

**COMMUNITY DEVELOPMENT AND JUSTICE  
STANDING COMMITTEE**

**INQUIRY INTO CUSTODIAL ARRANGEMENTS  
IN POLICE LOCKUPS**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 14 AUGUST 2013**

**SESSION TWO**

**Members**

**Ms M.M. Quirk (Chair)  
Mr I.M. Britza (Deputy Chair)  
Mr C.D. Hatton  
Mr M.P. Murray  
Dr A.D. Buti**

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**Hearing commenced at 11.01 am****TURNBULL, MR GEORGE****Director of Legal Aid, Legal Aid Western Australia, examined:****PAYNE, MR ALEXANDER****Lawyer, Director of Regions, Legal Aid Western Australia, examined:****ROBSON, MR ANDREW****Appeals Team Leader, Legal Aid Western Australia, examined:**

**The CHAIR:** I thank you all for attending today, and also for your submission. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into custodial arrangements and police lockups. I understand that you have been provided with a copy of the committee's terms of reference. At this stage, I will introduce myself and the other members of the committee present today. On my left is the deputy chair, the member for Morley, Ian Britza; to his left is Chris Hatton, the member for Kalgoorlie; and to my right is Dr Tony Buti, the member for Armadale. Mr Mick Murray, the member for Collie, is absent today.

This is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking you to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record.

I now have some questions that I need to ask you, and can I ask all of you to respond rather than nod your head, for the purposes of Hansard. Have you completed the "Details of Witness" form?

**The Witnesses:** Yes.

**The CHAIR:** Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

**The Witnesses:** Yes.

**The CHAIR:** Did you receive and read the information for witnesses briefing sheet?

**The Witnesses:** Yes.

**The CHAIR:** Do you have any questions in relation to being a witness at today's hearing?

**The Witnesses:** No.

**The CHAIR:** Mr Turnbull, we have received a written submission from you, and that will form part of the evidence before the committee and will be made public. Are there any amendments that you would like to make to your submission?

**Mr Turnbull:** No, thank you.

**The CHAIR:** Before we ask you a series of questions, do you wish to provide the committee with any additional information or make an opening statement?

**Mr Turnbull:** If I could just say, first of all, thank you very much for the invitation. We are very pleased to be here, and to assist this committee in any way we can, and if there are any questions

that you have beyond today's hearing we will be very happy to provide answers to them and assist in any way we can.

As you are probably aware, the Legal Aid Commission is an independent statutory authority set up under state law. It is jointly funded by both the commonwealth and the state. It is obviously there to provide assistance to people who cannot afford a lawyer. That is potentially a very wide group of people, so of course we have to set priorities in terms of who we assist and in what circumstances, and to keep within our budget. We employ approximately 300 lawyers and support staff and deal mainly in crime and family law. Our head office is in Perth, and we have two metropolitan offices and seven regional offices throughout the state. We also have a presence on Christmas Island. On any given day we can have possibly as many as 20 lawyers appearing in various magistrates courts throughout the state providing duty lawyer services in their criminal lists. As you would expect, we work very closely with the Aboriginal Legal Service, particularly in the regions. Much of what we say this morning is based on feedback from our lawyers working in the criminal law division and in our regional offices. We generally see clients following their arrest and in the period immediately before they appear in court.

If I may, I think the starting point for us is two what we call basic propositions or principles. The first is that we would say that detention should always be a decision of last resort; and, secondly, if detention is unavoidable, following arrest the accused person should be brought before a judge as soon as practicable. In relation to the first proposition, we believe that more work could be usefully done to avoid detention in the first place, especially when dealing with juveniles, intoxicated people and people with a psychiatric illness. I think this is not news to anyone here, but this would require obviously an increase in infrastructure to support prevention and diversion, such as drying-out shelters to get intoxicated people to a safe place. There are some significant gaps across the state. Bunbury is a good example—we recently had an unfortunate incident there which we could give you details about later if you like. Psychiatric health services are also needed to assist in dealing with people with psychiatric illness who are being threatening or disruptive and diverting them to a mental health system rather than being detained in a lockup and in the criminal justice system.

