STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

TRANSPORTATION OF DETAINED PERSONS

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 14 JUNE 2010

SESSION TWO

Members

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

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Hearing commenced at 12.30 pm

JOHNSON, MR MICHAEL
Director, Magistrates Court and Tribunals,
Court and Tribunal Services, Department of the Attorney General,
sworn and examined:

WARNES, MR RAY
Executive Director, Court and Tribunal Services,
Department of the Attorney General,
sworn and examined:

MARSHALL, MR ANDREW
Manager, Research and Analysis,
Department of the Attorney General,
sworn and examined:

The CHAIRMAN: On behalf of the committee I would like to welcome you to the hearing this afternoon. Before I begin, I must ask you to either take the oath or the affirmation.

[Witnesses took the oath.]

The CHAIRMAN: Please state your full name and contact address, and the capacity in which you appear before the committee.

Mr Johnson: Michael Herbert Johnson. I am the director, magistrates court and tribunals, and my contact address is level 16, 26 St Georges Terrace, Perth.

Mr Warnes: Ray Warnes. I am the executive director, court and tribunal services, and my contact address is level 17, 26 St Georges Terrace, Perth.

Mr Marshall: Andrew Marshall. I am manager of research and analysis, Department of the Attorney General, and my contact address is 12th floor, 141 St Georges Terrace, Perth.

The CHAIRMAN: Thank you. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: I have had a request from the media to take some footage. Only if you agree will I let them take footage without sound.

Mr Johnson: I am okay with that.

Mr Warnes: I am okay with that.

Mr Marshall: Likewise.

The CHAIRMAN: I will proceed with the formalities while they are taking the footage. 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 you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. As we have more than one witness, can you please try to speak in turn for the convenience of Hansard. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make

a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I invite you to make an opening statement, if you wish, to the committee.

Mr Warnes: Thank you for that opportunity. I did consider making an opening statement, but given the questions that we received late on Friday, I think they are pretty comprehensive, and they will cover all the areas that we would be keen to talk about. I am sure there will be lots of probes on those questions too, and we look forward to the opportunity to address those.

The CHAIRMAN: Okay. I am remiss in not introducing the members of the committee. I am Brian Ellis, the chair. I am joined by Hon Lynn MacLaren; Hon Kate Doust, the deputy chair; and Hon Colin Holt. We have apologies from Hon Phil Edman, who could not make it here today.

In your submission, you advise that the Department of the Attorney General has full or partial responsibility for implementing six of the 14 recommendations in the coroner's report; namely recommendations 3 and 4 with WA Police, and recommendations 5, 6, 7 and 8. I note on recommendation 3 that the ALS was particularly concerned about the implementation of this recommendation and the communication of this recommendation. What progress has been made in implementing this recommendation?

Mr Marshall: I will answer that one. In relation to recommendation 3, that probably is best directed to the police department, in the sense that it will be implementing any changes to its bail processes. What I can say is that—when I talk about this, in a sense I am answering question 2 as well, and possibly also the others in that section—obviously in our review of the Bail Act we involve the police, as an integral stakeholder in the Bail Act. Do you want me to go on to number 2?

The CHAIRMAN: Also, when that review is completed, could you forward that to the committee?

Mr Marshall: Most certainly, yes.

Hon KATE DOUST: Apart from the police being asked to give input as a major stakeholder, will you be seeking submissions from other stakeholders or opening it up for public comment?

Mr Marshall: I understand that it will not be opened up for public comment. It is a relatively limited review. My understanding as of late this morning is that they are just about to contact the key stakeholders. That would obviously be magistrates, justices of the peace and anybody else involved in the bail process.

Hon KATE DOUST: What are the terms of reference for that review? You said it was narrow in scope.

Mr Marshall: Yes. I can give you the terms of reference. They have been approved by the Attorney General. There are three of them. The first is whether there is a need to provide additional or clearer guidance or direction to bail decision makers to ensure a consistent approach in line with the intention of the act. The second is whether any provisions of the act or current procedures may unintentionally disadvantage particular groups of people. The third is what might be done to mitigate any such disadvantage, looking at issues such as the availability of bail decision makers, the information provided to accused persons, the appropriateness of bail conditions, and the availability of bail support service, among others. It is not a full review of the whole Bail Act but rather is concentrating on those issues that directly result from the inquiry.

[12.40 pm]

Hon LYNN MacLAREN: Will that review be likely to include requiring arrest as an option of last resort? Do those terms of reference encompass that?

Mr Marshall: I think you might find that that is probably best covered under the Criminal Investigation Act in relation to the actions of the police when they deal with someone—fine someone and charge them; what they do. It is really covered by the Criminal Investigation Act.

Hon LYNN MacLAREN: So this review is unlikely to look at that?

Mr Marshall: No.

Hon LYNN MacLAREN: You mention in your submission that you anticipate some time this year that that review would be completed. Could you be more specific about the timeline?

Mr Marshall: Yes. We have set ourselves a timeline, at the latest, December, but we are hopeful that it will be done earlier than that.

The CHAIRMAN: Do you know what training WA Police have received to ensure they have an understanding of the Bail Act? Is the department involved in this process?

Mr Marshall: It is probably best to ask them specifically about the training. Obviously part of the training of all police officers is the Bail Act. We certainly update their training programs whenever there is any new information on bail. For example, the result of this review we do will obviously go towards updating the police training manual.

The CHAIRMAN: When was the last update?

Mr Marshall: The last Bail Act review was done around 2000. I am not absolutely sure. There was a review done in 2000. Some of those amendments flowed through towards the end of last year.

The CHAIRMAN: When do you anticipate recommendation 3 will be fully implemented?

Mr Marshall: That will be up to the police following amendments or any procedural changes we recommend. It is up to the police to implement them once it has gone through the proper cabinet and other processes.

The CHAIRMAN: So recommendation 3 really revolves around this review?

Mr Marshall: Yes, I think so.

Hon COL HOLT: My question relates to training. We have heard some evidence about the Bail Act and people's understanding of it, and obviously there has been the coroner's inquest and review. It seems that this training component is pretty integral to people's understanding of the Bail Act and the consequences, as well as JP training. I think you guys have to be involved in that component. Obviously it is a police department or a service responsibility, but surely you guys have to be involved to ensure that you are confident that training and knowledge is taken up. Have you any comment? You say, "It will go to the police; ask the police about it." You guys are the holders of the legislation—how do you have confidence that in fact police officers are being trained adequately?

Mr Marshall: I do not have the details of exactly what exchanges take place between the department and the police department in relation to training, but they obviously do.

Hon COL HOLT: The coroner has highlighted some gaps in that training in the past. How are you going to ensure there are no further gaps in training in the future?

Mr Marshall: By involvement with the police, as I indicated with the review, because this review, as you will see from those terms of reference, is a fairly procedural review. It is likely to result more in changes to procedures than it is substantive legislation. The police will be involved in that process right from the beginning.

The CHAIRMAN: Some of these questions we have on recommendation 4, obviously it will again depend on the review. There is a question we wish to ask about how the department is satisfied that police officers with powers of deputy registrar of the Magistrates Court have an understanding of

the powers and responsibilities of the deputy registrar. How will the department monitor and ensure they maintain this understanding?

Mr Warnes: Maybe I will start off answering. Mr Johnson, who has responsibility for Magistrates Courts, can add some extra information about the compliance regime that we put in place at a regional level. We have worked pretty closely with the police officers as deputy registrars. There are a number of things we have put in place. We have reissued guidelines. In the supplementary pack that we provided the committee with, we provide a copy of those guidelines. We have reviewed and updated those guidelines.

Hon KATE DOUST: Sorry; we have not seen that.

Mr Warnes: I brought those in quite some time ago.

The CHAIRMAN: What document are you talking about now?

Mr Warnes: We came in about 30 minutes before and provided a file with some supplementary information that you requested. It has all the documents.

The CHAIRMAN: We will have to go and get that. We have not received that as yet.

Mr Warnes: Shall I pause and wait for that? I can keep referring back to that. I can talk about other things that we have done, if you like.

The CHAIRMAN: You can proceed.

Mr Warnes: We have got a regime where a deputy registrar and a police officer in a community is appointed. We rescinded all appointments because before or during the wartime the appointment of a deputy registrar was statewide. If I were a police officer in Laverton or Warburton I would have a statewide delegation. We rescinded all that, revoked it all, and said, "As a police officer, as a deputy registrar, you have a local-based delegation. Here is what your delegation means. Here is the updated guidelines. Here is a description of what is required of you as the deputy." We required them to sign a return certification to the local clerk of court, who then again verbally went through the guidelines and verbally went through what was required. Instigating that made sure that a relieving police officer, or a newly appointed police officer with that delegation, automatically formed a relationship on the phone with the clerk of court, as well as testing the understanding of what was required of them. Once that process had been done, an officer in Mr Johnson's area keeps a record and maintains a register of who has certified basically that they have read and understood the requirements. If we find that someone has been appointed as an acting officer in those locations but we have not had a return certification to say that they have got the guidelines and understand those guidelines, it is Mr Johnson's people who monitor that. They get on the phone and start talking to the local police or the local court people about why we do not have that certification. There is a compliance checking process in place to make sure that they both understand, and from our point of view that they are not putting a court in place that is not properly constituted under delegation from a local magistrate.

