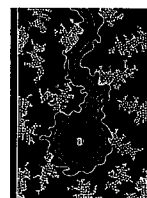
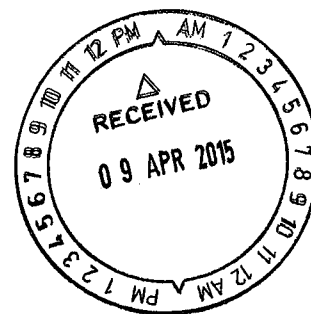


**Deaths in Custody Watch Committee (WA) Inc.
PO Box 1, Cannington, WA 6987**



The Hon. Simon O'Brien MLC
Chair, Standing Committee on Environment and Public Affairs
Parliament House
Perth WA 6000

8 April 2015



Dear Mr O'Brien

Petition No. 81 – Death of Ms Dhu in police custody

I acknowledge receipt of your letter on 26 March and note that the letter was dated 11 March, effectively halving the 30-day period allowed for our submission to the standing committee.

The Deaths in Custody Watch Committee WA does wish that the committee inquires into the matters raised in the petition, and sets out the following to assist in your preliminary investigation:

1. Immediately establish an independent and timely public inquiry into Ms Dhu's death.

There are two issues here: one is the average two-year wait for a coronial inquest to be completed, and the other is the coroner's independence and capacity to find accountability. The lengthy wait for a coronial inquest into any death in custody is a source of much anguish for the deceased's family and could potentially create an obstruction to justice. We believe an independent inquiry is necessary to fully investigate the actions of South Hedland police and staff at the Hedland Health Campus. These organisations effectively are investigating themselves as the coroner relies on their internal reviews on the matter for the inquest. Many national and international commentators warn that independence is severely compromised in such cases. Pursuant to s 25(2) of the *Coroners Act 1996* (WA), the coroner is permitted to comment on any matter connected with a death including 'public health or safety or the administration of justice'. Pursuant to s 25(3), the coroner 'must comment on the quality of the supervision, treatment and care of a person while in that care'. The coroner cannot decide that any person has committed an offence or determine any question of civil liability. Further, there is no mandatory requirement for relevant departments to report back on the coroner's recommendations arising from an inquest, making a coronial inquest unsatisfactory in regard to learning lessons and reforming institutional practice where deemed necessary. Finally, questions remain over the role that domestic violence played in Ms Dhu's short life and death. She had old injuries as well as new and a public inquiry will be instrumental in bringing to light any interaction she might have had with family violence services and any failings that occurred. It is in the public interest that such an independent and timely inquiry is held.

2. Legislate for and fund a mandatory 24-hour custody notification service and R U OK phone line in accordance with the *In Safe Custody* recommendation.

The 2013 Community Development and Justice Standing Committee's *In Safe Custody – Inquiry into Custodial Arrangements in Police Lock-ups* report (SC) report recommended amendments to the *Criminal Investigation Act 2006* (WA) to ensure that detainees in lock-ups receive timely access to legal services, and in particular ensure there is immediate notification of, and access to, legal services by Aboriginal detainees. This would require further funding of the Aboriginal Legal Service in WA, which the government has rejected. We believe this decision should be urgently revisited, however, particularly in light of the incredible success of the custody notification service in New South Wales, where not one Aboriginal death in police custody in NSW has occurred since its introduction in 1998. The R U OK aspect of this service would also assist in meeting the SC recommendation to divert people with mental health issues from arrest. This measure also has the potential to create significant cost savings in diverting people from custody where alternatives exist. Such a service would meet recommendation 223 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) that the ALS be notified as soon as an

Aboriginal person is arrested or detained. In short, a mandatory 24-hour custody notification service and R U OK phone line has the potential to decrease preventable injuries or deaths in police custody; increase legal and health protections for a person in custody; increase Aboriginal family and community safety; and reduce Aboriginal incarceration rates. While there are existing protocols in place they are inadequate.

3. Fund 24-hour on-call medical coverage and assistance at all metropolitan and regional lock-ups.

While the government has agreed to the *SC* recommendation for 24-hour medical assistance at the Perth Watch House, it is unclear what it intends to do at lock-ups in regional areas. Having a medical practitioner or nurse on-call at all times at all lock-ups in the state will assist police officers with cell-guard responsibilities to competently perform their duty of care to people taken into custody. RCIADIC recommendations 122–167 are relevant.

4. Adopt alternatives to imprisonment as a penalty for non-payment of fines.

Immediate reform of the use of fines as a sentencing option and the use of imprisonment for enforcement of fine default is required, involving implementation of the recommendations of the *SC*, the 2014 Review of the Chief Justice's Gender Bias Report and the Attorney-General's 2013 Statutory Review of the *Sentencing Act 1995* (WA). The RCIADIC and the *SC* found that detaining people in custody for fine default incurs an excessive cost to the state and disproportionately affects people on low incomes. Aboriginal women are particularly affected (see Mr Papalia MLA's report of last year, 'Locking in Poverty'). In addition, the *SC* further found there is a lack of cost-effective alternatives to custody in regional areas due to lack of services and resources. Papalia has suggested greater resourcing of community work orders. We believe the NSW work and development orders (WDOs) should be examined as an effective program in breaking the cycle of fines debt. Further, the recent announcements from the government on enforcing payment of fines via benefit quarantining will require cooperation with the federal Centrelink agency. The cost-effectiveness and feasibility of such plans must be questioned when measures that do not require state–federal coordination are available. RCIADIC recommendations 92–121 all pertain to imprisonment being an option of last resort.

5. Expand the role of the Inspector of Custodial Services to oversight of all lock-ups in WA and fund this in accordance with the *SC* report recommendation.

The *SC* recommended that the Inspector of Custodial Services take on oversight of all lock-ups in Western Australia and be allocated more resources in order to carry out this task. We support this recommendation as it would bring a greater degree of consistency and, critically, introduce greater independence to the oversight process. It would also ease the burden on non-government organisations such as the Deaths in Custody Watch Committee by ensuring that custodial processes are adequately resourced and supervised.

6. Invest in community programs instead of constructing more prisons.

We remind the committee of the primary objective of the Royal Commission to reduce the number of people coming into contact with the justice system. We voice our deep concern over the recently debated Home Burglary Bill and mandatory sentencing legislation that is already in place which has seen imprisonment rates skyrocket. We urge the committee to look at how public investment may be directed away from prisons and into programs that will benefit the community. Premier Barnett himself has expressed a desire to reduce Aboriginal incarceration rates. The Police Commissioner has said that greater resources allocated to police would go further if they were instead channelled into community-based initiatives and the *SC* further found that justice reinvestment is worth exploring in order to reduce the number of people in custody.

We have not taken this complaint to the Parliamentary Commissioner for Administrative Investigations (Ombudsman).

Yours faithfully

Marc Newhouse
Deaths in Custody Watch Committee WA Inc.