they were into, or addicted to, and have turned their lives around. Years later, through forensic testing, old DNAs have come forward, and because of mandatory sentencing they are back in jail. My partner is one of these. We fought for two years to get my partner clean off amphetamines; two years later he was fully detoxed and working full time. This is a man who has spent 10 of his last 18 years in jail. He got clean and he did something I thought he would never do; three years ago he was put back in jail for an old DNA. My partner served three years' jail after he had detoxed and gotten clean. He was working full time and we have three children to support—I was an at-home mum—but my example is just one of many. You could bring in so many Aboriginal people to sit at this table, and they will tell you the same thing. Now, if the government wants people to get better, why are there laws such as mandatory sentencing that do not take into account individual circumstances of an offender? The parole board sits there and looks at the file, and if someone is reoffending and reoffending and reoffending, why is something not being done to stop them? People deal with all different problems, and this overcrowding issue can be tackled just by something as simple as justice reinvestment. Christian Porter is always talking to us about budgetary restraints. Well, stop locking people up, and that will save $100 000 a person. Go and do rehabilitation training centres, so that if they are driving without a licence all the time, go and build a driver training school within the prison. Let them walk out with their licence and be clear of fines. If they are interested in art, go and build an art studio on the rehabilitation training centre; let them sit there every day and bust out artwork and go and sell it, so that when they get out, they have a couple of grand or whatever to go and get themselves on their feet—you know what I mean? Elders are forever telling Christian Porter, who is very ignorant to us—it is so hard to get a hold of him—that we need to discuss so many options for prevention and diversion, but DOTAG is not listening to us. The Attorney General is not listening to us. We want to help ourselves, and I can tell you now that there are so many Aboriginal people out there who are trying to help themselves, but the government is pushing us down and pushing us down and pushing us down. There is a minority in the police department who are racist—it is only a minority in every department—but, unfortunately, the minorities are the ones at the front line dealing with our people. I have spoken with a number of police officers who are first-class constables who have stated that if they walk into Commissioner O'Callaghan's office, they will get ripped up and jarred because, "Who is a first-class constable to walk into my office?" They have stated that they cannot be social workers. They cannot be out there on the street. What we need is a holistic approach. We need 24-hour drug and alcohol services working alongside the police, and we need mini task forces established. If they are going to drive around in those police cars, why not have two police officers in front, a Department for Child Protection worker in the back, and a drug and alcohol officer in the back so that if every single person they attend to needs help with their families, DCP is there.

[11.15 am]

So if they need help with drugs and alcohol, that drug and alcohol officer is there. There are also two people who can say that there has been no police brutality; so there are also witnesses to view the officers' actions with these people. Karl O'Callaghan at the law or order forum spoke about this as well, and he said, "The governments continue to invest heavily in police, rather than investing in mental health, child protection and health", and that, "The police want police outcomes", and, "The government needs to provide a holistic solution." Then Malcolm McCusker, QC stated that, "When they leave, what have we got for them to prevent them from going to prison again?"

There are just so many things. We get picked on. We get spat on by police. My brother has come out of a nightclub to have a cigarette, because you cannot smoke inside, and the police are straight there with a move-on notice—"What are you doing?"; "Oh, I'm having a smoke; I've just come out of the club"; "Sorry, mate, you're loitering; move along"—and then he cannot go back into that nightclub. This is what the police do. We need to get the word out there. You do not understand what the police do to our people and how ignored we are by the system. You know, there are so many of our people who get shot and stabbed and just treated like crap, flogged in the back of these police vans, flogged in prisons. We have prison guards and police officers who walk around and cause our people to suffer and suffer and suffer. You have no idea what they do in the prisons. They victimise our people. They have them standing their naked. They victimise them. They do this in the police station. Mirrabooka Police Station as well is one of the worst ones around. They take Aboriginal women in there and they strip them and they flog them and they do so much stuff. I can give you evidence of that from prisoners who are currently serving time in Bandyup Prison if you need further clarification or evidence to prove my statements that I have just made.

The CHAIRMAN: I think Hon Phil Edman has a question for you.

