

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO THE TRANSPORT OF PERSONS IN CUSTODY IN WESTERN AUSTRALIA

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 15 JUNE 2015**

SESSION THREE

Members

**Hon Liz Behjat (Chairman)
Hon Darren West (Deputy Chairman)
Hon Nigel Hallett
Hon Jacqui Boydell
Hon Amber-Jade Sanderson**

Hearing commenced at 10.52 am**Ms MAUREEN KAVANAGH****Director, Criminal Law Division, Legal Aid Western Australia, sworn and examined:****Mrs KELLY NICLAIR****Team Leader, Duty Lawyer Service, Legal Aid Western Australia, sworn and examined:**

The CHAIRMAN: Good morning. I am Liz Behjat, Chairman of the committee and I represent North Metropolitan Region. Just out of the room at the moment, but she will take her chair there, is Amber-Jade Sanderson who is a member for East Metropolitan Region. My deputy chair is Hon Darren West from Agricultural Region; also on the committee are Hon Nigel Hallett from South West Region and Hon Jacqui Boydell from Mining and Pastoral Region. Our clerk is Tracey Sharpe, and committee advisory officer, Dr Julia Lawrinson, will come back and take her seat. We will do the formalities and they will come back in.

On behalf of the committee we would like to welcome you to the meeting. Before we start, I have to ask you both to take either an oath or an affirmation to swear you in.

[Witnesses took the oath or affirmation.]

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

The Witnesses: Yes.

The CHAIRMAN: The proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to speak into them and ensure that you do not cover them with papers or make noise near them and try to speak in turn, which I am sure you will do. 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 material published or disclosed is not subject to parliamentary privilege.

That is the formalities out of the way and you can relax now. You are looking a bit nervous there; do not be. We are quite friendly; I can assure you of that. We have already heard this morning via a phone hook-up from Rosalind Russell-Smith from the Aboriginal Legal Service in Port Hedland. The tyranny of distance in this state, as we are all very familiar with, meant that we did that with her today. She spoke about their submission and her personal experiences in the Pilbara, so some of the committee members may actually refer to that. But there was nothing that was not in the submission; she did not go into other areas than that. Unless you have an opening statement, I have some questions we could start with straight away. What would you prefer?

Ms Kavanagh: I have prepared an opening statement, but really just probably more so by way of the background of our submission. The Legal Aid Commission has regional offices throughout the state and the Perth office when it received the invitation to make a comment canvassed the whole of the state for feedback around the issues that they were facing on the general topics under the terms

of reference. At that stage, it became clear to us that the Pilbara had specific issues and they were joined with the Aboriginal legal services up there to make their own submission. That is probably the background. We have gathered information and these are the issues that our staff have come up with.

The CHAIRMAN: Great. First of all, I just want to ask you a number of questions about the interaction between the stakeholders. The submission from the Pilbara office and the Aboriginal Legal Service suggests that contract staff would be best placed to manage all transport and court arrangements for Aboriginal people, especially because of the historical mistrust between police and Aboriginal people. Is this a general view of your clients in the metropolitan area as well?

Ms Kavanagh: I probably would say no, not necessarily. I read the Pilbara submission and noted that concern and it seemed relevant to the regions, but perhaps not to the same extent in the metropolitan area.

The CHAIRMAN: Your submission discusses your concerns regarding communication issues between court staff and custodial staff. Can you elaborate on this and indicate what processes could be put in place to better manage these communications?

Ms Kavanagh: Just going back to the submission, I think our suggestion was perhaps some communication strategies, particularly in the handover between the stakeholders. Sometimes it just seems that they may well be at cross purposes. I suppose the sorts of recommendations that we would be looking at would be one basic communication strategy between the parties and some training around communication issues in particular. I am not sure whether Kelly would like to add anything to that. It just seems to be something that comes up from time to time, that they are not on the same page and things get missed—whether there was the opportunity for a documented handover procedure with checklists that could be verified. It just seems to fall down on occasions and we end up with people being transported in custody when it is not necessary.

Hon AMBER-JADE SANDERSON: Just following on from that, what are the consequences of things being missed for your clients?

Ms Kavanagh: Essentially that they are spending more time in custody.