The document I am referring to in that file is in the first section. Maybe I will walk you through and orientate you to a bulletin that Mr Johnson has put out to the appointed deputy registrars updating them on requirements. That went out on 1 September 2009. What you will see there are sample letters appointing deputy registrars. Again, it clearly articulates what they need to do, in a process sense, to inform the local clerk of court and where that return confirmation goes to. Then there is the appointment letter for a deputy registrar. Towards the back, you will get the confirmation of appointment. Again, they have got to physically write out to acknowledge that they have understood the guidelines; understood what they are required to do. Behind that you will see the deputy registrar guidelines. What you will see following that, again to show you the compliance and to show you the checking that we do—you might not have that. I have got a copy of the check list that we have of each location where there is a deputy registrar. We have a colour code system to say this is red. This person has been appointed. We do not have the information. It is a court that we

regularly use and it is a code for Michael's person, or local clerk of court, to go and harass the police to get that information. We have a green and a blue flag because it may not be as pressing a priority area because we might not do much—we think we have got a little bit more time to chase up—or we do not have the notification.

[12.50 pm]

In addition to that compliance check, we have a manager of regional courts who goes out in a cyclic fashion to each of the courts and does a quality audit of all of the court systems. And there are three checking items where he purposefully checks that the local court is up to date with their own compliance checking of deputy registrars. I guess I am trying to articulate that there is another checking process that we have in place.

Hon LYNN MacLAREN: Yes.

The CHAIRMAN: It is my understanding that the documents that we have just now received are the updated guidelines for police officers appointed as registrars.

Mr Warnes: That is correct.

Hon COL HOLT: Do you think that implementing this process in this review adequately addresses recommendation 4 from the coroner's report?

Mr Warnes: I think it does. I think that we have to keep—and this is why we have a centralised mechanism of chasing up—on our toes all the time to make sure that there is no complacency in terms of the appointment of deputy registrars. I mean, police people are obviously in those locations going on leave fairly often. We do not want there to be a relieving police sergeant there who is not very clear on what the delegations are, or what the instructions are from a local magistrate about what constitutes a court and when they can constitute a court. So we are clear that we have guidelines in place. We have some way of managing the risk of another event happening again, like we are trying to prevent.

Hon LYNN MacLAREN: So these new guidelines have been in response to the coroner's recommendations, which, obviously, are quite a public event. What steps have you taken to advise the public of your response to the coroner's recommendation in this regard? Have you advised other stakeholders about the new updated guidelines?

Mr Warnes: We probably have not done that. We probably have just administratively wanted to get in and make sure that we were managing the administrative functions properly. I do not think that we have gone out publicly and communicated it.

The CHAIRMAN: It is one of the criticisms brought to our attention by the ALS. They were particularly concerned, obviously, about recommendations 3 and 4 and the lack of communication, and about not being advised of what action is taking place or about what stage you are at in progressing that recommendation. So, I suppose that is where we have to ask: where are you at with this recommendation? I mean, is it fully implemented or is there still a process to go yet?

Mr Johnson: Mr Chair, I will answer that.

It is an ongoing process. Through our review of what we implemented in September 2009, we have found generally that the system, on the face of it, appears to be operating reasonably well and the improvements from the review will strengthen the practices and procedures, and the compliance. The review has indicated so far that there is still room for some improvement, particularly—as Mr Warne stated earlier—when a police officer goes on leave, because sometimes it is at short notice. We have to be on our toes, in effect, to make sure that we make the relevant appointments. I have the delegated authority to appoint deputy registrars; so I appoint them. What I am finding when I am assigning some of them, is that it is very short notice because the police, for whatever reason—be it short notice on holidays or sick leave—have to appoint somebody else. And sometimes, it has not got to us in time. They have been tardy with that. As part of that review, we are taking a further

step to introduce a checklist to the registrar or the clerk of the court to ensure that when they get notification—because when we appoint the deputy registrar, we also send a copy to the local clerk of the court or the regional manager. When we send that now, a checklist will go to the clerk of the court or the registrar to follow up on it. We do not leave it for the police to check. We are making it a responsibility for our officers to contact the police to make sure that they are aware of what their responsibilities are.

Hon LYNN MacLAREN: Two questions, Mr Chair. One arises out of your submission in relation to where you indicate you have encouraged all applicants to meet with Aboriginal elders and Aboriginal community leaders from the local community to promote awareness of the principle persons within the region. I am wondering: is it possible to actually make that a requirement rather than an encouragement?

Mr Johnson: We would certainly strongly encourage people appointed as JPs to make that connection—for the obvious reasons. I do not know whether we can make it mandatory. There is nothing in the act that says it is mandatory. But we would certainly strongly encourage all new JPs to make those connections.

Hon LYNN MacLAREN: These are all good steps to ensure that at least the information is going in, but we need to be able to monitor whether that information was comprehended and is actually acted on. How are you monitoring whether the systems have actually changed in their implementation?

Mr Johnson: We are in the process of implementing the systems at the moment. The funding that was provided to us by government starts from 1 July. We are getting a new person on board in the justices of the peace branch area to start to implement all these new processes. In terms of whether the JPs understand their role, will be followed up through the enhanced training that we will be implementing to ensure that they are fully up to date with the latest legislation and practices of the court. I take your point regarding the appointment of JPs and their responsibilities around the community. We could probably put something in that area as well for the regional manager to follow up with the JP.

Hon LYNN MacLAREN: So monitoring actually what they are doing and how their decision-making has changed through the new training, would be good. Do you have some system —

Mr Warnes: It is difficult for us to monitor the JPs when they are performing judicial functions. It is not really a role that we as court administrators would do—no more than monitoring a decision of a magistrate or a district court judge. Our focus on monitoring is really that the court is being properly constituted under the delegation given from a local magistrate. Our other part of monitoring is that the JP being used is appropriately trained. If they are not being trained, we would be, at a local level, saying we do not use this JP. And we would like to get to a more robust point. And I think that when we talk about the two-tier approach that we want, that is where we want to put in a lot of investment in the training and the development of local JPs, around our court practices and around their court approach.

Hon KATE DOUST: It is interesting that you talk about your two-tiered approach, because we heard earlier evidence about the JP who was actually involved in Mr Ward's situation. Comments were made about the fact that whilst he had been given the opportunity to do training or to read the appropriate materials, he had not done so. I just sort of wondered how many others would there be out there, because you do have quite a large number of JPs. How do you know that they have actually completed the requirements to the standard that they should have? I mean, what sort of mechanism do you currently have, or did you have before Mr Ward's passing, to actually have some checks and balances in place? I mean, I know how easy it used to be in some cases to have somebody put forward as a JP.

Mr Warnes: That is right. Before 2002, I think, it was not —

Hon KATE DOUST: And I have just had a good look at the names of some of the people who have been around for 25 years, and have to say, "Well, they might be very good people, but are they still up to doing that task given times of change and technology has changed and laws have changed?"

Mr Warnes: And I think that is absolutely the right question to ask. We conducted a survey of JPs. The survey is still open at the moment and it closes at the end of this month. It went out to all JPs. We have had a fairly large return rate. We sent about 3 295 surveys and we have had a return of 2 237—outstanding is about 1 000. That is not a bad hit rate in terms of returns. It has proved a very useful tool for us to see what is it that JPs are doing and how they are being used. A large majority of them are being used for witnessing and certifying documents.

Hon KATE DOUST: Is that more of a metropolitan function rather than a rural or regional function?

Mr Warnes: We put the survey out across Western Australia. I think in rural areas they are still doing that role as well. Authorising warrants tends to be the predominant monthly usage of a JP. And bail and surety are, again, predominantly monthly; so they are not being regularly used. And presiding in court—we have some information about how frequently they perceive they are being used in court. The weekly figures were very, very low; monthly was probably more appropriate.

[1.00 pm]

What we got from that was also an understanding of how many had had training and how many would be interested in training. As of 2002, training became mandatory; one could not become a JP unless one did the training, with some exceptions. A lot of those said that they were interested in doing training, and a number of people pulled out saying that they wanted to resign their commission as a JP because they had gone past the availability of their time to be able to do it, or for a number of other reasons. We have had a large number of people resigning their commissions. Three or four expressed a desire to have training, but they were more around the 70-year age group. To follow the committee's earlier line of questioning, training in such cases probably would not be warranted, because we probably would not be using them in some of those court locations, when we actually looked at where they were responding from and what their location was. One of the three JPs who were in the area we were talking about, who caused the Ward inquiry, has moved to another location and has complied with and completed the training. The two others who were in that location have resigned. We have changed and strengthened the policy for JPs, and it is now mandatory. There is no other way now that one can become a JP, unless one has done the training. That is still a concern for us, because it only gets people to do the general training. There are some figures in our papers; they are not really to hand, but about 13 per cent of JPs do court work, and they are the ones we want to re-target and concentrate on building up their capability in a court setting.