In relation to the second proposition, namely that arrested people appear in court as soon as possible, we note that cabinet has recently approved funding for a weekend or Sunday and night courts at the newly-opened Perth police complex. This should enable access by video link from regional lockups, which will allow for accused to have bail considered as soon as practicable. We are pleased to say we have also been funded to provide duty lawyer assistance after hours, and I think the Aboriginal Legal Service is also gearing up to provide lawyers, so we think that is a very positive step in the right direction. At the present time we usually provide advice to people in custody during office hours, and mainly by telephone. We are told that the Criminal Lawyers' Association is planning have a listing on its new website of lawyers who are prepared to take after-hours calls and provide advice on a pro bono basis. The attraction for private lawyers is that they are likely to pick up the clients if they qualify for legal aid.

In relation to the second term of reference of the committee, namely, access to legal services, the main issue for lawyers in many police lockups is not so much getting access to clients. I note that there was a report in this morning's *The West Australian* about a denial of access. Our experience is that although there may be refusal of a client's request, we are not aware that we have ever been refused access where we have requested it. So that is not the main issue. The main concern for us is access in confidential settings to enable proper instructions to be taken. At some lockups, the only option for lawyers may be interviewing the accused in the lockup cell, or through the bars, in the presence of other prisoners, or in a room with a police officer standing nearby. In these circumstances it may be very difficult for the accused to provide full and frank instructions. I think too that confidentiality can be particularly important in small communities where payback feuding is a possibility. Also, in some regional police stations, the same situation applies to telephone calls;

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that is, there is no privacy, we are told, while police remain in the room. The situation does vary significantly.

**The CHAIR:** Is that something that has been raised formally with the authorities over the years; that is, the presence of police in rooms while you are interviewing clients?

**Mr Turnbull:** I might get Andrew to answer that. But can I just say that one of the issues, which we kind of accept in a way, is that there is a bit of a trade-off between security and confidentiality. You kind of cannot have both.

**Mr Robson:** It is more dealt with on a case-by-case basis. As a lawyer, you might inquire whether the police are still in the room, and you might ask to speak to the officer and ask that they leave the interview room while the advice occurs. The difficult thing is you do not know whether there is any monitoring of the call, and often it limits what advice can be given and what instructions can be obtained. I would ordinarily ask that the client not go into the details of the case and provide only the advice concerning their particular circumstances so that the client is not revealing any information.

**Mr Turnbull:** Are you happy for me to continue with this?

**The CHAIR:** Yes, thank you.

**Mr Turnbull:** As I say, the situation does vary quite significantly across the state, with some of the new police stations having really good facilities, including purpose-built interview rooms. I should make that point.

On the issue of medical services, there are occasions where accused persons with psychiatric illnesses have indicated that they have not been permitted to collect medication or a prescription at the time of arrest. Some have also said that they have not been allowed to take medication while in the lockup. We think it would be useful if all lockups had access to medical services, including by telephone, that could confirm the prescription of a person arrested and confirm the appropriateness of the provision of medication to the person in custody. Our duty lawyers are also aware of occasions on which accused with medical issues requiring attention have actually not raised the issue with custodial officers and the duty lawyer has been the person who has felt obliged to raise it.

In relation to the third term of reference, namely lockup design, staffing and administration, as I referred to earlier, having secure non-contact interview rooms and confidential telephone interview areas for people in custody would provide the confidentiality needed and avoid the need for police officers to be present to provide security during the interview. We also think as a separate matter it would be helpful if all staff who undertake responsibility for custody of people have specific training in communication strategies for dealing with detainees who are stressed, and particularly detainees who are under the influence of drugs or alcohol or who have psychiatric illnesses. I imagine there are techniques that one can use to de-escalate these volatile situations.