The CHAIRMAN: Could you explain how issues arise with prisoners not being able to access food when they are transferred to court and who in your view should be responsible for providing meals for the prisoners?

Ms Kavanagh: This particular issue became apparent and very obvious in a recent murder trial. It was a lengthy court process and unfortunately the accused persons—person in this instance—became quite obsessed with the issue of not having food to the point where he would arrive and speak to counsel and the first thing on his mind was that he had not had anything to eat. He was going back to the prison at night time and having a sausage roll because he missed dinner. This was flagged by a senior practitioner in our division as something where there tends to be crossover on occasions where they are leaving very early in the morning and getting back —

The CHAIRMAN: So they were leaving prison prior to breakfast being served at the prison?

Ms Kavanagh: Yes.

The CHAIRMAN: At which prison in particular was this the case? Do you know; can you recall?

Mrs Niclair: I want to say Casuarina, but I could not be 100 per cent sure of that.

The CHAIRMAN: Would you be able to take that on notice?

Ms Kavanagh: Yes, certainly.

The CHAIRMAN: Obviously you do not need to identify the prisoner, but which prison that happened at and perhaps the hours that they actually left prison—if you have that information—for transportation to court on that date and also the time that they returned.

Ms Kavanagh: I think the return was probably the bigger issue for this particular accused person.

The CHAIRMAN: That question will be B1.

[11.00 am]

Hon JACQUI BOYDELL: Could we also include in that whether this is a one-off case or something that you are aware of happening?

The CHAIRMAN: They might be able to answer that now.

Ms Kavanagh: I think it is not a one-off case. This was probably just one of those cases where it became a consistent issue.

Hon JACQUI BOYDELL: It brought it to the forefront.

Ms Kavanagh: Yes, that brought it to the forefront.

The CHAIRMAN: How long did that trial take?

Ms Kavanagh: I think it was at least two weeks, was it not?

Mrs Niclair: I think it was more.

Ms Kavanagh: Yes, a two to three week trial.

The CHAIRMAN: And that was a constant complaint?

Ms Kavanagh: A constant complaint by the prisoner, yes.

The CHAIRMAN: Okay, fine. We would like to know a bit more about that. Your submission discusses issues that arise regarding persons in custody who have received surety bail having to be transported from the Perth watch house to Hakea before 4.00 pm on a Saturday and 3.00 pm on a Sunday due to Hakea not accepting Serco handovers after these times. Why has this arisen? How many people does it affect, and what would be the most effective way of dealing with it?

Mrs Niclair: I can probably add slightly more to that. Since we did this submission—we have a meeting every two months with stakeholders of the Northbridge court house, and so this issue was raised, and there has been communication between Hakea prison and Serco. My understanding is that they are now accepting prisoners past those times. The number of people may depend from weekend to weekend as to how many it will affect. Potentially between 10 and 20 people would be affected by it.

The CHAIRMAN: But there has been some improvement?

Mrs Niclair: There has been improvement on that issue, yes.

The CHAIRMAN: And that came about as a result of these multi-agency stakeholder meetings that are being held every couple of months?

Mrs Niclair: Yes.

The CHAIRMAN: We have just heard from the Inspector of Custodial Services that they used to attend those stakeholder meetings, and in recent times they have not attended those stakeholder meetings. Have you participated when OICS have been at those meetings?

Ms Kavanagh: I think this one is being—well, whether it is being resurrected or whether it is specifically arranged to deal with the Northbridge issues and the introduction of Northbridge as the central point for hearing matters over the weekend, and the issues that were arising out of that. I do not know that it is —

The CHAIRMAN: Transport to the —

Ms Kavanagh: No, it is generally to do with Northbridge and the whole range of issues around that court.

The CHAIRMAN: The Pilbara office suggests that lawyers are unable to see prisoners in a timely manner due to limitations of the contract in relation to Serco only being able to have limited custody of prisoners and due to the timing of their arrival at court. Does this happen in the metropolitan area as well?

Ms Kavanagh: Yes.

The CHAIRMAN: Can you expand a bit on that, what your experiences might —

Ms Kavanagh: I will let Kelly speak to that one because she is down at the court on a daily basis and can probably give a better picture than I could.

