COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

INQUIRY INTO CUSTODIAL ARRANGEMENTS IN POLICE LOCKUPS

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 18 SEPTEMBER 2013

SESSION ONE

Members

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

Hearing commenced at 10.00 am

COLLINS, MR PETER FRANCIS
Director of Legal Services, Aboriginal Legal Service of Western Australia, examined:

The CHAIR: Good morning Mr Collins. On behalf of the Community Development and Justice Standing Committee, thank you for interest and for sparing your time to appear before us today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into custodial arrangements in police lockups. Have you been provided with a copy of the committee's specific terms of reference?

Mr Collins: I have, thank you.

The CHAIR: I am Margaret Quirk, the chair. On my left is Ian Britza, the member for Morley and the deputy chair. On his left is Mr Chris Hatton, the member for Balcatta, and to the far left is my colleague Mr Mick Murray, the member for Collie–Preston. On my right is Dr Tony Buti, the member for Armadale.

We are a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings of the house itself. Even though the committee is not asking you to provide evidence by way of oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as contempt of Parliament. This is a public hearing and Hansard will be making a transcript of proceedings for the public record. If you refer to any documents during the evidence it would assist Hansard if you could provide the full title for the record. Before we proceed to questions, I need to ask you a series of questions. Have you completed the "Details of Witness" form?

Mr Collins: Yes I have, thank you.

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

Mr Collins: I do, thank you.

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

Mr Collins: I have, thanks.

The CHAIR: Do you have any questions about being a witness today?

Mr Collins: No, I do not.

The CHAIR: You have provided a written submission to the inquiry. Together with the information you provide today, your submission will form part of the evidence for the inquiry and may be made public. Are there any amendments you would like to make to the submission?

Mr Collins: No thanks.

The CHAIR: We have a series of questions to ask you today but before we do so, do you want to provide the committee with any additional information or make an opening statement?

Mr Collins: Before I start, I would like to acknowledge the traditional owners of the land on which we meet today, the Noongar Whadjuk people, and pay my respects to their elders past and present.

There is not a lot I would like to say by way of an opening statement, save to perhaps make one observation. I have been employed with the Aboriginal Legal Service of Western Australia pretty well since 1995, and I have been in my current role as director of legal services since 2005. In my

experience during that time any ongoing impetus for the Royal Commission into Aboriginal Deaths in Custody recommendations to inform decisions made by police and government, especially with respect to police lockups, dissipated years ago. That is reflected in part by—as I understand the situation—the fact that the last WA state government review of the implementation of the recommendations took place back in 2000. It is almost inconceivable that in 2003 the recommendations would inform day-to-day decision making about lockups. That is well understood.

The CHAIR: I understand that the ALS was involved with the Australian Institute of Criminology in doing a review of where the recommendations were a few years ago.

Mr Collins: ALS has published a number of documents about reviewing the implementation of the recommendations. I am sorry, but I cannot quote the date of the last ALS document, which was a number of years ago. It may well have been during the time that Mr Buti was working at the ALS, which would have been at the latest in the late 1990s.

The CHAIR: Are you saying that things have moved on, standards are different, and some of the recommendations of the royal commission are, in a sense, an anachronism now, or things are done differently?

Mr Collins: Regrettably, that is the case, yes.

The CHAIR: A number of issues have been raised in our travels up to the Kimberley and also in hearings. One of the first ones, and you address it in your submission, is access by detainees to legal services. It appears from our inquiries that certainly police in regional and remote Western Australia know that with Aboriginal detainees that ALS is the go-to point. However, because your organisation is thin on the ground, we have evidence to suggest it is difficult to contact the ALS.