Hon KATE DOUST: Are they metropolitan based or regional based?

Mr Warnes: They are both.

Mr Johnson: The majority are in the regions.

The CHAIRMAN: Can you provide the committee with a copy of that report or survey?

Mr Warnes: Sure. It is marked "Draft" because it is still open and has not yet been concluded, but I am happy to make the draft available, or the concluded version when it is finished.

The CHAIRMAN: If you could state the name of the report for Hansard and table it.

Mr Warnes: "Draft JP Survey Results".

Hon KATE DOUST: I go back to the matter you raised about looking at the break-up of administrative and judicial. The reason I keep asking about metropolitan and regional areas is that I would imagine there would be more opportunity for a JP in a regional area to take on a judicial role

rather than just an administrative role. I am wondering whether that is where you are going with that, and whether metropolitan-based JPs will predominantly do work of an administrative nature. I suppose it would be a rare occurrence for a metropolitan-based JP to have to do any court work.

Mr Johnson: There are JPs who do court work in the metropolitan area. They appear regularly in a number of courts, but they are on a roster basis. The member is right, the majority of the JPs we use are in the regional and remote areas, and that is the area that Mr Warnes mentioned earlier that we want to concentrate on, in terms of that second tier training for JPs, so that they understand court work.

Hon KATE DOUST: That would require a higher entry point, if you like, for somebody who wants to be a JP working in a regional area—a higher qualification or a better understanding of the system before they put their hand up.

Mr Warnes: I think we would be concentrating on the better understanding and we would be encouraging them to sit with the local magistrate. We have a magistrate in the South West who will not let a JP undertake court work unless he or she sits on the bench with him for a time so that he has confidence about their types of decisions and awareness of how the court operates. That for us is probably best practice for JPs being inducted into a court environment, and how a magistrate is comfortable that they can handle the type of work that comes through the court and that they are able to perform that function as JPs.

Mr Johnson: They also sit with a very experienced Justice of the Peace before they take the lead role.

The CHAIRMAN: Who is conducting this investigation into the two-tier system, and when do you anticipate that it will be finalised?

Mr Warnes: We have undertaken that investigation within Court and Tribunal Services through some of our policy officers. They have provided a draft discussion paper to the Attorney General. We put it to the director general last week. Our understanding is that the Attorney General has got it or will get it very shortly.

The CHAIRMAN: Again, could the committee be supplied with that report once it is finalised?

Mr Warnes: Sure. We actually want to make the document public, similar to Victoria, where changes to JPs are being proposed. Once the Victoria Attorney General approved it, that document was put out for public consultation to say, "These are some changes we want to make. What does the public think about it?" We would like to follow in a similar vein to that. We have not just focused on a two-tier system. There are a range of other options for us to consider with JPs, and we want people to provide some advice and views on that. We have structured the discussion paper along those lines and have recommended that it should go out for that type of comment.

The CHAIRMAN: Is there a two-tier system in other jurisdictions in Australia?

Mr Warnes: There is a section in the supplementary papers I have given the committee that identifies other states. Queensland has a three-tier system.

The CHAIRMAN: Is that in the file you gave us?

Mr Warnes: Yes, it is the last tab.

We collected that type of information for the discussion paper we drafted for the Attorney General. South Australia, in essence, has a two-tier system. They have general justices and special justices that do court work; the others do more administrative work, to the extent that we are suggesting. Victoria has general JPs and bail JPs, which obviously puts a lot more emphasis into the bail work that a JP would do. Other states and territories have JPs with varying responsibilities, a mixture between administrative and judicial, much as we do at the moment. The papers also refer to some work we looked at in New Zealand and the United Kingdom as a comparative. But really,

Queensland and South Australia are probably the ones we were looking at closely and forming some views on.

Mr Johnson: JPs do not do any court work in New South Wales.

Hon LYNN MacLAREN: Just going back to the training materials you provided us with, and in reference to your submission dated 28 May, you say that the draft JP handbook is under professional review. What do we have here? Is this what is under review?

Mr Johnson: That is the existing JP handbook. The review has been completed and endorsed by the Chief Magistrate and the Deputy Chief Magistrate, but it has gone out to professional review to make sure all the references et cetera are correct.

Hon LYNN MacLAREN: When is it anticipated that that will be finalised?

Mr Johnson: We are hoping to have the final document by the end of this month.

Hon LYNN MacLAREN: Will that document be used in the TAFE course, "Competencies for Justices of the Peace"? I understand that that course has retained the same content for at least the past two years.

Mr Johnson: Yes, the TAFE course will use the JP handbook. A lot of the material will be the same, but updated. It is my understanding that there is some material in there that does not need to be in there, and will be taken out. It is more concentrated on the roles and responsibilities of JPs.

Hon LYNN MacLAREN: How soon will that TAFE course be revamped?

Mr Johnson: The TAFE course has a number of modules in it now. It will use the new JP handbook to replace the other.

Hon LYNN MacLAREN: But you have one that is dated June, so this is hot off the presses—the "Practical Affidavit and Statutory Declarations Information" document.

Mr Warnes: No, there are a couple of packages. There is a plastic-bound package, which is the handbook. In the file we have provided there is some more recent information we have pushed out to the JPs as part of an education program for them. That is the latest we have sent out to them.

Hon LYNN MacLAREN: So finally, the $800 000 that has been allocated for the training package—what are you spending that on? Is that going into the new training or the handbook?

[1.10 pm]

Mr Johnson: No; the $800 000 over four years is for the enhanced training of justices, particularly in the regional areas. But it also takes into account updating our justice of the peace database, which is something like 20 years old and we get no real information out of it. So we are going to update that and hopefully that will be ready to go in January 2011. We are also being provided with money to be able to continually update the handbook. That was the problem for us—having the resources to be able to do that. We are also being provided with funding, as part of that funding, to introduce electronic learning modules, and we are in discussions with TAFE at the moment on how that might be achieved. That will mean that if JPs in regional areas or metropolitan areas cannot attend any of the seminars, there will be online training for them. If they undertake those modules and pass them, that will count as their training for that year. So we are hoping to have two modules of those every year, because you have to change the modules. But we are also even looking at an opportunity further down the track, for want of a better phrase, of having some of those modules on the website, so anyone can have a look at them to see what it entails to be a JP or what JPs do undertake.

The CHAIRMAN: Will further funding be required to complete recommendations 5 and 6?

Mr Warnes: We do not think so at this stage. That is excluding the two tier, because it is still subject to the discussion of where that goes and how we roll that out. If I can add to Mr Johnson a little bit, the other thing we have got to do is recruit the training person. We are in the process of

doing that now that we have got funding secured for it. We are trying to schedule out over the next 12 months, the next financial year, the training at local level. Obviously, until the training person comes on board, that is a bit hard to have someone being scheduled to roll out. But that is where the money will go—really to those regional areas to bolster up the training.

The CHAIRMAN: Can you also provide the committee with the final JP handbook when it is finalised?

Mr Warnes: Certainly.

The CHAIRMAN: Can you advise us also who you will be providing this handbook to?

Mr Warnes: Now?

The CHAIRMAN: No; when it is finalised.

Hon COL HOLT: There are a few different avenues for me and they probably cover a little bit more ground than you have already covered. Was the survey you put out for JPs compulsory to be returned?

Mr Warnes: No, it was not. We did not compel; we did not make it compulsory.

Hon COL HOLT: The only reason I ask is that it would be interesting to know if it was compulsory and you got that two-thirds return, it was probably not very good, but as a voluntary thing, great. But it would be a good indicator of how much into the role that each of those JPs are, if you understand what I am saying. It is about commitment to the role and confidence in the role. That is just an aside.

Mr Warnes: The other part of the survey for us, because our data system is fairly archaic, was it gave us an opportunity to test where all the JPs were. So those that we got a no return from, we have not been sitting idly on it; we have actually been trying to find those JPs to verify that they were in receipt of the survey at the address that we sent it to. We have been trying to follow them through by phone. We just have not rested. We keep that information; we keep it live and we know who the active JPs are.

Hon COL HOLT: It is not a criticism; I am just saying I think it is a really good indicator of how much into the role and how important they see it.

Mr Warnes: Largely, all our JPs, we find, are a really dedicated bunch of people. We get great support for the justice system from them.

Hon COL HOLT: I have an adult education background, and training is an important step in transferring knowledge. I have done Auskick online coaching, but I would not say they would know how good a coach I am, if that makes sense. I think there really are those checks and balances you need to pull into place in terms of all that regional support and the regional training module. My real question is: how would we be, and is the review going to cover this, if we go down the New South Wales track where our JPs do not have any judicial responsibilities at all? Do you have any comment about what effect it would have or how important those JPs in regional areas are in a judicial role?