Hon PHIL EDMAN: Ms Mackay, just recently I spent a day in Casuarina Prison to have a look at the facilities, and I spent some time in the Indigenous section. One of the issues that was brought to my attention is that 50 per cent—this is overall—of people in that prison, not just the Indigenous, actually reoffend because they want to go back into the prison. I want to ask you, firstly, if you are aware of that; and, secondly, what your opinion of that is.

Miss Mackay: Yes. You will have a lot of men who will say that. That is because they are so institutionalised that they do not know anything else, and when they come out to society there is nothing here for them, so they are just overwhelmed and it is like nah, nah, nah; I am going back. So they will actually commit an offence knowing that they are going to be sent back; or their support might be inside that prison from other prisoners, so when they come out they might feel lost without those other prisoners, so they will go and reoffend to go back into jail. You will get a lot of them, whether they are Aboriginal or non-Aboriginal, where they just have nothing and they are just lost, and that prison is all that they know, so there is nothing else that they can do. They are just so institutionalised, and they do not know anything else.

Just on Casuarina, I actually had a call the other day from a concerned auntie for one prisoner who is in there. There were a number of issues, but basically what it has come down to is that the prison is failing to provide this particular prisoner with the medical attention that he deserves and that he really requires. He has been on suicide watch as well. He suffered from chest pains, and they sent him to hospital, and he had his appendix removed, when he was suffering chest pains. Then he was suffering chest pains again, and he had a blocked artery, so they had to put a stent in there. As you can understand, after an operation like that you need serious painkillers, and they are giving these men in there a Panadol. We have got so many men, and women, but mainly the men, who are complaining about headaches and medical issues, and they are being ignored because the correct health services are not provided. On that note, Medicare is taken off prisoners when they are put in jail. Why? Why are the health services handed over to the Department of Corrective Services, when the Australian government already has a health scheme in place? There is already funding available for prisoners to access health care by Medicare. So why are they having to be stripped of something that could save the government funding and take away the government's health fund? The federal government has got that money there already. So, the state government is wasting money on health that could be used to lower the recidivism, and to bring in programs like justice reinvestment and divisionary programs.

We also need more for our youth. I get asked all the time by young ones, "Oh, Marianne, can you put a netball team together, or can you start a modelling group, or can you do something else, because us mob, we're bored; we've got nothing to do?" They are bored because councils take

away their park and their basketball court and where they want to hang out, and then, if there is a skate park, they say, "Oh no; there's all this antisocial behaviour there; we'd better go and clean it up." It is like, hang on; if you are going to put activities there for young ones, why not monitor them properly? Why not have cameras where you can monitor them? Why not have things in place where they can have proper youth advisory bodies that actually work, and have ones for Aboriginal people as well as for non-Aboriginal people, but have ones where they come together as well? I will not use reconciliation, because you cannot go back to something you never had. There was no good relationship in the past, so you cannot have reconciliation. But we need to have conciliation between the Aboriginal and the non-Aboriginal community to come together and show each other their culture, show each other the experiences they have had. Aboriginal people suffer from so many social justice issues that there is no way that we can move forward unless the people in power allows us to do that in the way that we want to. Let us lead ourselves forward with our own self-determination, our own controlled programs, with our own funding. Let us have an Aboriginal person as the CEO of our organisations. Employ our Aboriginal people in our Aboriginal organisations, and not all these other people, where they are taking up positions in organisations that could be beneficial to our people.

The CHAIRMAN: You mentioned justice reinvestment. Can you explain to the committee your views and your understanding of what justice reinvestment is?