Mr Collins: I have read the submission from the WA Police service about the role of ALS in terms of people accessing it for legal advice when they are in a police lockup. Perhaps I will seek to address some of the criticisms made of the ALS in that context. The primary point is that in terms of contacting the ALS after hours, be it after hours during the week or on weekends, ALS is not funded to provide that sort of service. Underpinning that is the fact that ALS receives no funding whatsoever from the state government for the provision of legal services to the Aboriginal community in Western Australia. We are provided with no specific funding from the federal government to provide a service to enable clients in police lockups to ring us for legal advice. It also needs to be noted that Legal Aid WA does not provide a service whatsoever. That is troubling in this sense because Legal Aid gets five times the funding of ALS but it does not seem to be in a position to think it necessary to provide this sort of service. In addition to that, if ALS were to embark upon a process where it required particular officers to be available after hours and on the weekends to provide that service, that would place an almost intolerable burden on them. I will use the office in Kununurra as an example; it has two lawyers, a court officer and a secretary. That office services Kununurra court, Wyndham court, Kalumburu, Halls Creek, Warmun and Balgo in addition to the District and Supreme Courts when they are on circuit there. I could not in all conscience in my role as director of legal services, require those people to be available 24/7 effectively to answer the phone. The proposition can be put that some of the time we might have no calls, and that is true. But on the other hand, the feedback I get from our staff who have this phone after hours, and it is predominantly staff in Perth, is that you might get 15 calls on a weekend or on a Friday night. That is enormously disruptive. In addition, we have no capacity in-house to alleviate the burden on those people by saying, for example, "You do not have to go to court on the day after you have been answering the phone." So these people are answering the phone after hours, albeit imperfectly, and I acknowledge that there are issues around ALS answering the phone, but they still have to go to court the next day. We are different from Legal Aid because somebody who answers the phone from Legal Aid is not going to court and doing duty lawyer services necessarily. They might be going off to the Supreme Court today to do a jury trial. They might be going off to the

Corner's Court to do an inquest into a death in custody. We deal with a range of complex matters from Supreme Court murders in-house, down to duty lawyer matters, so I am not going to require our lawyers to answer the phone after hours in those sorts of circumstances, absent additional funding. Criticisms have also been made of the ALS in terms of the advice it provides. In my submission, those criticisms are largely ill-conceived. When a client is being asked by police to participate in a recorded interview with them in a police lockup, it is standard advice to inform that client of their right to silence; that is, that the client should not participate in a recorded interview. If that is a criticism made of the ALS I will wear it because that is appropriate advice in all the circumstances.

[10.10 am]

The CHAIR: That not something we have heard.

Mr Collins: It is in the police submission, Madam Chair.

The CHAIR: They did not articulate it on the day.

The Criminal Lawyers' Association of Western Australia has said, for example, that on some occasions it is not told that it has a client in custody for many hours, if not days. We put it to the police commissioner that maybe the Criminal Investigation Act could be amended in the section that requires provision of access to lawyers, then if it is not provided that may render any evidence obtained in those circumstances as inadmissible, not as a matter of discretion, but mandatorily so. Have you any views on that?

Mr Collins: I have two views I would like to put to the committee. Section 138(2)(c) of the Criminal Investigation Act is in urgent need of amendment, especially in light of the interpretation placed upon that subsection by the Court of Appeal in the case of Wright. As the committee would know, that provision provides that an arrested suspect is entitled to a reasonable opportunity to communicate or attempt to communicate with a lawyer. In the case of Wright, the Court of Appeal has said that the only obligation on police officers under section 138 is to inform an arrested suspect of their right to communicate with a lawyer. Once that is done, the onus is on the arrested suspected to exercise that right. The way that will work in practical circumstances for our clients is this: if they are told of their right—and they are routinely are so there is no criticism at the feet of the police on that score—once told, if the police then provide the arrested suspected with a phone and the ALS contact number, that is sufficient to accord the arrested suspect of a reasonable opportunity to communicate with the lawyer, such that the requirements of the subsection are satisfied.

In my view, Aboriginal people in police custody are profoundly disadvantaged by that subsection and the interpretation placed upon it in Wright, and I will provide some reasons in support of that contention. Aboriginal people, as is well known, are inherently vulnerable in police custody. Dealing with authority figures they are inherently unlikely to press the issue re contacting a lawyer once police have complied with those bare-bones requirements. They simply will not press the issue. I have countless clients who I can vouch for who do not press the issue when the proposition is put to them in interviews, "Well, we have given you a chance to ring the ALS, no-one is answering the phone so what do you want to do?" The answer is, "I will keep going." They then proceed to answer questions in the interview without legal advice. The other obvious point is that so many Aboriginal clients who are taken into police custody are affected by alcohol or drugs, suffer from mental illness or cognitive impairment, are illiterate and/or innumerate, and are unworldly and unsophisticated. They are inherently disadvantaged in that sort of setting. Many, importantly, labour under a profound misapprehension that it is better to get the thing over with by speaking to police in an interview, believing that by telling their story in the interview setting they will not be charged or it will improve their chances of being released to bail. They then proceed to answer questions in an interview situation without first obtaining legal advice. There are issues around gratuitous concurrence; that is, the cultural propensity of Aboriginal people to accede to requests by police in this sort of situation. There are often very serious communications issues. Clients from remote