On the issue of training of custodial officers on cultural issues, again it would be useful in our view if custodial officers had training on cultural issues, particularly relating to Aboriginal culture. For example, there are many family relationships that define the closeness allowed between two people in Aboriginal culture. Depending on the relationship, sometimes people should not be sitting next to each other, or sometimes even in the same room or in the same general vicinity. Insisting on people sitting in the same courtroom or waiting room can at times be quite disrespectful.

[11.15 am]

Another observation that our staff have made is that although there are reasonable numbers of Aboriginal police officers and liaison officers, Serco does not appear to have many Aboriginal staff members. We think that it would be useful or beneficial if they were to have more Aboriginal officers, which would be of assistance to Aboriginal people who are feeling distressed at the time

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they are in custody. It may be that the Aboriginal person in custody would feel more comfortable about raising health or other issues with an Aboriginal staff member.

On the issue of whether or not oversight mechanisms are adequate, we are aware of the proposal that the Inspector of Custodial Services have oversight of custodial arrangements in police lockups and support the proposal as an effective oversight mechanism to identify in particular any systemic issues relating to the detention of people after arrest. The Inspector of Custodial Services would also be in a better position to deal with any crossover issues between the police and Serco. There are obvious deficiencies in a system where the only avenue of independent complaint is through the CCC or, perhaps to a limited extent, the Ombudsman.

In general terms, on the issue of reducing the rate of Aboriginal imprisonment, there appears to be a need for more bail hostels as an alternative to detention, particularly with a treatment focus on substance use rehabilitation. In the West Kimberley, for example, juveniles end up in custody in police lockups because there is only one bail hostel, which is based in Broome and which is capable of taking only three juveniles, who, incidentally, must be of the same sex.

I appreciate that I may be straying slightly outside your terms of reference, but I just add that we think that the availability of pre-sentence programs can significantly improve the client's position when it comes to sentence. There is also a need to ensure that sentencing options other than imprisonment are available and, importantly, workable. For example, there is no approved community work in Fitzroy Crossing, and it is very limited in other areas in the Kimberley, except for Broome and Derby. Clients in remote communities who have reporting obligations while on community orders often have real practical difficulties in complying with telephone reporting, with a lack of mobile telephone coverage and with vandalised public telephones. If they miss two occasions of reporting, that results in a breach. Even if clients have reinitiated contact by the time it gets to court, and frequently the program requirements may have been satisfactorily completed, there is still a problem for them.

Finally, we were very pleased indeed to see the recently announced driver training and education program for regional and remote communities. We think that will make a significant difference to reducing the rate of Aboriginal imprisonment. That is an issue that has been around for 10 years that I am aware of, so we think that is a very positive thing. That is all I wanted to say by way of opening.

**Dr A.D. BUTI:** There is this issue about Legal Aid and the Aboriginal Legal Service, and the decrease in Aboriginal legal aid is putting greater pressure on your organisation, without, I presume, an increase in your funding to be able to cope with that.

**Mr Turnbull:** Yes.

**Dr A.D. BUTI:** This is a question that is a bit strange to ask you. Do you think it would be better that Legal Aid receive increased funding to cope with representing Indigenous clients or would it be better if the Aboriginal Legal Service received the extra funding?

**Mr Turnbull:** I can understand that question coming from Armadale. I think they no longer appear in Armadale. That is a very difficult question. I genuinely believe that an Indigenous organisation such as the ALS, if it were properly funded and properly administered et cetera, is probably the best option. We have some very experienced lawyers who have been dealing with Aboriginals in their communities for many, many years. We work very closely in partnership with the Aboriginal Legal Service, and perhaps I should leave it at that.

**Dr A.D. BUTI:** You mentioned the Armadale situation about the lack of privacy and confidentiality and so forth. There is a problem just in the local courthouse at Armadale, is there not? It is appalling.

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**Mr Robson:** There are not enough interview rooms for the lawyers, and in detention there is only one room to see people. It creates delays in the court because there are just simply not the facilities for lawyers to interview their clients.