Miss Mackay: Basically, my understanding of justice reinvestment is a whole community approach to lowering the recidivism rate. If the community want to feel safe and protected, they need to be brought in and asked, "What do you feel we can give you to provide you with a safer and more enjoyable community that is free from crime and free from antisocial behaviour?"—well, not free, but has a low rate, because you will never be free of it. So it is tackling areas anywhere where there is a high rate of reoffending, rather than locking all of the offenders up from that area, which is $100 000 a year; so if we have got 10 men from an area who are reoffending constantly and are in and out of jail, that is $1 million. Locking them up is $100 000 a year, so if they did three years each, that would be $900 000 each a year, so that is $3 million. So, instead of locking them up, you could have all of that money placed into that community to have things like rehabilitation training centres, or to have community workshops and community education, and to provide services for the youth, for the males and for the females. Whatever that percentage is of imprisonment within that area, that is where they should be putting that money. It should be put straight back in there. Because if they are going to just lock people up, the reoffending is just going to keep going, as we have seen it, and the imprisonment rates are just going to keep going up. In Acacia, they have got 986 people in there, when they have got an operational capacity of only 750, so that is 236 that they are over in operational capacity, and this is a privately run prison. Thirty-eight per cent of the prisoners in this state are Aboriginal, and 21 per cent of them are in a private prison. So. instead of having all of these overcrowding issues, all of that money could be put straight back into that community where all of these offenders are coming from, and programs and services can be made readily available. That will save the cost of building more prisons, because people will be getting the services and treatment that they need, so they are not going to reoffend if they have been shown a different way of life.

Drug and alcohol use, and smoking cigarettes, too, I would like to add, is an addiction. It is not a habit. I would like to put that point across very strongly. It is not a habit that someone can control. It is an addiction. People should not be penalised for having an addiction. They need to be supported. They need to be supported in a comfortable environment, and they need people to listen to them. If we can treat drug and alcohol addiction, that will lower rates, along with all of the criminal activity that we have such as stealing and everything that people do to support their addiction. Is that enough for you?

The CHAIRMAN: That is good. Marc, do you want to add anything?

Mr Newhouse: We clearly support and recommend that the government adopt a justice reinvestment approach. We recently had a public meeting where we launched the "Build Communities, Not Prisons" campaign. We received overwhelming support from that meeting. A coalition of churches, chaired by the Anglican archbishop, the Aboriginal Legal Service, the Prison Officers Union, the public sector union and a range of community organisations, are in the process of forming a community justice coalition. One of the matters that that coalition will be addressing is the whole question of justice reinvestment and other initiatives.

In our view, it is not sustainable to keep building prisons, because we are just going to keep filling them up and we are going to be over capacity. The projections are there; the inspector has provided that. The idea that we just keep building more and more prisons, and the idea that punishment and those sorts of sanctions are the appropriate response to a range of offending behaviours, internationally has been shown not to work. The justice reinvestment approach basically reinvests funds from prison construction and operation to relevant initiatives in people's home communities, where a large percentage of offenders are coming from, so it is identifying which communities. It is pretty much like you can put someone in prison, and sooner or later that person is going to get out, and if they are going back into the same environment and the same circumstances, what is going to happen? It is quite highly likely that you are going to have reoffending. The Royal Commission into Aboriginal Deaths in Custody basically pointed to the socioeconomic causes of high rates of imprisonment, which then leads to deaths in custody. So, we thoroughly support justice reinvestment and recommend that the government look at it. We are concerned, however, that should that happen, and we hope that it does happen, again it needs to be driven from those communities, not the other way around. It needs to be driven from those local initiatives, because the people in those communities are their own best experts, they know their communities, they know their issues, and they have got the solutions. That is where the funding needs to go to.

We are also concerned, just on this question, if I can move on quickly, that it appears to us and many others that the current government—in fact the Attorney General, with respect—is far more interested in pushing through, in our view, draconian law and order legislative initiatives, like stop-and-search, the prohibited orders act, and name-and-shame and so on. They seem to be the priorities. We think the priorities are wrong. The priorities, particularly arising out of Mr Ward's case, are to amend the Coroners Act, to amend the Bail Act, and other matters. Those things are the priorities, but somehow the government does not put that priority on them.

I just want to, if you will bear with me, go back to videoconferencing. A critical thing that I forgot to mention with videoconferencing—hopefully it will be rolled out—is that it needs to be done with thorough consultation and engagement with Aboriginal people, not only about the use of videoconferencing, but also about the use of interpreters. To my knowledge, there is no statewide Indigenous interpreting service. That is pretty appalling. You may have someone for whom English is a fourth or fifth language, and it is being explained to them what the charge is, and they do not understand it and nod their head, and that may result in a prison sentence or some other sanction. So we need to consider the question of Indigenous interpreters, particularly in regional areas.