communities in particular, may speak English as a second or third language. There is a huge issue around this because there is a belief among some, including police, that if an Aboriginal person speaks some English, that is sufficient. We have had interpreters, linguists and those sorts of experts interpret records of interview conducted by our clients where they have made it very clear that there has been at total cross purposes between the police and the client in an interview situation because English is not the client's first language.

The CHAIR: I will interrupt you there. There were a number of cases, if I recall, a few years ago involving sexual abuse in the Kimberley. Those records of interview were ultimately thrown out because of those kinds of reasons, as I understand it.

Mr Collins: That is correct. Some of them were, not all of them. The important point to be made in that context is that there is no Aboriginal interpreter service in Western Australia that is government funded and properly resourced with properly qualified interpreters, save for the Kimberley interpreter service, which operates on an absolute shoestring. However, for example, there is no interpreter service available for Aboriginal language speakers from the Pilbara. I am struggling to recall—I think this is mentioned in the ALS submission—during all my time at the ALS, any interview, especially one conducted in relation to serious offences, where the services of an interpreter were enlisted to assist an accused, so they all go ahead in English. There are often issues around the compliance with the Anunga rules, which emanated from a Northern Territory case involving Anunga. These rules spell out some prerequisites that should be observed by police when interviewing Aboriginal suspects in records of interview situations. I will not go through all of them because it will take too much time. However, the rules, as they have come to be known, speak of matters such as the police not asking leading questions of Aboriginals in interviews because Aboriginals will invariably give the answer that police expect.

The CHAIR: So by leading questions you mean ones that are capable of receiving a yes or no answer?

Mr Collins: Ones that suggest a particular answer. The rules speak of the importance of having what is described as an interview friend present with an Aboriginal person during the interview to provide support. That should be someone with the requisite amount of experience and understanding of the process to provide support, assistance and guidance, not necessarily legal advice. It should be someone whom the suspect feels confident in during the interview process to balance things up, if you like. Interview friends are utilised by police in this state; however, what routinely occurs is that the people used as interview friends are not up to scratch, but more importantly, their role is not properly explained by police in an interview situation. In one of the cases from a long time ago, the interview friend was described as a piece of furniture, and in essence that is what happens a lot of the time. The critical point though is what happens if the ALS number is provided and the phone is not answered, which happens, as I acknowledged earlier. As far as section 138(2)(a) and the case of Wright are concerned, that is the end of the penny section. My view is that the act should be amended to make it mandatory for a person to speak to a lawyer prior to an interview proceeding, which leads to my second point; that is, that it creates all sorts of resourcing and logistical issues. In New South Wales, regulation 33 of the Law Enforcement (Powers and Responsibilities) Regulations 2005 makes it mandatory for police to ring the Aboriginal Legal Service in New South Wales to advise every time an Aboriginal person is arrested and taken into police custody. It works fantastically well. It benefits both police and the Aboriginal person in custody. It only works for practical purposes because the ALS in New South Wales is provided with specific funding to employ lawyers to answer phones 24/7. Do not hold me to this, but my memory is that around six lawyers are employed on a full-time basis by the New South Wales Aboriginal Legal Service and their only job is to answer the telephone on a rostered basis.

The CHAIR: And that is funded by the state?

[10.20 am]

Mr Collins: It is funded by the commonwealth now. It used to be funded by the state, but I am happy to stand corrected on that, Madam Chair. It benefits police because it enables them to obtain information that might have not been forthcoming from the client for all sorts of reasons such as the lawyer knowing the person well because, as we all know, lots of Aboriginals regrettably get into trouble all the time. It can include obtaining information about the personal status of the individual in custody; their mental health issues that might otherwise have not been disclosed; issues around risk of self-harm and suicide; and the names of people within the community they might be bailed to. All manner of things can assist the police because we all know that police would prefer not to have people in lockups, and there are myriad reasons for that. In terms of the client, it facilitates them being provided with their legal rights and the opportunity to properly exercise them.