**Mr I.M. BRITZA:** In your submission you mentioned that in some cases—maybe many—the accused for some reason or another has not brought up the issue that they need medical attention, even with the duty lawyer. Why do you think this is so?

**Mr Turnbull:** They have raised it with the duty lawyer, but I think it is the authority figure. I really do not know the answer.

**The CHAIR:** Part of the admission process into the cell is that they are asked whether they have any medical conditions.

**Mr Payne:** One particular example I know of is an Aboriginal woman with a woman's problem.

**Mr C.D. HATTON:** Would it be right to say that a lot of Aboriginal people who are detained would have medical conditions such as diabetes or something like that? It would be quite prevalent, would it not?

**Mr Robson:** Yes, that is right.

**Mr C.D. HATTON:** Would it be right to say that the police cannot allow the drugs to be on them because, as an example, they might overdose or do something stupid? If there is medication to be taken away from them, the police cannot administer the medication without a nurse there, so probably it would be right to say that more often than not they would go to a regional hospital straightaway. Would that be correct? Do you understand anything that goes on in that area?

**Mr Turnbull:** We can probably take that on notice. I am not sure that we have a ready answer to that.

**Mr C.D. HATTON:** I am a bit unclear on what procedures are in place.

**Mr Robson:** If there is an urgent need for medical attention—if a person has been involved in a motor vehicle crash—they are conveyed to the hospital for treatment. If it is more a longstanding problem like diabetes and there is an issue of their medication, I do not know what the approach of the police is. I am not sure that they would transport somebody to hospital simply if they have a background of diabetes.

**Mr C.D. HATTON:** So I guess what I am hearing is that medication is not something that is brought to your attention very often.

**Mr Robson:** We surveyed our lawyers in preparation for this hearing and it has been raised by the lawyers. Sometimes our clients will raise that they need medication that is at home and they have not been able to take it with them, probably for the reason that you have identified—that the police are concerned about the administration of medication and being responsible for medication. In our view, it would be beneficial if all lockups had access to a medical service that could administer medication to people in the lockup. Basically, the police would have somebody they could consult to find out what a person should have. It is particularly concerning if, say, someone is on antidepressant medication and they are not allowed to bring that medication with them and they miss their medication and they are in a lockup, which is a depressing place.

**Mr C.D. HATTON:** I am thinking about the duty of care of a police officer when someone is in custody. We have had a recent example at a regional police station. The story was given of a person being detained and they actually fooled around and said, "Look, I'm swallowing all this" and they did swallow the tablets, but the police did not know they had tablets. I am getting the feeling that maybe this is happening more often than not. I am not understanding whether there is a procedure in place that is a definite followed procedure.

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**Mr Robson:** As far as what happens at the reception stage of the lockup, we do not get to see that stage of the process; we really only get what people report back to us about having difficulty with accessing medication.

**Mr C.D. HATTON:** There is not a high incidence of reporting by the sound of it in a legal sense.

**Mr Robson:** It does come up from time to time. It is not raised an enormous amount, but occasionally it is raised with us that people have not been able to access their medication. I think the solution to it would be if there was a statewide health service that the police could access to get validation on what medication should be provided and ensure that medication is delivered to the person when it is medically necessary. So, to take it out of the hands of the police who are not medically trained and to have a service that the police could access to ensure that people get their medication would be ideal.

**Mr I.M. BRITZA:** I have two follow-up questions. I want to check once again: is the Aboriginal Legal Aid answerable to you?

**Mr Turnbull:** No. It is a separate statutory corporation. It is a non-government body, fully funded and supported by the commonwealth government.

**Mr I.M. BRITZA:** I think my question may be inappropriate in light of that.

**The CHAIR:** Is it the experience of the lawyers—I suppose it is hard if they are not there—that there are more people in custody than there need be because they have not had timely access to a lawyer?