Mr Warnes: I think they are important. Our magistrates, certainly the country magistrates, cover a large territory and the circuits are very large. They are not always available, although they try to avail themselves and make themselves available. When police apprehend somebody and they want to have bail considered, the JP is usually someone that they in the past have tried to go to, if they make the decision as police officers that they do not give bail themselves. They have been crucial in that aspect. As I am talking, the need for that is probably diminishing because of the technology that we have now got, and we will explore that with some of the other questions around video and audio technology. A lot more of our magistrates will avail themselves through audio, through the telephone, to handle that. With restraining orders in the metro, certainly they do a lot of work around restraining orders. That is a large part of our business, too.

Hon COL HOLT: Is that going to be a part of that review you talked about in terms of JPs—that no judicial duties kind of scenario? Is that in there?

Mr Warnes: Sorry; in terms of —

Hon COL HOLT: In the JP review, is that scenario of not giving them any judicial duties—no tier two, if you like—part of that review?

Mr Warnes: Yes; tier one would be no judicial. It is similar to Queensland, where you just do the administrative things—a police search warrant or something like that. There is somebody else there that can deal with the administrative stuff, but if it is court related, that is where we want to have the specialist training and that is where we have got our assurance.

Hon COL HOLT: I guess what I am asking is: will there be somewhere in that review process that says, "Yes, we need JPs to do judicial service duties"? Will that decision be made or will you just concentrate on the one tier?

Mr Warnes: No; I think it will be a decision, as you say. South Australia, I think, found that for a while. They had a perceived diminishing need for JPs and were moving away from using JPs in the court. But they found, certainly for the regional locations, that they needed the JPs, and that is why they have now over recent years created special justices of the peace. They are emphasising giving a lot more training and attention to it and bolstering the skills in those JPs, because they found they needed them just to keep business going.

The CHAIRMAN: So is it correct then that we are not the last jurisdiction to have JPs conducting court appearances?

Mr Warnes: No.

The CHAIRMAN: Could you explain what is meant by the term "judicial duties"?

Mr Johnson: Judicial duties are where justices of the peace have to make a judicial decision; it might be in a court. But I think the paper will also look at where they authorise issuing of warrants, like search warrants, because that seems to be a judicial decision. That would be included as a judicial decision. It is where they appear in court and can make a decision just like a magistrate and issue warrants just like a magistrate.

The CHAIRMAN: Would that include bail undertakings?

Mr Johnson: They can, yes. As Mr Warnes said, the more that we have with technology nowadays is that magistrates more and more are dealing with those because they can either deal with them from a remote location by audiovisual or, in places where there is no audiovisual facility, they will take the appearance by telephone, and that is happening daily. That only happens during normal hours, of course, and, if it is out of hours and if it is at a location where police do not have an appropriate custodial facility or an appropriate cell, they may transport them to a nearer town and be dealt with in the court the next morning.

Hon KATE DOUST: You talked about the usage of new technologies. What sort of training do the magistrates and the JPs receive to be able to use audio and videoconferencing and any other form of communication that they may need to access in those areas?

Mr Johnson: On the training for the magistrate side of things, the clerical or administrative staff undertake those roles, the same as they would for justices of the peace if they were dealing with matters by audiovisual or by telephone link.

[1.20 pm]

Mr Warnes: When we roll out technology in courts that we manage, we have administrative staff who look after it. When we roll out technology into a court such as Wyndham, we do not have court administrators there but the police station is there and the police use the AV for their own purposes when we are not using it. We train them how to use that and so they would facilitate that.

Hon KATE DOUST: A comment was made in an earlier session this morning that, given some of these situations, particularly with videoconferencing, a dedicated person needs to be there to manage it or the people who are going to be participating in the process, be it the magistrate, the JP or whoever else is there, need to have an understanding of how to use the technology.

Mr Warnes: From my discussions with country magistrates, I have not found the need for training. If they said they wanted to learn how to do it, I am certainly open to provide that training. We would show them how to do it and we would make sure it is a mandated thing. I have not had that feedback from them. We have within court tribunal services a dedicated unit that looks after the infrastructure. They go out and train our people. They are on the phone. A contract is provided with the technology so our core people or the contractor can be called when there are technical difficulties in the area. When we talk about issues that limit the utilisation of AV in some of the later questions, the lack of technical staff can be an issue. When something goes wrong with the technology and we have had older, analogue-based technology, that has been quite problematic. It has not been as reliable. The new digital technology we have rolled out is a lot more stable. Sometimes it is more user error that has caused it to not connect up properly within our own system. That is where they can get on the phone and get that help and we can do it remotely. It is more problematic for us with our audiovisual links to a prison environment in which they are using technology that is probably 10 years old, it is more analogue based and it is not as robust and stable. It is difficult for us to provide assistance to Corrective Services. It does not have a dedicated audiovisual team to look after its technology. We try to help with that but we have our limitations.

The CHAIRMAN: You have given us a great rundown on the plans and the investigation into the two-tiered system and what you anticipate you will have in place in the future. Once that has all taken place, are you confident that the series of errors that occurred in Mr Ward's case will not happen again in the future?

Mr Warnes: I am confident but I am not complacent. The risk approach that I have tried to talk about where we have these checks in place help us to not be complacent and help local people not be complacent and there is an active management of it. I would hate for us to get in a situation where we are being complacent and overconfident. The message that Mr Johnson gives out to his staff in those local areas is, "Don't be complacent, keep checking this and keep being involved with the local police, keep being involved with the local justice of the peace." Everybody is very comfortable with what is being asked of them.

Hon LYNN MacLAREN: I keep wanting to ask this question. If it is difficult to monitor how JPs are making their decisions, is there a complaints system in place and has that complaints system given you any guidance up to now about how things could have been improved before now?

Mr Warnes: Not a complaints system as you and I might call it from a service point of view, more from an appeal point of view. The Aboriginal Legal Service, Legal Aid and other players can appeal a decision that might have been made. That is the judicial process that we really cannot control. There is that appeal process.

The CHAIRMAN: I would like to move on to recommendation 8. What action has been taken to review court procedures to limit unnecessary transportation of long distances?

Mr Warnes: Pretty quickly after the events that took place, the Chief Justice formed a working party to try to implement or activate some changes from a judicial point of view. We supported his working group on that. He called together all the judicial heads—the Chief Judge of the District Court, the Chief Magistrate and the President of the Children's Court—the Inspector of Custodial Services, Legal Aid, Corrective Services, the Aboriginal Legal Service, the police and a barrister as well. From the judicial perspective, they were very concerned about those circumstances. They wanted to see what they could do as judiciary to ensure that those events were minimised. What came out of a lot of the discussion was the need for stronger practice directions to be given by the judiciary. The Supreme Court has reissued practice directions, the Children's Court president

reissued practice directions and the District Court. Maybe I could quote from the Supreme Court practice direction. The Chief Justice wrote —

> To avoid undesirable and unnecessary transportation of persons in custody it is necessary to ensure that the number of personal appearances before the Court by such persons is limited to only those appearances where the interests of justice require it.

A lot of the others were much the same. They were not trying to say it defaults and it is AV but that is really what they were leaning to. They were really trying to say that unless there is a good reason for justice, it should be by AV and the practice directions are in that vein. At the same time as that there was a change in the Evidence Act. That came into place on 30 September 2008. That amendment really changed the criteria for the use and requires that an application is made by the court or another party in court to use audiovisual and that it should be granted unless it does not serve justice for it not to be granted.

The CHAIRMAN: I am not sure whether we have had a copy of that but if we have not, can you provide us with a copy of the practice directions you were reading from?

Mr Warnes: Certainly.

Hon LYNN MacLAREN: Do you ask magistrates to report any concerns about JPs to you?

Mr Warnes: No. Going with the answer to the question, the Director General of the Department of the Attorney General and the Commissioner of Corrective Services also established a steering committee at the same time as the Chief Justice. That steering committee had two working groups. One was to look at prisoner movement coordination. If we find there is still someone being moved unnecessarily, and it does happen, that working group looks at why it has happened and what has been the breakdown in communications between the court and the prison and tries to resolve it from a process point of view. That committee still exists and continues. The other committee they have is the legislative and remand warrant working party. That working party is reporting on legislative or technical changes that could be proposed to change the existing form 2 remand warrant under the Criminal Procedure Act 2004 and criminal procedure regulations. I do not have the details of where they are at with that but that is still in existence.

The CHAIRMAN: I refer to the government's response to the recommended notes that the department will investigate the feasibility of establishing a centrally located judicial service to be available by audiovisual infrastructure to respond to the needs of regional and remote communities. Has this been investigated? I note that the ALS was concerned that it was not privy to any feasibility study.

Mr Warnes: A budget proposal went through the Attorney General to cabinet for its budget decisions in the 2010–11 budget process. It was a proposal worked up with the Department of Corrective Services, Western Australia Police and the Department of the Attorney General that was really trying to bolster the facilities within police stations and prisons and their capabilities to be able to do audiovisual. Where I described Corrective Services' facilities and technology being 10 years old, the proposal was really trying to bolster their capacity. We are in a situation where the government is continuing to fund our AV upgrade; this financial year coming we will receive around $2 million.