Before I forget, there has been a criticism by the police in their submission that the ALS does not go to police lockups to assist their clients, and there is a very good reason for that. Usually, we would be called to a police lockup to assist a client who is about to undergo a recorded interview with police. If an ALS lawyer sits in on an interview with the police and there are issues further down the track in court about the admissibility of that interview, there is a real risk that the ALS lawyer will be called as part of the prosecution case, which then conflicts with the ALS being able to continue to act in the matter. Again, the routine advice given to all our staff is that unless it is absolutely necessary, they should not attend police lockups, especially to sit in on police interviews. It is fraught with danger and compromises our capacity to provide a legal service to the client further down the track.

I will make two points to the committee about legal services, which are found in my submission. Section 138(2)(a) of the Criminal Investigation Act is in urgent need of amendment. It would be wonderful if the state government could see fit to introduce a regulation similar to regulation 31 of the Law Enforcement (Powers and Responsibilities) Regulation in this state. Given especially the geographical size of this place and the logistical issues around providing legal services per se, especially in regional and remote parts of the state, if a provision such as that were to be introduced, the appropriate funds would need to be made available to make it work properly.

Mr I.M. BRITZA: Given what we are talking about now, an issue has come up concerning the lack of appropriate interview rooms where your lawyers in particular have to speak with their clients in front of others, and it is just not appropriate. Do you have a comment to make on that issue?

Mr Collins: Yes, I do thank you. I think the issues are well known. In my submission, any newly built or refurbished police station needs to have properly designed interview rooms to allow lawyers to interview clients in these circumstances. The room should be available on request at any time. It should, as has been noted, accord privacy and, therefore, facilitate the lawyer–client relationship in terms of confidentiality. No interview should take place within either the visual purview of the police or in police hearing. The room should enable documents to be passed between the lawyer and the client. So often we have secure interview facilities where you cannot hand over a document to the client to get them to sign it, for example an authority to act or an authority to obtain medical records through FOI; these are simple things but they are very important. The rooms need to be properly air-conditioned and, where necessary, heated in winter. There should be no time limits on lawyer-client interviews, and there should be sufficient writing space and a chair at an appropriate height, because we know there are issues, for example, at the Northbridge watch house with these sorts of things.

Mr I.M. BRITZA: I am also aware that there are time limits.

Mr Collins: Sometimes there are time limits because of staffing issues within police stations. But rather than repeat some of the concerns that have been raised and that the ALS routinely experiences, what I would prefer to do is point to what needs to be done going forward.

Mr I.M. BRITZA: Is this primarily an issue in regional areas?

Mr Collins: It is. This applies also, of course, to some of the metropolitan police stations and metropolitan courts, but if, for example, you go to Derby courthouse, which is attached to the police station—I have done this on a number of occasions—you have to take instructions outside in the scorching heat, or, if it is the wet season, in the rain, because there are no facilities available to take instructions with a roof over your head, but also, more importantly, in private. If you go up the road to Northam, the Northam Police Station lockup is, quite frankly, Dickensian. It was built in the 1880s, I suspect. There are no proper lawyer–client interview facilities. You have to interview the client in the cell and sit on their bed. Often they reek of all sorts of things. Also, the police officer stands outside the cell, keeping guard, so there is no confidentiality. For clients who are on bail, you sit outside on steel chairs immediately adjoining the courthouse, along with any number of other people nearby trying to take instructions, and in the middle of winter it can be two degrees. This is sort of prehistoric stuff, and that is one of the points.