**Mr Robson:** I think it is not so much access to a lawyer. Generally, the police will try to facilitate access to a lawyer in the pre-interview stage. After the person has decided whether or not to take part in the interview, the police will then review the case and decide whether they have a sufficient case to charge the person and then will either charge or release the suspect. I guess it is possible that if the person receives the advice not to take part in the interview and there is insufficient other evidence, that might result in the person being let out of the police station.

**The CHAIR:** What about bail? Do you think there is an issue about bail being unreasonably refused in circumstances?

**Mr Turnbull:** I think that must inevitably be the case, given that police typically often refuse bail and then when the application is made subsequently, bail is given. As I mentioned, the fact that this new facility will be available in Northbridge should overcome a lot of those potential problems in the delays associated with people getting bail. But, as I mentioned earlier, there is also the issue of bail hostels as an alternative to detention.

**The CHAIR:** I think in last year's budget, there were already ones in Kalgoorlie and Geraldton, and I think there is going to be one somewhere in the West Kimberley. It is in last year's budget. I have not checked to see whether it is still on the books. Mr Turnbull, you mentioned an incident in Bunbury. I wonder whether you would expand on that now.

**Mr Turnbull:** Sure. We surveyed all our lawyers and said that this was coming up and asked them to give us whatever information they had. One of our Bunbury lawyers mentioned that they had a trial matter recently where a man was kept in the lockup as a drunk detainee. He was not that drunk and was asking repeatedly to be charged with something or released. The police came to take the mattress out of his cell and he put his hand on the edge of the open door and said, "Why won't you release me?" The police perceived he was "trying to escape" and rushed him back into the cell, punching him repeatedly. He was twice the size and did not strike back at all. He was immediately charged with obstruction. Magistrate Pontifex found it was an abuse of process and ordered a permanent stay because the Protective Custody Act says that you cannot charge while in protective custody. In summary, if they are going to detain people under the Protective Custody Act, they

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should not be detained in the lockup. They are not under arrest and there should be a drying-out place where they can take people.

**Mr Payne:** Just to add to that, there is no drying-out shelter in Bunbury.

**The CHAIR:** Obviously, that applies in a lot of places around the state, and that would certainly decrease the numbers in the lockups generally.

[11.30 am]

**Mr I.M. BRITZA:** I am thinking of an issue—it may come over because I think it may have been given from your department to legal aid—where an Indigenous person was taken, not charged, and incarcerated for up to five months. The Aboriginal Legal Service, I think, then took it over. He was released without charge and told he was free, but then he was legally told he had no recourse to find out what had actually happened. I do not really know how to pursue that, but I find that the distrust from Indigenous people towards Aboriginal legal aid is far and wide; I do not think it is an off-the-cuff comment. That kind of situation really alarmed me, because I saw the letter from the Aboriginal legal aid services telling him, “We’re sorry that you were incarcerated for five months,” without charge, and nothing has ever been laid, and he was free to go, but not free to pursue it and told not to. It just put a concern in me about the process of the aid given to a person like that, that he has no recourse. I think that maybe, for a lot of Indigenous people, I at least do not always understand the legal jargon, so when you are in the hands of a lawyer, you are very much in their hands as to having an understanding—worse for an Indigenous person who is at the mercy of a lawyer, so I do not even know whether that is a comment or a question, but it is a dilemma. When you are dealing with Indigenous people, they do not always understand the process.

**The CHAIR:** That is probably something to take up with the Aboriginal Legal Service when they come in.

**Mr I.M. BRITZA:** Very good, I shall.

**The CHAIR:** The issue of interpreters in regional Western Australia is a major issue. Is it the experience of lawyers in Legal Aid that, for example, a plea might be secured because the defendant does not fully understand the process?

**Mr Robson:** I think it would be beneficial if there was greater accreditation with Indigenous interpreters and a better system for that. We have received comments from our regional offices in the past, not in connection with this matter, that it is often difficult to find someone who can interpret. With greater interpretation there is greater understanding of the legal process involved.