[1.30 pm]

Prisons and the police do not have that, and so this budget proposal was largely to try to do that. Police had identified areas of priority across the state that they wanted to address and prisons had done the same, certainly in their large metropolitan prisons where there are vast numbers of people coming through and they do not have a large number of studios or AV courts in which to process people through. So that budget bid was around all of that. It also was about establishing extra FTEs to help manage the AV facilities in police and corrective services. That is something we were volunteering, with the expertise that we would have, to do that across those two departments. It was

not funded this year in the budget process. All the three agencies involved determined that it goes up again in the next budget round as a priority. The feedback we got back was that the other initiatives that we were putting in place around the training of the JPs, the use of the technology that we already have within the court environment, was enough to see how we were going. They gave us $2 million to continue with our rolling AV stock. I guess that is where it was.

Hon LYNN MacLAREN: How much was that budget request for?

Mr Warnes: I cannot remember off the top of my head; I am not sure.

Hon LYNN MacLAREN: How far away are we from ensuring that people who are living in remote communities have access to videoconferencing of whatever, even 10-year-old technology?

Mr Warnes: They have access to our technology, because I think we are closer than prisons to some of those remote communities.

Hon KATE DOUST: Do you provide shared services in those cases?

Mr Warnes: Yes, we do. Where we have a location at Wyndham court—we have a court at Wyndham; we do not have a permanent administrative base there—we circuit to that location. It is right adjacent to a police station, so if the police apprehend somebody or want to contact or linkup through audiovisual, they have control of that system and can do that, and do do that.

The CHAIRMAN: How much funding was sought for the proposal? You said you were not sure.

Mr Warnes: I do not have those details.

The CHAIRMAN: Can you get that information for us?

Hon LYNN MacLAREN: I always forget to do that second part: could you do that for us. You might have to take this one on notice as well. I was just wondering if we could get a map that shows where the holes are, if you will.

Hon KATE DOUST: I think we have actually got that. As you go through the documents, it is quite clear where capacity exists and where it does not and what facilities are available or not.

Hon LYNN MacLAREN: It is kind of hard for me to look at that and know—because I guess I do not know where all the communities are—where the gaps are.

Hon KATE DOUST: When you have got situations where a police court does not have a separate remote witness room, can you just explain so that we understand exactly what that means—a remote witness room?

Mr Warnes: In some of our larger courts—Kununurra for instance—where it is a pretty active court, we have protected witnesses or vulnerable witnesses, who we may want to protect from actually going into the court and confronting the offender. We would put them into an audiovisual suite outside of the court, where they could remote in. That same suite could be used to witness into Broome court or witness into Perth court. So it is a separate suite for vulnerable people.

Back to your question, if I may, in part, we have a large number of places that we circuit where we might circuit into a hall. At Balgo, for instance, there is not a police station in there with a court or multifunctional purpose room that we could go to. We go to a community hall that has no AV capability. There are a number of other locations similar to that.

Hon LYNN MacLAREN: Could we then get that list?

Mr Warnes: If I may then provide it by supplementation. There is a list in there that shows you all the court facilities that we have. We rate our video capacity from court A, court B and court C, court C being the basic level of audiovisual capability right up through big plasma screens in a type A court, which will be what we would have in a new District Court or Supreme Court. I have got another one, which I could supplement that, which identifies places like Bridgetown, Burringurrah, Yandeyarra and Yalgoo as places that do not have audiovisual. We could put the equipment in there

but the lines do not come out. The Telstra service may be inadequate for us to put it there, so there is no benefit in having an audiovisual function out there. Telstra spent a large amount of money about four years ago, I think it was, and put a telecommunications loop through South Australia to the lands area, through Warburton and Warakurna, and because they did that, we are able to do audiovisual from Warburton or Warakurna, and so we have put the audiovisual facilities out there, whereas there are other remote locations that do not have that same technical infrastructure, which limits us being able to put it out there. I am happy to supplement that information if that is okay.

The CHAIRMAN: You formally table that.

Mr Warnes: There is no title on that. My apologies.

The CHAIRMAN: Just then on recommendation 8, where are we at with that? Is it fully implemented or is there still more to go on recommendation 8?

Mr Warnes: I think we can say we have completed it, but again, there is earnestness amongst the three departments to keep trying to find ways of meeting the need for audiovisual capability. Despite not maybe receiving funding in this budget year, the Department of Corrective Services, I understand, is looking at what they can do to improve their services with what they have got.

The CHAIRMAN: Moving on to our terms of reference—the feasibility of air transport or videoconferencing instead of long-haul vehicle transport and the Transport of Persons in Custody Working Group, chaired by the Chief Justice—I note the department is a member of that group. What action has been taken or recommended to date?

Mr Warnes: I think I have probably answered that in part before about practice directions, about being a reference committee for the three departments to look at the budget proposal and look at where the priority areas were for that. I can go into more detail about what the budget proposal was, if you want. It was about additional audiovisual facilities within prisons, additional audiovisual facilities within police, additional funding for support services and additional funding for the AV network and coordination of listings between prisons and courts. So there was a lot of consultation with the judiciary about those types of areas where they believe that priority should be given and could be given. That is really where it is. Once they put the practice directions out, the Chief Justice did not stall the committee but was involved in the consultation on the department's budget proposal, and it has not really met since then, just waiting to see what the outcome of those budget proposals was.

The CHAIRMAN: Can we have a copy of the budget proposal?

Mr Warnes: Given that I only had your questions on Friday, I have not got a copy of the proposal. I have not taken the advice from the Attorney as well. If that is all right, I will take his advice on the release of it.

Hon KATE DOUST: This morning there was some discussion about some of the barriers to using audiovisual conferencing facilities. Some of those barriers were explained to us as being cultural, age, language and perhaps the need to have an interpreter available for some people. Have you as a department given any thought to those issues in terms of how they manage video links and other means of communication?

Mr Warnes: Sure. Certainly the judiciary are very concerned about all of those things and the legal advisors who represent accused people are very concerned about interpreters. The legal advisors are very concerned also about being able to contact or conference with the persons that are accused; so if they are in a major court centre in Perth and their accused is in prison, it is very difficult for them to have a private conversation. We have not got an immediate resolution to that problem. The new court design for Kalgoorlie will provide a telephone booth, if you like. It is fairly contemporary and not many other courts in Australia have got that. I think Parramatta courts in New South Wales are the only ones that I can think of where they do that. That would be a new court-design requirement

for us and we try to back for all other courts to provide that same facility, so they can go and do an in-private conference with the people they are representing.

[1.40 pm]

The other problems that we have with our audiovisual system are the disparate AV systems. We have good, robust systems that are well maintained in the courts. The prisons, as I articulated before, do not have that. The police do not have any systems apart from what we are providing within the locations that we cohabit. Telecommunications infrastructure and ownership is another one, as I described with the example of Warburton. Other remote locations do not have that. There are costs for using the Telstra-based infrastructure. A large amount of our infrastructure is on our DOTAG network across the state, and that network is sustainable, robust and in place. Where it operates through the ISDN lines that Telstra or others provide, at times it is not as stable as we would like it to be, which can cause some dropout and some slowness and pixilation, which from a court's point of view is not very satisfactory. It can also cause fallout of audiovisual, which is a frustration to everybody, both the persons in custody and in the court and the court participants. Another problem we have—we talked about it earlier—is the support for some of our remote AV facilities, because we do not have local experts. The technology experts are based in the city and are available on the telephone. When something goes really bad, we do not have people with the technical expertise on the ground. That is another issue for us, and it is the same for prisons, I understand, because they do not have technical people based in the prisons to deal with that.

Another area, which we have not really touched on, is the statistical reporting on it. It has been an area of frustration for all of us that we do not have good statistical reports on either the usage or the nature of the usage of our audiovisual systems. You have a whole pile of questions that are asking me to provide that information, but I am not able to provide the depth of information that you are after. Because our system has been analogue based, we cannot extract information from it. Digital is enabling us to do that and we are now rolling out software that will be in place in the next three months that will enable some automation of the statistics that are being collected. We have had to resort to manual-type collection, which has not been very robust, but it does give us an indication of the increased usage. We can touch on that later.

The other area I touched on that is an issue with our system is the access of legal representation by AV to the people they are representing. With that comes the interpreter issue as well. We do not have solutions to all those problems, but we have ways to try to mitigate that. We explore with the judiciary whether there is an interpreter issue. An interpreter can be in court, but that does not suffice for the person in custody—that is, having an interpreter in a prison who can explain things closely to the prisoner.

The CHAIRMAN: You have explained a lot of the problems of remote videoconferencing. What do you think is the main impediment to the progression of video links?