Miss Mackay: Yes, and with equal salary. I have spoken to a number of elders across the country who have told me that Aboriginal interpreters are paid half as much as interpreters in general.

[11.30 am]

Mr Newhouse: I would like to move on, as a part of this, to the Aboriginal visitor scheme. That was something that came out of the Royal Commission into Aboriginal Deaths in Custody. Are you familiar with that scheme?

The CHAIRMAN: No.

Mr Newhouse: It is where Aboriginal people visit Aboriginal people in prison. The idea is to provide support and to basically help prevent self-harm, deaths in custody, that sort of thing. So it is

a very important program. The Aboriginal visitors are, I understand, paid by the Department of Corrective Services, and they are required to report to the prison authorities after their visit. Nevertheless, it is an important program. It has come to our attention, through an AVS worker who has been doing it for 20 years, so he has got considerable experience—he is based in Geraldton—that AVS is not operational in Geraldton, where there was a death in custody last week; in Carnarvon; in Kalgoorlie; and in Roebourne, based on the information that we have been provided with. That is of grave concern and needs to be inquired into, particularly given that these are regional areas that have basically been described as Aboriginal prisons. So, I would like to submit, and this person has authorised me to do that, correspondence from her to the watch committee, and also correspondence to her manager. I have whited-out some of the parties' names in there, but the key ones are in there.

The CHAIRMAN: So you would like to table that for the committee's use? Can that be made publicly available?

Mr Newhouse: Yes.

I now want to move on to the Coroners Act. With the Coroners Act, we know that Professor Ray Watson has made an extensive submission on that, as have others. We believe that basically successive WA governments have failed to implement the royal commission recommendation in relation to putting in place a public reporting and review system for coronial recommendations relating to deaths in custody. We are also aware that the Law Reform Commission is reviewing the coronial practices in WA. We are also aware that there have been significant delays in that review. The last phone call I had was, "Oh, the discussion paper that was due out in 2009 is not out". We are drawing towards the end of 2010. We are concerned about these delays. We submit to the committee that there is already an abundance of evidence to support the watch committee's proposed amendments to the Coroners Act. Waiting for the Law Reform Commission to finalise their report, whenever that may be, into this matter will further delay urgent reforms, which at the end of the day will cost lives. That is inevitable. The whole point of coronial inquests and recommendations is to save lives. It is to learn from what has happened and to make sure it does not happen again, as in the case of Mr Ward.

We add our support to the position of the ALS for inclusion in the proposed amendments to the Coroners Act of private companies that contribute to a death in custody. We understand that some people, like the Bar Association and a few others, have cautioned and have said that some of the coronial recommendations are essentially flawed, unrealistic and so on. We accept that that may be the case in some instances. But nevertheless, that is not in our view an argument to not amend the Coroners Act so that there is mandatory reporting. If I was the head of G4S, for example, and there were recommendations that related to us, and we disagreed with them, well, we would say why we disagreed with them, we would have to report back, and we would propose an alternative. So, I do not think it is really an argument that should be given much weight. The key things are that a reporting system is put in place within time frames. Again, I think in Mr Ward's case, that because of the nature of his death and because of the public outcry, there has been reporting, but, even so, scant. So we refer to our submission's recommendations, where the amendments to the Coroners Act have been drafted and worded for the committee's consideration. But what we really emphasise is: do we really have to wait until the Law Reform Commission finishes that report? The evidence is there. It is a question of saving lives.

We would now like to go to "any other relevant matters", and I would hand over to Liz Carbone, who is a legal practitioner and has academic qualification in public administration and politics, to take us through amendments to the Inspector of Custodial Services Act, which we think is critical.

The CHAIRMAN: Thanks, Marc. I would just like to point out that we allocated one hour for this hearing, and I am prepared to go over time, but I will have to start winding up at quarter to 12.