**The CHAIR:** Is that interpretation just for a consultation with a client, or also that would be accredited for an appearance in court as well?

**Mr Robson:** Accredited to appear in the court and also assist the lawyer in advance of court.

**Mr Turnbull:** The Kimberley interpreter services work quite well, but that is the only one, I think, in the state that does. Yes, it is an issue.

**The CHAIR:** I am aware of this being said frequently—so frequently it has become trite—but part of the cultural differences mean that when questions are put to Indigenous persons they, wanting to be helpful, agree. Is that an ongoing issue? What do we do to assist that not occurring?

**Mr Robson:** It is an important matter for the training of the police to really enforce that a person in custody, particularly an Indigenous person, should have access to legal assistance and receive legal advice before the criminal investigation proceeds and before the person is interviewed.

**The CHAIR:** One final question I have: the prosecution is under duty of disclosure; are you aware of cases where, for example, matters that occurred, say, in the lockup that were not disclosed to the defence were then raised at the trial? Is that something that has occurred?

**Mr Turnbull:** Not really.

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**Mr Robson:** From time to time there are issues of disclosure; it is really an issue for the police. They decide what to disclose to the defence. Sometimes it is not always immediately apparent what has occurred.

**The CHAIR:** That tends not to be part of the formal brief, but somehow or other, whether or not the level of documentation or CCTV coverage or whatever needs to be improved in the lockups; that is what I am saying. It could knock on the head some of the allegations that have been made immediately.

**Mr Robson:** I think having video recording of what occurs in the lockup is the best protection for the police against allegations of abuse, and also for the individuals who are detained in the lockups.

**The CHAIR:** Usually there are external areas and charge areas with CCTV, which is both audio and visual, and that is recorded, but in cells you have live monitoring CCTV, no audio and no recording. The police say that that is a privacy issue. I do not know whether you have any views on that—whether it is recorded then dealt with in some way subsequently so that privacy cannot be breached, but it seems to me that things that could happen in a cell would need to be recorded. Do you guys have any views on that?

**Mr Robson:** I think, really, probably video recording of the images within the cells used by the detainees is probably sufficient to ensure that protection.

**The CHAIR:** What happens at the moment is that it is there live, so someone is overseeing what is happening in the cell, but if someone subsequently wants it to be reviewed, there is no record of it because it is live. What I am asking is: would you see there being any issues in, for example, consideration being given to recording prisoners while they are in the cells? Not for the purposes of evidence, but just as a backup in terms of any allegations down the track. The obvious thing is, the police might say, “Look, we checked them every 15 minutes, as we are required to do,” and the video would show that that did not occur, for example.

**Mr Robson:** I think it would obviously be of assistance, particularly when something untoward happens, you have a clear record of what the circumstances were.

**The CHAIR:** Anyway, that was a bit without notice; you might want to have a think about that, because I can see both sides of the argument, but it seems to us that if the equipment is there, it might act as a deterrent to some improper behaviour and also help to speed up resolving issues when they arise.

**Mr Turnbull:** The privacy issue is in relation to the audio aspect, or just the visual. For the safety of the prisoners, to retain that visual view, I cannot see why it would be an issue in preserving that, as distinct from keeping it for 15 minutes and then not having it available later. I do not see that to be a reason why we could not, why that has any effect on privacy. I would have thought that if it is accepted that it is sufficient not to have the audio aspect, then I would have thought there is no reason why it should not be preserved.

**The CHAIR:** All right, thanks very much for your time. If anything else occurs, please feel free to contact the committee staff. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days of the date of the letter attached to the transcript. If the transcript is not returned within that period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee’s consideration when you return your corrected transcript of evidence. Thank you all very much for your time.

**Mr Turnbull:** We are very happy to provide any other assistance that you think we should, if there are any other matters that occur to you. We are only too happy to help.

**The CHAIR:** Thank you.

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**Hearing concluded at 11.38 am**