Mr Warnes: I think the main one is the disparate systems. With that is probably the volume issue. We have a large volume of need for audiovisual services. The spreadsheet that I gave you shows where we have audiovisual. Prisons do not have a comparable number of sites. When we want to be able to go into a prison where an offender or a group of offenders may be located, the court has to wait and schedule the offenders that it can get to. If Hakea has only three audiovisual facilities—I cannot remember the exact number—we might be drawing on that for all around the state, let alone the volume of need that might come from the Central Law Courts or the District Court. When some of my people go out and sit in prisons to see what is actually happening there, they might have a corridor full of people waiting for their scheduled turn to get into the audiovisual. That would be one of the biggest areas.

Hon LYNN MacLAREN: I guess in the particular circumstances that we are examining today, it is not really that; it is mainly to do with the people who are detained and the pre-transportation decision making so that we can make a decision about using a video link so that they do not have to

get transferred down to a detention centre located somewhere else. In those circumstances, are there any barriers to using the internet and Skype? Does Skype qualify as a private conversation between a lawyer and his or her client?

Mr Warnes: No. We have investigated Skype as a solution, but it does not have the type of security that we would be very comfortable with. I cannot find my notes where we have referred to Skype, but we have done some investigation into using that technology.

Hon LYNN MacLAREN: Is it considered not to be private or secure?

Mr Warnes: It is considered not to be secure to the extent that we need in courts in terms of not having pixilation and the flow of information being pretty smooth.

Hon LYNN MacLAREN: Does it again come down to the hardware—the technology itself—not the software application?

Mr Warnes: Yes. But having said that, in my discussions with the Chief Magistrate and a number of other magistrates, they are really keen to explore those types of technologies. We have not put up the shutters and said no; we have concentrated on rolling out the audiovisual systems that we have in those locations in our order of priority.

Hon LYNN MacLAREN: There are several packages out there which you could theoretically make secure, I would think.

Mr Warnes: Yes. We also find that the magistrates now are a lot more open to audio and dealing with things by telephone if they are not available to use audiovisual technology. Certainly the magistrate in Carnarvon does that. She uses it fairly extensively. She does not use justices of the peace very much at all in her region. She much prefers that she is the contact. I think she has a mobile phone or even a satellite phone when she is on circuit. She makes herself accessible at all hours. That is not consistent across the state, though.

Mr Johnson: All magistrates in the regions now take telephone calls when a person is in custody and needs to be dealt with by the court but that is, as you say, during normal operating hours. As I said earlier on, if a person was arrested at a location where the police did not have a safe cell, they may have to transport them to another safe location.

Hon LYNN MacLAREN: Just picking up on what Kate was saying about the need to have an interpreter and potentially several people to be in a videoconference call, are you looking at the minimum capacity being a four-way call so that you can include the person's legal representative and an interpreter in addition to, presumably, the JP and the —

Mr Warnes: It would probably be a magistrate rather than a JP in those circumstances.

Hon LYNN MacLAREN: When you are looking at technology, are you looking at the potential for a four-way conversation?

Mr Warnes: Yes, we have to. We are obligated to do that, given the complexity of it.

The CHAIRMAN: You have a list of our questions and you indicated that you may not be able to give us all the information that we require. Could you take on notice questions 24, 25 and 29 and get back to us with as much information as you can get for us on those? Question 27, I think, has been covered. I would like to move on now to the terms of reference number 3. Why do you think Aboriginal people are over-represented in the prison population in Western Australia.

Mr Marshall: I will attempt to answer some of these questions. Because one of my responsibilities is in the area of criminal statistics, I will give you a little bit of a statistical background, but not a lot; I will not throw all sorts of figures at you. I thought I would give you a picture, but before doing that, I might just say that we are fairly lucky in this state because since 2004–05, we have had a fairly accurate system of recording Indigenous offenders. Prior to that, our statistical systems used to have lots of unknowns; sometimes as high as 30 or 40 per cent were unknown. It was difficult

then to get a clear picture of the level of Indigenous participation in the criminal justice system. Since 2005, we have had electronic lodgement by the police into our courts and the Magistrates Court throughout the state—that is, for the Magistrates Court, not for the Police Court.

[1.50 pm]

The police follow a standardised ABS process for identification. With those two things together, since 2005, we have some reasonably accurate figures on Indigenous involvement in the criminal justice system. To give you a little bit of a landscape, we talk about a thing called "lodgements". It means the number of offences for which people are charged and put before the court. This is now for Indigenous persons. I am using a lot of 2005 and 2009 comparisons; for example, between 2005 and 2009, criminal lodgements by Indigenous persons increased by 39 per cent. That needs to be tempered a little bit by the population increase in that five years. During the same period all Indigenous and non-Indigenous criminal lodgements, interestingly, increased by 38 per cent. The Indigenous increased by only one per cent more than the growth in all lodgements. The proportion of Aboriginal criminal lodgements has fallen slightly from 19.8 per cent to 19 per cent over that period, which is small but in the right direction. In relation to imprisonment, we do not look at imprisonment per se but imprisonment as a sentence coming out of the court. The proportion of Indigenous persons getting sentenced to imprisonment has declined from 15 per cent to 11 per cent over the period 2005 and 2009. A pleasing result is that, in contrast over the same period, the number of Indigenous people receiving community-based orders and fines has increased from 75 per cent to 82 per cent. In 2005, the proportion of Aboriginal people compared to all people sent to prison was 43 per cent and, interestingly, in 2009 it was 43 per cent. As a proportion there has not been an increase in percentage of Aboriginal people sent to prison.

I have some figures on juveniles if you are interested because a juvenile today is an adult tomorrow, so to speak. I presented these to a federal government committee a few months ago. Again, they give a quick snapshot of the situation on juveniles. The proportion of Aboriginal juveniles—again lodgements in court—has been remarkably consistent over the years of between 39 and 41 per cent. So between 39 and 41 per cent of all people going to juvenile court are Aboriginal. I indicated to the other committee that in the top three offences for which juvenile offenders versus non-juvenile offenders commit, juvenile offenders are very consistent over those years. They are always on top of the list. There is a category called "unlawful entry with intent", which is essentially breaking and entering and related offences. We use these broader categories. The second most popular offence committed by Aboriginal juveniles is public order offences, which are things such as disorderly conduct. The third one is what we call "justice offences", which are essentially breaches of other sorts of orders. By contrast, the top three offences for non-Indigenous children have changed around a little bit, but over time essentially dangerous and negligent acts, including fraud, are number one.

More recently non-Indigenous kids have become heavily involved in traffic-related offences. What type of sentences do they get and how has that changed over the years; for example, imprisonment? You are aware that children over the age of 16 can be sent to prison under the Young Offenders Act. That has come down from 44 per cent in 2005 to 30 per cent in 2009. Juvenile detention has come down from 66 to 56 per cent as a sentence imposed by the Children's Court. The use of suspended imprisonment is also down from 50 to 37 per cent. Conditional release orders are up from 50 per cent to 61 per cent. Similarly, intensive supervision is up from 48 to 58 per cent. Referral to juvenile justice teams, which is one of our diversionary options, remains steady over the period at 36 per cent. Fines for juveniles has increased from 16 to 17 per cent.

The CHAIRMAN: Would you dispute the view that the rate of Aboriginal imprisonment is increasing in WA?

Mr Marshall: We seem to have reached the point at which, on the figures, there appears to be a plateauing effect and even possibly some early encouraging figures.

The CHAIRMAN: Do you know what percentage of the population is Aboriginal people?

Mr Marshall: It is understood to be between three and five per cent.

The CHAIRMAN: We are talking of a high percentage.

Mr Marshall: Yes.

Hon LYNN MacLAREN: Per capita.

Mr Marshall: Oh, yes.

The CHAIRMAN: You are talking only about those sentenced to jail; you are not counting those held in custody waiting for sentence.

Mr Marshall: No.

Hon LYNN MacLAREN: Is it still true that we in WA have the highest rate of detention of Indigenous juveniles in Australia?

Mr Marshall: For juveniles, yes.

Hon LYNN MacLAREN: And the lowest rate for non-Indigenous juveniles?

Mr Marshall: I cannot confirm that but you could be correct.

For adult persons imprisoned as a rate of total population, we are second behind the Northern Territory, which has a rate of almost three times our rate. I can give you the figures if you want. Northern Territory has about 640 per 100 000 general population. We have about 230 per 100 000 general population. The next closest state is New South Wales with 209 and it tails off from there. In terms of the reasons, that is the $64 million question. Our view is in the middle in the sense of the justice process; that is, in courts, and, of course, it applies even more for DCS, which is further down the track. We do really think the factors lie well outside the criminal justice system.

This has been widely recognised in terms of some of the initiatives of the federal and state governments around closing the gap. I would go as far as to say I expect that, if all those closing the gap initiatives were on their way to reaching the targets they have set over the next three to five years, that will produce a reduction in Aboriginal crime. By saying that, basically, I am saying that that is where crime comes from—the social factors. I will correct the figures: the Northern Territory had 657 per 100 000 in 2009; WA, 260; and New South Wales, 204.

Hon COL HOLT: Is that general population?