Ms Carbone: Thank you for the opportunity today to speak to you. The first recommendation that the coroner made with regard to Mr Ward's death was that the Office of the Inspector of Custodial Services be empowered to issue show-cause notices. We have looked in detail at the submissions that the Office of the Inspector of Custodial Services made to the coroner. If you go through our submissions, you will find that we were actually highly critical of those submissions. We think they are fundamentally flawed in a number of ways, and that essentially show-causes notices are not sufficiently powerful to prevent preventable deaths in custody. We considered a number of models. We proposed a model in our submission. In saying that, that may not necessarily be the only model, but it was the model that we thought was probably on balance the best model that we could think of, taking into account the requirement to change lots of legislation and restructure, if you like, some of the operations of government in order to make the Office of the Inspector of Custodial Services more effective. Our model is based on the Office of the Inspector of Custodial Services having additional powers to issue enforcement notices. It is really a simple proposal. In the case of, for example, what happened with Mr Ward, the evidence presented to the coroner showed that from as far back as 2001, there were government reports suggesting, through the Office of the Inspector of Custodial Services, that the vans were dangerous and someone could die. So, if the Office of the Inspector of Custodial Services had the power to slap a notice on a van—our proposal is as simple as this—and say, "This is an unsafe vehicle; you are not allowed to use it until it is safe", that could be enough to prevent a preventable death in custody. Recommendation 1 that the coroner made in our view, in that example, may not necessarily prevent a preventable death in custody, because what would happen would be that a show-cause notice would be issued, and someone would have to respond to that show-cause notice. There is not a lot of detail that has come from the Attorney General's office about what this show-cause notice proposal would look like, although we can draw on the experiences of the use of risk notices, because prior to show-cause notices, risk notices were being used. But, really, we are proposing something to just prevent preventable deaths in custody. It is a very practical measure. The legislation could be redesigned to empower the Office of the Inspector of Custodial Services to put these kinds of notices on a vehicle, or anything in the custodial system that is unsafe and could cause a death, to mean that it cannot be used until it is fixed. Our proposal really mimics the existing powers that WorkSafe has. So, these powers will not fetter G4S's operational requirements in relation to their employees. They are obligations that they have as an employer to their employees. They are still able to function. I mention this point because the Office of the Inspector of Custodial Services, in their submission to the coroner, said that one of the reasons why they rejected enforcement powers is that they believe that would fetter the managerial operations of G4S. There is really no evidence that it would. I think it would enhance the public's legislative empowerment in this area and really would ensure that the community has greater confidence and trust that in the delivery of custodial services, there are proper safety mechanisms in place.

[11.40 am[

I mean, I am not an Indigenous person, but if I was, how safe would I feel at the moment in the back of a prison van, quite frankly? There has been nothing that has happened in the last few years that would give me peace of mind in that regard.

I will go through our proposal in a little bit more detail. It is outlined under the "Other Relevant Matters" section. We believe that with a different model, we could partly remove some of the frustrations with regard to lack of control over service provision, no matter who delivers the service, and I must say obviously the Deaths in Custody Watch Committee has a position on that, we would prefer that the state delivered custodial services. But we recognise that is not everyone's position. So, regardless of who delivers the service, the service provider will be required to adhere to codified standards set in a statutory framework, and be responsive to the community via Parliament. This is a model that, if you like, links the community, Parliament and the delivery of custodial services within a framework of agreed standards for safe delivery of those services.

There is a history to the use of risk notices. I will not go into that in a lot of detail; however, it is in our submission. Really, we say that show-cause notices are really trumped-up versions of risk notices—a practice that already existed—and there is no demonstrated useful purpose that we could find into how useful they actually were. According to the Office of the Inspector of Custodial Services' own submission, they were of limited usefulness. Just for some historical reasons, it is documented in here that what happened was there was an escape of a number of prisoners a few years ago outside Parliament House, and it was that escape that triggered the use of risk notices. Since that time, they really have not proved to prevent much at all. So we are really advocating more power in that regard.