I am not necessarily being critical here, but in an era where police are being increasingly resourced and of course there is a government commitment to employ—what is it?—500 additional police officers, what inevitably occurs in those circumstances from a justice perspective and from an ALS perspective is that more people are charged. That just follows as night follows day. That means there are more people in the system and more clients to act for, and a greater need for some thinking and some resourcing around providing the facilities and the infrastructure for people to be properly moved through the justice system. You cannot have a situation where all these resources are, for example, devoted to policing and not have some proper thought and consideration given to the flow-on effect of more people coming to court and facing criminal charges and additional pressures being placed on services like the ALS and Legal Aid. As things stand at the moment, my perception of things is that a lot of resourcing is being devoted to policing. I understand the argument for that, and I have some views on it, but this is not the forum. A lot of resources are being spent on jails. However, in between, there is a huge vacuum. In fact, "vacuum" is the word that was used to me in April this year by the magistrate for the Pilbara, who rang me to talk about what was happening up there. He said to me that the system up there is in crisis, because court lists have blown out exponentially, and in places like Karratha and Roebourne they have to cap the number of people appearing in court to 60 or 70 a day. That is a phenomenal amount on its own. We have had ALS lawyers in places like Halls Creek who appeared for 120 people in one day on their own. That places intolerable pressures upon everyone in the system, from magistrates through to lawyers, to police and to custodial officers, and on it goes. So they have had to cap the number of people who can appear in a one-day sitting. But that means that the court still sits very late. It is not uncommon for the court up there to sit past six o'clock. That means that people have to drive home in the dark, with all the dangers of night driving. A poor Legal Aid lawyer was earlier this year involved in a terribly serious accident going to court. But also the criticism made by the magistrate was that the provision of rehabilitation services for people who are placed on court orders—for example, a community-based order or intensive supervision order—are largely non-existent. If we want to keep people out of jail and we are genuine about it, we have to provide the resources to be able to facilitate that. The bottom line from an ALS perspective is that Aboriginal people inevitably miss out, especially Aboriginal people in remote areas, because they are not provided with the psychological services and with the opportunity to do community work, or with substance abuse programs, residential programs and the myriad services that can be provided to try to turn people's lives around. They miss out all the time on that. So these people end up in jail.

[10.30 am]

The CHAIR: We have a fair bit to go through. One of the issues that has turned up—it is a consistent theme and it is almost equally agreed to—is the lack of access to mental health assessment or care for people in lockups. You mention this in your submission. Is it your experience that there are people who are basically in lockups who should not be there because of their mental illness but that was not assessed or able to be assessed?

Mr Collins: It is beyond dispute that people with mental illnesses inevitably end up in police lockups and, in turn, in jail. I acknowledge that the police are placed in an incredibly invidious position in these circumstances. Police are not nurses and they are not doctors. They do not have the medical qualifications to be able to deal appropriately with these people. It is an incredibly vexed issue, I think. There are a number of coronial inquests that the ALS has been involved with over the years where these sorts of issues have been ventilated. I suppose it dovetails into this, Madam Chair. When it comes to screening processes for people who are admitted to a lockup, in a nutshell, what concerns me is that often the screening process becomes an incredibly perfunctory process. That is often due to the pressures that police face in lockups.

The CHAIR: It is basically self-reporting, is it not?

Mr Collins: That is right, and that is the other issue. There is also a problem with eliciting historical information as opposed to current information. My view is that more thought needs to go into the nature and content and the manner of asking questions of Aboriginal people who are brought into police lockups to ensure that a complete picture is provided to police so that they are able to identify not only, hopefully, mental health issues but other medical issues that may impact upon custodial care obligations.

The CHAIR: Access to medication is another issue that people have told us about.

Mr Collins: Correct. That is a very difficult process when you are dealing with Aboriginal people. This happens with people like me who are trying to elicit instructions from a client. I will give you an example; it is not directly on topic, but I will give it anyway. I appeared for a woman a couple of weeks ago who pleaded to an incredibly serious armed robbery on a 60-year-old woman. She went to jail for a substantial period of time. She did not give me much information, but she told me that she had been admitted to hospital on a number of occasions when she was a child in relation to domestic violence incidents. I got through FOI all of her medical records, which demonstrated compellingly an indescribably sad and horrendous childhood where she was living on the streets at the age of 13, she was beaten relentlessly by her boyfriend, she was pretty well abandoned by her parents, and on it went. It was a litany of woe. There was a psychiatric report before the court, in which she had told the psychiatrist that she had had a really happy childhood, and she had also tried to kill herself on countless occasions by swallowing plumbers' fluid and all sorts of terrible things. There was a note in her medical records that struck a chord with me. It was one line that said, "This person presents as a sad little girl." I hope that makes the point. Aboriginal people do not like going into custody—no-one wants to go into custody—and they will be affected by drugs or alcohol or mental illness, and on it goes, so they are not necessarily going to be volunteering very important information to police about matters that are often deeply personal to them. I think what needs to be considered—again, this impacts upon resources—is that if we are going to lock people up, first, we want them to survive; and, secondly, they need to be treated humanely and appropriate medical services need to be provided where necessary.