Mrs Niclair: It is in the submission, but essentially my understanding from the contract is that they are due to be at court at least half an hour before court starts. Frequently, by the time they arrive at court and are processed, the court has already started. The issue that arises from this, particularly if it is a trial matter, is that you might not be able to speak to your client before the trial starts, or you may have to say to the magistrate, “My client has only just arrived, I need to seek some time just to speak with the client.” It seems to be a more recent issue. I recall that in the past always if we were at court by around 8.30 am the prisoners would be ready to be seen, but it just seems to be getting later and later.

The CHAIRMAN: Is that when they were being transported by their prison themselves or by Serco previously?

Mrs Niclair: Good question. I do not know.

The CHAIRMAN: You do not know.

Mrs Niclair: No.

Hon AMBER-JADE SANDERSON: Does the provider give any reason for why they are late?

Mrs Niclair: If ever I have raised it, it is usually brushed off to be honest with you, and I guess it is probably—by the time the person that I am speaking to is dealing with me, it is only the person that is now dealing with the prisoner, so I guess it is kind of —

The CHAIRMAN: You are not there at the time of the handover anyway to find out whether Serco got stuck in traffic or they broke down or they left the prison late or —

Mrs Niclair: Exactly.

Ms Kavanagh: My sense of feeling is that it is not an uncommon issue.

The CHAIRMAN: We want to move to regional transportation of prisoners and the contract’s scope. How often are people in regional areas released on bail from say, Albany, when they live in Katanning and then they are unable to return home?

Ms Kavanagh: This came through from our Albany office, this issue, and it was something that the solicitor in charge there had raised with a user group locally, and I had understood from the feedback that was provided by him that he had had two occasions in a matter of a few days, but beyond that to how often it happened, I probably could take that on notice. But certainly, it was enough for him to raise it as a genuine concern. They do have video link facilities in Katanning and Ravensthorpe, but choose to take them to Albany, and then they are stuck in Albany until —

The CHAIRMAN: So they do not use the video link in Katanning or in —

Ms Kavanagh: In the courthouse it would appear not—that they are not utilising it.

The CHAIRMAN: Okay, fine. Could you take that on notice? That would be B2 as to the frequency of these occurrences. Again, we need to find out whether there is one-off things happening or whether there is a regular pattern of these sorts of things and certainly we will seek confirmation about the use of video link with Ravensthorpe and Katanning. Are they the only two?

Ms Kavanagh: Apparently there are video link facilities there; however, the police do drive the accused to Albany is what I have been told.

The CHAIRMAN: You also noted in your submission that in an attempt to avoid this situation arising, a person will be remanded in their home town so that they will be transported by Serco, resulting in a person spending an unnecessary night in custody. You suggest expanding the contract scope to include the optional return transport of people to the place they were transported from. Has that been a historical problem in the regional areas?

Mrs Niclair: I think it is not just a regional issue. We also find that issue in Perth. For example, if someone has come from Northam and the Northam court is not sitting that day, which is why they have been brought to Perth, the magistrate will remand them back to Northam, so that they can get home. I think this has been a problem for as long as I can remember. I have been practising for five years now, and frequently the magistrate, depending on how they wish to deal with it, will adjourn a person back to where they have come from to assist them getting home.

The CHAIRMAN: So they actively do that? They know that is the only way that they will get home that day.

Mrs Niclair: They do, yes.

Ms Kavanagh: That is right, yes, which may well result in them spending additional time in custody.

The CHAIRMAN: Waiting for the transport home?

Ms Kavanagh: Yes.

The CHAIRMAN: It is sometimes perhaps not until the next day, or just later that day?

Mrs Niclair: I think usually what happens is—say, for example, the person appears in court today, the magistrate will say, “Well, Northam court is not sitting until tomorrow, so I will adjourn you to tomorrow in Northam court. That way you appear there, obtain bail and be released.” So, it means that the person would stay in custody overnight tonight, to appear in court tomorrow, and then be released, as opposed to just being released from Perth today.

The CHAIRMAN: Does the magistrate give the prisoner an option: “Here are your options: I can release you on bail to appear at a different time —

Mrs Niclair: Yes.