So with the Office of the Inspector of Custodial Services, their act should be amended to give them more teeth, because if one actually looks at their act in terms of what they are empowered to do, they have no power to enforce any standards at all. They are a body that writes submissions, and they get circulated and they get tabled in Parliament, but there is no onus on anybody to actually do anything as a result of those reports. So we believe that if our primary proposal was adopted, it would mean to some extent that the Office of the Inspector of Custodial Services would be required to change their methodology. However, that is essential if they are to have a role that really meets the community expectations about what they should be doing as a body that is funded by us, the public, to ensure that prisons are being run safely and effectively. Obviously, as representatives of the executive government, it is really within your prerogative to make those changes—I just want to say that—because we cannot do it. We can ask for it, but we cannot change the legislation; only you can.

Mr Newhouse: And we have also drafted the amendments, again, under the recommendations.

Ms Carbone: Some of those relate to the private member's bill as well, which we also talk about in our submission.

Just in regard to some background to the overall submission, you will note that we attached the Ward case document, "The Ward Case and Lessons for the WA Government: System-Wide Dysfunction Requires a System-Wide Approach". That was the first document that we tabled, and that went to the Attorney General. That was in response to a meeting that we had with him, when he asked for our input. We provided that, and we have documented through our further submission to this committee some of the feedback that we got from the Attorney General's office after tabling with him our submission. But in regard to this particular matter, in regard to our specific proposals around the Office of the Inspector of Custodial Services, to enhance their powers and give them enforcement powers, we have had no direct official response, either saying yea or nay. We can only infer from that that he has rejected our proposal. We are unsure why, if that is the case. We have no idea why.

Now, I have sort of skimmed over pretty much everything, I think. I just want to emphasise that in our model we have also taken note of the fact that if you are going to create enforcement powers, you need review powers. If you are going to create a power for someone to slap a notice on someone, then that person who has had a notice slapped on them should have the right to have a review of that decision if they think it is unfair, and potentially appeal that decision. So, there are provisions in our proposal to deal with how that may occur. I think that one of the submissions that has been tabled has raised a concern that the Office of the Inspector of Custodial Services Act has not at this stage been amended to incorporate the show-cause notices and the auditing function that Christian Porter also announced. In our view, that provides us with an opportunity, in the context of this committee, to really look at the act, and look at whether executive government really believes that the proposals that are currently being tabled are enough to provide public confidence that custodial services will be delivered in a safe manner.

So, in general, we believe that there needs to be consideration of the overall funding of the Office of the Inspector of Custodial Services, and the division and separation of powers within that office, in

order to appropriately manage the following: enforcement; review of enforcement decisions; inquiry handling; long-term reviews and reports; and longer-term education and prevention functions, which of course are very important. As well, we have made a number of other recommendations. For example, in relation to review powers, we did, as I said, canvass a few models, but we ended up forming the view that the State Administrative Tribunal human rights division would be the appropriate body onto which to put a review function for any order of a notice slapped on a service provider.

If I may, I also want to just briefly mention another part under "Other Relevant Matters". That is to do with transparency and accountability generally. I need to find that in my notes.

Miss Mackay: You see, if WA had a human rights act, then there is a lot of legislation and a lot of policies that would not be put forward, because we would have protection under that act.

Ms Carbone: Okay. We believe that in the past 30 years or so, as more and more services have been corporatised, deregulated and privatised, that has thrown up new challenges in terms of government policy, and in terms of, well, what happens when you take a service that was provided by you, and you contract it out to someone else to provide; how do you mitigate against the public's loss in terms of transparency and accountability in the delivery of those services? I wanted to raise that as an issue, because what we saw in Mr Ward's situation was that no-one has been charged over his death. No-one has been charged over a horrific death that is in a very sanitised way referred to as caused by heatstroke. No-one has been charged over that death. There is an argument to suggest that government, in the way that it designed the delivery of that service, through a chain of different providers, contributed to that fact, because there were so many providers that it was difficult to actually lay a charge on one single person or body. So, what is the onus on the executive government when it privatises and contracts out services, and that results in things like this horrific death, where no-one is charged? I think that comes back to a number of things. But the one issue I want to briefly talk about is that privatisation can be a smokescreen by which you almost contract out of certain checks and balances in the system. So how do we create systems where that does not happen—where there are not all these hidden costs to the public and the community that do not show up in the narrowly defined balance sheet by which you make a determination about whether it is viable to keep something in-house or contract it out?