In my view, serious consideration needs to be given to utilising, for example, Aboriginal health workers in lockups to assist in the screening process to ensure that the right information is elicited so that the correct decision can be made further down the track where there is a need for medical treatment and things of that nature. In an inquest that I did in 2010 in relation to the death of Hector Green—it was a prison death in the eastern goldfields jail—the coroner in that case recommended that if Aboriginal health workers were not available, elders in the local community be utilised to elicit this sort of information.

The CHAIR: That sort of stuff happens in Canada, as I understand it.

Mr Collins: You know more than me. We need to be more proactive and innovative in our thinking around these things, because if we are not, people will continue to die in custody; there is no two ways about it.

The CHAIR: You have mentioned the coroner's inquest recommendations twice. One of the frustrations for this committee is that there are recurring recommendations by the coroner over the years yet there does not seem to be any easy way to access a comprehensive list of those recommendations so that policymakers can say that theme has recurred over two decades and what is being done about it; it just seems to go into the ether. Is there any value in having a consolidated record of relevant coronial recommendations or some way for them to be captured more effectively?

Mr Collins: Absolutely; it is of critical importance, in my submission. With respect, the question raises a few issues that I would like to address. One is—I know this to some degree from personal experience last year—that the Coroners' Court is the poor relation in the justice system. Regrettably, it is very poorly resourced. Firstly, it needs a properly functioning website where all coronial findings can be easily accessed. That is currently not the case. Secondly, there is an organisation called the Australian Inquest Alliance, which includes representatives from all states and territories, which is trying to bring together that sort of information. There is another agency, but I apologise that its title temporarily escapes me. Ideally, there should be a nationally coordinated coronial information service so this sort of information can be routinely accessed, so that we do not reinvent the wheel interminably or repeat the mistakes of the past.

The other point I seek to make is this: I have appeared at a number of inquests over the years for families, especially in relation to deaths in custody in both prison and police custody. One of the frustrations for me at the ALS is that, in my submission, very useful, insightful and helpful recommendations are made and are never actioned by government departments; they just gather dust. The situation is different, for example, in the Northern Territory. In the Northern Territory—I am not sure on the precise dates, but I think it is three months—the legislation requires that any recommendation directed at a government department must be actioned by the department, in the sense that it has to report back to Parliament within three months on what steps it has taken to address the recommendation made by the coroner. It does not make it mandatory to implement the recommendation, but at least the government department has to account to Parliament what it has done in relation to the recommendation. It is a long way forward from the current situation that prevails in Western Australia.

The CHAIR: I will ask another question and then I will let other members have a go. I need to cut to the chase a bit. We have had some discussions about police exposure to cultural training, which seems to be reasonably ad hoc.

Mr Collins: Yes.

The CHAIR: It is more accident than design if you get a good, sensitive cop at a station who leads, then he or she seems to get the message out to their colleagues. On the other hand, if you have a tyrant who has attitude problems, that tends to affect the whole environment as well. Would you say there is systemic racism in the system or would you just say it is straight racist, or have you encountered instances of actual racism?

[10.40 am]

Mr Collins: That is a difficult question. I think there are pockets in the police service, as there is in the wider community, who are racist. There is no doubt in my experience that Aboriginal people are policed far more harshly in this state than non-Aboriginal people. That is beyond dispute. You only have to look at some of the cases that have received media attention over the years. They include a 16-year-old boy who was arrested and spent over 10 days in custody for attempting to steal a $2.30 ice-cream in Onslow. In 2009, there was a boy from Northam who was charged with receiving a stolen Freddo Frog. Mr Ward is a very good example. Mr Ward was charged with drink-driving and was refused bail on a spurious basis because the sergeant in charge of the police station, who was making the decision about police bail, formed a view that he did not come to court in circumstances where he had not come to court, but no charge for breach of bail had been preferred—that is, the

position was reached that he had good reason for not going to court. He would not have died if he had not been refused police bail. My point is that it is hard not to think that if the people involved in those incidences had been non-Aboriginal, they probably would not have been either charged or refused police bail. That happens day in and day out.