Mr Marshall: That is the number of people in prison as a ratio of each 100 000 people in the general population.

The CHAIRMAN: Does the Aboriginal community have the higher percentage?

Mr Marshall: Other states do, yes.

Hon LYNN MacLAREN: Do your statistics indicate that when an Aboriginal juvenile comes to the attention of police, he is more likely to be detained than a juvenile who is a non-Indigenous Australian or of non-Indigenous appearance? What do your statistics show about that?

Mr Marshall: Our statistics plus, of course, the report that you refer to, the Auditor General's report on juvenile justice, do not address that particular problem. But it does address the issue that Aboriginal children do not appear to get the same opportunity to go into what we call diversionary programs such as juvenile cautioning whereby, basically, they get a caution and that is the end of the matter; there is no record. In other words, they are diverted out of the system.

[2.00 pm]

Similarly with juvenile justice teams, the Auditor General's report certainly identified that there seems to be a lower proportion of Indigenous children being offered the process of going through a juvenile justice team—where, again, once the child has completed the penalty set by the team, that is the end of the matter. So it is a diversion option.

Hon LYNN MacLAREN: You do not have statistical evidence about that?

Mr Marshall: Well, the Auditor General's report does. Unfortunately, they are stats that are kept by the police department, because they make the referrals to the juvenile justice teams and they make the cautions. For reasons around keeping the juvenile data separate, the police keep that cautionary database fairly tightly controlled, because it is not something that they want to affect any future record.

Hon LYNN MacLAREN: Do you have that statistical evidence for adults? Are Aboriginal adults who are brought to the attention of the police detained more frequently than their non-Indigenous counterparts?

Mr Marshall: No. I think you would have to ask the police in relation to arrest rates.

The CHAIRMAN: In your submission, you refer to the Aboriginal justice agreement. What action has been taken as a result of this program?

Mr Marshall: The Aboriginal justice agreement, as I think we described it in our submission, is a process that was commenced in around 2006 whereby we are trying to set up a structured engagement with Aboriginal people, at the most local level that we can, and as widely across the state as we can. I have a copy of the Aboriginal justice agreement, but you should also be able to access a copy. The agreement—this is one of your other questions—talks about how departments relate to each other. The agreement binds agencies to work together, particularly child protection, communities, corrective services, Indigenous affairs, police and so on. That has been implemented through the development of local justice forums. We had an original target of around 50 of those forums. About 35 currently exist. Those forums meet on a regular basis. They have created plans to address issues of crime and safety in their local communities. There is a standard template plan, and there is an assessment of activities and tasks around the issues that they have identified in their communities. We are in the process at the moment of evaluating the achievement of the broad goals set by the AJA, which are things like reducing victimisation, reducing imprisonment, and creating safer communities. We are assessing those goals. I notice that you ask some questions later on in your list of questions about evaluation and assessment. We are also looking at how effectively they are working in themselves. I did list some success stories that have been achieved by basically bringing people together and prioritising the issues in their communities and then working through them, with the agencies, of course, where necessary.

Mr Warnes: If I can add to that, the Aboriginal justice agreement is not part of my responsibility, but regional courts and how they operate and how they impact on the communities is. I have met with a number of Aboriginal people in a number of communities, and we have talked about the Aboriginal justice agreement and about how courts can play a part in that. In some of the communities, there is enthusiasm for it, and there is enthusiasm because it allows those communities to have a bit of a voice about what is important for them as a priority, rather than have all these government agencies come in and do good, but not connect up necessarily. So in some communities the AJA process has enabled some good governance to be put in place where it probably was not there before. It has allowed them to have a facilitated voice about what is important, and, out of those plans, they construct the three priority areas that they want to make a difference on. The obligation then for us as government agencies is how we deliver on that obligation. That is the part that I think government agencies in those local communities have always fallen down on, because we may not have had as integrated an approach as we should have. This process forces us as government agencies to account to those communities for how we have done that. So there is a real motivation for government and for the communities behind it. In some places in which it has not gone as well, it is because the governance framework probably has not been as robust as it could be, perhaps because the governance champions have not been in those locations, so we are in a process of trying to build them up and coach them up.

The CHAIRMAN: How do you judge what is a successful program? Do you have any criteria that you can judge that by?

Mr Warnes: Yes. I have been part of the team and what they are applying. So for me to go in as a different party and look at it, I know very clearly what they want to achieve. If they are not clear, then it is not being successful. If they are very clear and there is a good understanding about what they are going to commit to as a community, not just what government agencies are going to bring in, that shows that there is a sense of ownership. So I get a strong sense, as an observer on that, that they are going to make a difference, because the community is going to drive it and drive government agencies to make a difference for them. Again, that is anecdotal. That is just one of my sense.

Mr Marshall: Formally in terms of the evaluation, we combine qualitative feedback with quantitative. So in the case of the AJA, we had a massive campaign of consultation with all the groups, with all the key stakeholders. I do not know the exact number, but it runs into the hundreds of people that we have spoken to in terms of qualitative feedback. With quantitative feedback, we are looking at the areas where there are active AJAs operating, and trying to compare over the last few years reported crime rates and other statistics from an information system that we have available called the Western Australian indicative framework system.

The CHAIRMAN: Just on that, can you advise us of any of the outcomes of the AJA evaluation?

Mr Warnes: It is not completed yet. We have collected all the data. We are actually in the process of putting together all the data, both the qualitative and the quantitative.

The CHAIRMAN: Could you provide us with that information when it is completed?

Mr Warnes: We can do that, through the Attorney General, yes.

Hon COL HOLT: My question is along the same lines. When do you expect the review to be finished and when do you expect to have some ideas about how successful it is going to be?

Mr Warnes: For the AJA?

Hon COL HOLT: Yes, and in terms of the forums that have been established—the 35 or whatever it was.

Mr Warnes: We hope to have the report certainly given to the Attorney General in July.

Hon COL HOLT: Next month?

Mr Warnes: Yes. The implementation of the recommendations will be ongoing after that.

Hon LYNN MacLAREN: Mr Marshall, you indicated that you had given us a list of the programs that were reasonably successful. Are you referring to the list that is appendix 2 in your submission?

Mr Marshall: Yes.

Hon LYNN MacLAREN: Thank you.

Mr Marshall: Although I might add, if you will allow me to, that that list does not mention a committee that I mentioned when I appeared before you last. That is a federal committee called the cross-border justice project. Western Australia was the leader in that project. That is an ambitious project involving three states or jurisdictions, and the police departments, the Attorney Generals departments and the community services departments. That is now in operation. We developed the model legislation, and that was then used as the template for the two other states to pass equivalent legislation. The intent is essentially that in the desert lands you have no jurisdictional borders, so an offender who crosses the border from one state to another can be dealt with in that state. The offender does not have to be brought back across the border.

Hon LYNN MacLAREN: I have a related question. It is also about crossing borders, but across agencies rather than across states. We heard this morning that one of the barriers is lack of

cooperation between departments and lack of communication between departments. Even in your committees that you have talked about today, I hear the same departments mentioned—corrective services, police and Attorney General. Even when you set up these committees, are you finding barriers? Are you still having problems with a coordinated approach to developing a solution? Is there anything that can be done to break down those barriers? The names of the departments that we are not hearing are community services and housing, and potentially health. Are those departments engaged in these broad attempts to create community safety?

[2.10 pm]

Mr Warnes: Maybe I will deal with the first part. Those committees were formed with names that are consistent around the justice sector. They are usually formed to solve an issue that is common for us in the justice environment about dealing with offenders or people who are accused or vulnerable people. We found in all of those committees there has been positive working relationships. People have not had vested interests and put barriers up and said, "No, I'm not going to go there because that's our protected area." We found police and Corrective Services, from our point of view, were very willing to be involved and willing to accept cross-jurisdictional support for one another. Our example was we were prepared to provide technical expertise on audio visual to their agencies. As long as they were able to give us the resources, we could provide that. We found that generally to be the case. We found in other committees, not related to the Ward inquiry, there was a large incidence a number of years ago with sexual offences in the Kimberley area. It was widely publicised in the media. Again the chief justice called together all the justice-related agencies and said, "We've got this wave of people who are going to come through our courts. We've got very vulnerable people. If we wait 52 weeks to have these matters dealt with, witnesses will go and we'll lose them. We've got young kids involved in this. How do we make sure all those agencies—Corrective Services, Aboriginal Legal Services, Legal Aid and the courts—can deal with this in a speedy way?" Everybody came to the table looking at a way of trying to solve the problem. The result of that, not related necessarily to your terms of reference, matters were dealt with on average around 28 to 30 weeks rather than 52 weeks. That is an example of how people come to the table trying to solve the problem from a community point of view rather than from their own agency point of view. I have never found them to be parochial.

Hon COL HOLT: I think the member's question is probably more about how do you guys work together so you do not have a wave of people coming into the court system; the preventive side of it?