The CHAIRMAN: — and you can find your own way home. Or I can remand you in custody, and if I do that you will be taken home.” Are they given that option?

Mrs Niclair: They are given that option and they usually do canvass with the person in custody if they are released today, do they have a way of getting home? So, if the person says, “Yes, I have. My aunty is here and she will be able to help me get home, or I have money and I will be able to catch a train”, then that is fine, but if not, they will start to canvass those issues with them.

The CHAIRMAN: So they are already given that option?

Mrs Niclair: Yes.

The CHAIRMAN: So it is not really a hardship in that instance if they are given that option and they know that is the option available to them?

Mrs Niclair: True, but it still means that they are in custody overnight when they otherwise would not have been.

The CHAIRMAN: But that is explained to them?

Mrs Niclair: Yes.

[11.10 am]

The CHAIRMAN: Thank you. I think that is all, unless there are other issues you wanted us to consider?

Ms Kavanagh: I would not mind mentioning the growing trends that we have noticed in the weekend courts. When the Northbridge court was originally mooted, there was the idea that there would be video links to a lot of the centres where there were overnight arrests. The rollout of the video link to the various centres where they have the big numbers is still happening and there are very few people appearing in the Northbridge court by way of video link. In more recent times, what we have seen is that people are being transported from areas such as Northam and Merredin on a Friday because to have them in custody overnight restricts police activities. They cannot stay all night in the lockup to look after them, so they meet halfway and the prisoner gets transported to a certain point where the police pick them up and then transport them on. So there is still a fair amount of transport in from the regionals.

The CHAIRMAN: What sorts of facilities do they use as halfway points?

Ms Kavanagh: Again, this came up at a user stakeholders meeting. Our understanding is that the two police vehicles meet and —

Mrs Niclair: I think they agree on a halfway point and a time that they meet, and then they transfer the person over.

The CHAIRMAN: An exchange of prisoners at dawn or something, is it?

Hon AMBER-JADE SANDERSON: It is just in a car park or somewhere?

Ms Kavanagh: Yes. But we have noticed increasing numbers on the Saturday that are from outer regional areas that had been transported in overnight. That has potentially got to do with the lack of the video link facilities being available. That was part of the idea of the weekend court, that those video links would be available. So it is just a trend that we have noticed in the last few months and we thought we would mention it today.

Hon DARREN WEST: Can I just clarify, the video link at the police watch houses, at the courthouse—you said there are not video links available in the regional areas so they have to transport them to Perth for weekend hearings? Where are those video links not available?

Ms Kavanagh: In the regional centres where the people are being held overnight, not in Northbridge; they have got the facilities.

Hon DARREN WEST: Yes, but in the regionals—in Merredin and Northam I think I heard you refer to?

Ms Kavanagh: That is where we have experienced people being brought in from, in recent times. I think there are a number of centres that were identified in the early stages as being—I cannot remember off the top of my head—ones where there were large numbers of people that potentially would benefit. I am not quite sure —

Hon DARREN WEST: I presume that the accused would be held in a police lockup or a watch house of some sort where there are no video link facilities. There would be facilities at the Magistrates Court, for instance, that could not be used on weekends.

Ms Kavanagh: Yes.

Hon DARREN WEST: Have I got that right?

Ms Kavanagh: I think the idea was that there were to be video linkups at the prisons —

The CHAIRMAN: They just have not been rolled out everywhere yet, is what you are saying?

Ms Kavanagh: They have not been rolled out, yes, essentially.

The CHAIRMAN: We will ask DCS when they come to visit us to provide us with a list of where it has been rolled out and where it is yet to be rolled out. That will be something we will ask them; I think tomorrow we are hearing from them.

Ms Kavanagh: Perhaps just listening to the last session, we do experience problems in video linking up to some of the prisons in order to have the opportunity to take instructions, give advice before court proceedings.

The CHAIRMAN: Is that done by video link generally or a telephone call?

Ms Kavanagh: Telephone. The appearance in court is by video link but the opportunity to try and take instructions from the client is a little bit hit and miss in some prisons, so I just thought I would mention that as well.

The CHAIRMAN: Thank you very much for appearing today. We appreciate it.

Hearing concluded at 11.13 am