The CHAIRMAN: I am going to have to wind you up now.

Ms Carbone: Okay. Everything is in our submission.

The CHAIRMAN: I was going to give you the opportunity to sum up in conclusion. In that process, you may be able to answer a question that I have. That is whether you consider that similar events to those that happened to Mr Ward may happen again. You can address that in your summing up. But, before you do that, I would certainly like to thank you for your submissions. You have given us a lot of information to work with, and you have presented it very professionally. So I thank you for that. I would also like to thank Ms Ward, if she is still on the phone. I do not know whether you are still there, Daisy, but thank you very much for your patience. She has gone. That is quite understandable! So, would you like to sum up?

[11.53 am]

Mr Newhouse: We clearly argue and recommend that transportation of detailed persons be returned to the Department of Corrective Service; that there are very strong moral, legal and economic reasons for why that should happen that are very clear to us; that the contract with G4S—the company has an appalling human rights record in this country and internationally—be terminated. We have been advised that is not going to happen until the end of its term. However, I think the public, particularly the Ward family and that community, need an assurance from the Attorney General that if they continue with contracting out, G4S will not be considered.

A final thing is the medical issue. I was quite appalled by what I heard. We had a meeting with then minister Margaret Quirk, and she revealed that the routine health audit procedure for when police hand over someone for transportation to a private company, in this case G4S, is a 10-point tick-box check list by the police officer. You might have first-aid training, but it is ludicrous. There is a real problem with that. It is grossly inadequate and does not meet minimum standards of duty of care. Basically, we propose—there are recommendations to that effect—that when someone is being transported lengthy distances, someone is there who at least has paramedic training and has the power to act. The G4S officer was a paramedic but it was not part of her role so, she did not use it.

In summing up, we believe that fundamental changes are needed; urgent law reform matters need to be attended to, sooner rather than later. They are more of a priority than pushing through things like stop-and-search laws and so on. These things are equally about saving people's lives. It has been quite a long period and we have not seen any legislative changes and we believe that needs to happen. If it does not happen sooner rather than later, we will see further deaths in custody and further instances. Remembering that the prison population generally is an Aboriginal one, when you look at that in the context of Aboriginal people 30 years old and so on and the overcrowding, the need for medical services, the lack of them, inadequacy to deal with the significant health problems that arise, in essence, it is a recipe for disaster. We have to have a different approach. There needs to be a bipartisan approach across political parties and a genuine attempt to work with communities to resolve this.

Miss Mackay: On justice reinvestment, when we had the opening of the Riverbank centre, my co-deputy chair, Glen Moore, spoke with Christian Porter. He advised us that he would not speak about justice reinvestment until we got him 400 people who did not belong in prison. As far as I am concerned, that is his role as the Attorney General and, as a member of the Deaths in Custody Watch Committee, I cannot believe I was requested to do something like that before something that could be beneficial to the community was put forward. I wanted to advise the committee of that.

The CHAIRMAN: As I said before, thank you very much for attending. You obviously have one last thing to say.

Mr Newhouse: This came to my attention. This is the next prisoner. I am not sure of the period. Perhaps I can read this to you very quickly —

> There will be more problems in the prisoner transport system. I know of many but the prison dept does everything it can to keep the information hidden. I was seen by 3 Doctors at Hakea Prison, who all said I was too sick to be transported to court.

This is here.

> My court date was changed and a new warrant was sent to the prison the day before. The prison still sent me even though I couldn't sit in the van. I passed out approximately 25 minutes from the court house. And when other people in the back of the truck got on the intercom and told the driver I had passed out,

Told G4S staff —

> the drivers response was "Fuck him we will be there in half an hour" The District court Judge orderes me to go back to the prison immediately -

Obviously he saw I was ill.

> Yet GSL made me wait standing in a cell for a further 7 hours.

I am happy to table that.

The CHAIRMAN: Thank you for attending and presenting your submissions. I will close the hearing now.

Hearing concluded at 12.00 noon