Mr Warnes: That is the bigger part of the problem. As Mr Marshall said, we are further down the pecking order. If there are social problems, if there is a lack of education, a lack of health or a lack of economic development in some quarters, it will cause people to become engaged with our system.

Hon COL HOLT: I recognise that is their role. It is going to need a whole-of-government, holistic approach to reduce the incidence. We are all part of it.

Mr Marshall: I will give an example, as Mr Warnes did, of bringing people together to solve particular problems. There is a committee on at the moment, a senior officers' group, working across a number of agencies, as you can imagine, on the issue of driving licences in remote areas—obviously Aboriginal people. It is bringing together all of the key players from transport, local governments, police obviously, and a number of other agencies necessary to resolve those issues. At the broader level, at the very big level, there are mechanisms at state level to bring all of those agencies together on broad strategies to deal with Indigenous issues across the board, not just criminal-related matters, and of course there is the even broader COAG initiatives addressing the disadvantaged agenda. One of those building blocks is on crime and safety.

The CHAIRMAN: Have you got examples of what programs to reduce Aboriginal imprisonment rates have been successful in other states? If they have been, could they be implemented in WA?

Mr Marshall: I think, talking generically, the answer is programs—more specifically, targeted programs and "culturalised" programs. I think places where they do have those programs have better success rates in terms of recidivism, which of course is a key measure in our area—that people do not come back and they do leave the justice system. That is the key. We of course have the problem of distance, remoteness, size of communities and the ability to service them. The Department for Communities, when you speak to them, will give you more details on the difficulties they have in providing programs to such a vast state.

The CHAIRMAN: How confident are you that the actions you are taking and the strategies that you are pursuing will reduce the Indigenous imprisonment and recidivism rate?

Mr Marshall: I might give you a micro answer because you did ask about the Kalgoorlie Aboriginal court specifically. I do not know whether Mike wants to give you a rundown on what the court does and how it is different to a normal court. I might talk about an evaluation we just conducted and what that evaluation has shown us. It answers, in a micro way, the answer to your question.

Mr Johnson: The purpose of the Aboriginal community court in Kalgoorlie is to provide culturally appropriate processes and procedures in the court's sentencing process. I will give you what the aims are and then I will give a bit of a rundown of how it works. As part of the court's aim to be culturally appropriate, the court aims to include culturally relevant authority figures as panellists in the sentencing process such as elders and respected individuals; ensure magistrates are better informed of the relevant social and cultural issues affecting individual offenders through the involvement of the Aboriginal panel members; develop tailored sentencing to best address the underlying issues behind offending behaviour; and to build relationships between Aboriginal communities and the justice system. That is a brief of what the aims of the court are. In the long term the aim of course is to reduce the over-representation of the Aboriginal community in the justice system. How the court works is an offender may come into what we call the mainstream court, the adult or the Children's Court in Kalgoorlie. If they plead guilty, they can then elect to go before the community court. When they go before the community court, it is with a magistrate and panel members. There can be as many as two or three panel members that sit with the magistrate to assist the magistrate in relation to cultural issues, their knowledge relating to the area and also their knowledge in relation to some of the offenders. Also present in the court to assist the court is the Department of Corrective Services through either their senior corrections officer and/or in Children's Court—I used to know it as juvenile justice but I think it is now called youth justice officer—Legal Aid and/or Aboriginal Legal Service. It is an informal situation, similar to here in effect, where the magistrate and the panel members sit at the same level as all participants in the court. There is more of an interaction between the court—the magistrate, the elders and the offender. They explore why the person committed the offence, what were the issues causing the offence or the offender to offend, and try to get some resolution on how the offender may improve or adjust the offending behaviour. It is more inclusive. It is more where the Aboriginal elders and respected persons can address the offender. I have witnessed the court on two occasions. It is an extremely powerful experience with the interaction between the panel members and the offender. What is said between them is really quite confronting. That is how it works. It is a lot different to the court but it is not a different law. The laws are still the same and the magistrate is the only one that has the final say in terms of what the sentence will be.

The CHAIRMAN: You have outlined a number of strategies to us that you hope will be successful. Is the department adequately resourced to achieve those strategies?

Mr Marshall: If we are talking programs, be they programs attached to a community-based order or programs attached to an imprisonment sentence or parole coming after imprisonment, I think it is a question of how long is a piece of string on that one. Clearly, as I said the more intensive the

program, the better supervision of the program, its impact early on in the offender's time in the community under the order, all of those are signs that point to success if you achieve those.

[2.20 pm]

But again, we have the distance issue and the remoteness issue to deal with.

Hon LYNN MacLAREN: I understand that recidivism is a particularly high number in Western Australia. I think 70 per cent of the prison population has been there before. I think it is a particularly high number and I was wondering if there were strategies in place or even if you had a goal of recidivist reduction—that is not easy to say!

Mr Warnes: You did well!

Hon LYNN MacLAREN: Do you have a goal for reducing recidivism and a strategy for how to do that?

Mr Marshall: My understanding on the figures is that overall the recidivism rate, which is measured by the percentage of people coming back into prison within two years, is around about 45 per cent. Around about 45 per cent of prisoners released today are likely to reoffend and be readmitted to prison within two years.

Hon KATE DOUST: That is dreadful.

Mr Marshall: That is the measure that is used here. It is probably not the best measure, but it is a measure that is standardised across Australia, so that people like the productivity commission can look at the standards across Australia.

Hon COL HOLT: Rehabilitation is not going too well, is it?

Hon LYNN MacLAREN: Do you have a goal to reduce that through programs? I mean, how do you measure whether your programs are effective?

Mr Warnes: Programs are probably more appropriate in corrective services where they have programs for the people who are in prison or who are being managed within the community under community-based orders.

Hon KATE DOUST: We have estimates on Wednesday morning; we look forward to spending some time with corrective services and the police, and asking these questions!

The CHAIRMAN: In light of the time, if you could take questions 40, 41 and 42 on notice and get back to us with some answers to those. I really have only one more question to ask. I just wanted you to explain the term "justice reinvestment" and what action is being taken in justice reinvestment. It was brought up this morning.

Mr Warnes: I have not heard that term.

Hon KATE DOUST: It must be a corrective services saying.

Hon LYNN MacLAREN: No; I think that it is about restorative justice.

Hon KATE DOUST: That is different again.

Mr Marshall: I can provide you with a little bit of an explanation.

It is a term that is going around the world. New Zealand is certainly very much in favour of it and has just produced a large paper on justice reinvestment. It is a name for having another really close look at the whole process of justice—from prevention through to detention—and really looking at where is your best avenue for results. Also, it is about more targeting of your customers, so to speak. In New Zealand they have, for example, looked at where most of the people in their prison population come from. Can they identify areas and are those areas identified with known things lacking in social services or structure and so on. The idea of justice reinvestment is that you then invest in those areas. That is a very broad explanation.

Hon LYNN MacLAREN: And in a related question: how effective are you finding restorative justice divisionary programs? Do you encourage the use of those programs? Are they working?

Mr Johnson: Restorative justice happens mainly, I think, in the Children's Court jurisdiction with the juvenile justice teams. That is where somebody may be diverted from the court to the teams and where the offender may meet with the victims. I can speak from experience; I have been in a juvenile justice team situation. You discuss with the young offender why they committed the offence and are they going to do it again—all those issues are discussed. I found that a very worthwhile experience. The outcome that my wife and I had with that is that we came to agreement with the young offender and we had some conditions imposed and we went on our way. The only thing is, as a victim you do not know the result of what may have happened down the track. But I found it a very interesting experience. And that is probably as close to restorative justice in WA, I think.

Hon LYNN MacLAREN: And does it reduce detention rates?

Mr Marshall: I will answer that. It is a very early option. The idea with things like cautioning and the juvenile justice teams is to divert kids early on in any potential criminal career. You cannot really talk about detention rates. But the reality is, that programs such as juvenile justice teams and cautioning, on the whole, will divert between 70 and 80 per cent of the kids who go through it.

Hon COL HOLT: The number of juvenile justice teams—is that your responsibility or community services?

Mr Johnson: No; corrective services.

Hon COL HOLT: I meant corrective services. Sorry. It is about who is responsible.

The CHAIRMAN: If there are no other questions, I would like to thank you for coming and attending the hearing. Thank you very much.

The Witnesses: Thank you.

The CHAIRMAN: Sorry, if possible, could you return the questions taken on notice within two weeks?

Mr Warnes: The material that we talked about as supplementary—I am happy to leave that here.

The CHAIRMAN: Thank you. And on one other thing, you tabled a draft document—excuse me in the gallery—that was not completed. When it is completed, can you give us the whole update?

Mr Warnes: I will leave the draft as supplementary, and when we have it completed—that is, the end; and it will probably be more likely to be in July because the survey closes on 30 June—we will update it and provide it to you.

Hon KATE DOUST: Thank you.

The CHAIRMAN: I have one quick question that I overlooked: do you have any objections to those tabled documents being made public?

Mr Warnes: No; I do not think so.

The CHAIRMAN: Thank you.

Hearing concluded at 2.26 pm