May I be permitted to mention to the committee the Prohibitive Behaviour Orders Act? It came into operation in February 2011. It allows courts to make orders effectively banning people from public space on penalty of being in breach, imprisonment. Over the past 12 months, the ALS has acted for over 50 Aboriginal people who are the subject of these applications. I will not mince my words: it is the most insidious piece of legislation I have encountered in my entire legal career. It is a form of ethnic cleansing. The people who are the subject of these applications are for the most part homeless alcoholic Aboriginal people who occupy public space and live on the streets of Northbridge. These orders seek to ban them for up to two years from the very places in which they live. We had a recent example where an order was made against one of our homeless clients who had a serious psychiatric illness—he was a schizophrenic. The order was made by consent because he refused to accept legal advice to challenge the making of the order. The order banned him from going to Midland Shopping Centre. He went to Midland Shopping Centre, was charged with a breach of a prohibitive behaviour order, spent 11 days in custody for breaching an order which involved, had it not been there, him engaging in totally lawful activity in going to a shopping centre. He was then fined $1 500 for breaching that order, and given a warning that if he were to breach it again, he would go to jail. As I say, these orders are directed against homeless, alcoholic Aboriginal people who invariably either have mental health issues or cognitive impairment consequent upon their substance abuse, and it is an attempt to rid them from the streets because they affect the amenity of places like Northbridge, in my view. I know they are strong words, but that is what is happening.

The other interesting aspect about this is that, as part of these applications, we are provided with summaries of prior offending by these people. The number of Aboriginal people who are prosecuted by police and arrested and end up in police lockups for using bad language at police is mystifying. It is staggering. These people swear at the police, in 2013, in circumstances where we all know that you can come across swearing at the drop of a hat. All you have to do is click a link on your computer and up it will come. These people use the usual expletive towards police and they get charged with disorderly behaviour, and sometimes they are locked up and end up in the watch house. Sometimes they do not come to court and a warrant is issued for their arrest and they end up locked up. The number of offences that these people are facing is absolutely staggering, and it is hard not to think that if similar language was used by non-Aboriginal people, it would all go through to the keeper. That is where we are at.

Mr C.D. HATTON: I was listening very intently to what you were saying and I am learning a lot today, thank you. You mentioned earlier on the recommendations, and you said that as of about 2000 it was quite regrettable that there had been no advancement of them. I did not quite understand which angle you were coming from on that. Firstly, would you mind explaining that?

Mr Collins: I am sorry, I might not have expressed myself as clearly as I should have. Again, I am happy to stand corrected on this, but my understanding is that there has been no state government review of the implementation of the recommendations since 2000. So, the government has not embarked upon any review of the level of compliance with the recommendations since 2000. And as a consequence of that, simply from the effluxion of time and things of that nature, my point was that from my perception, whatever impetus flowed from the royal commission in terms of making changes to the justice system, in particular obviously in relation to the way the justice system impacts upon Aboriginal people, it has really fallen away such that, as we speak, I doubt very much whether any government decision would involve a consideration of whether or not that particular decision complies or does not comply with any particular recommendation of the royal commission.

Mr C.D. HATTON: Thank you. And secondly—it is a three-part process—there seems to be a void or a vacuum over the last decade or so since 2000 in funding. Have you been lobbying a lot for that particular issue to be resolved for the ALS?

Mr Collins: We have lobbied but we came up against the argument on this federal–state divide that in this particular sector, the legal aid service delivery sector, Aboriginal people are the responsibility of the commonwealth. That is the mantra that gets chanted on every occasion. Hence we have a small amount of traction with the state government for which we are very grateful in this sense: we have been provided with funding to buy housing in places like the Pilbara, a catalyst of royalties for regions but also an acknowledgement of the difficulties around housing. But, aside from that, there is no funding and there has never been an ALS that has been in existence since 1973 from the state government for legal aid service delivery by ALS in the state. The irony is that 90 per cent of the work that the ALS does is in relation to state legislation. The bulk of our work, understandably, is in relation to criminal law, and it relates to state criminal laws as opposed to commonwealth criminal laws; for example, a Centrelink fraud or something of that nature. Everything else for the most part involves state laws but, as we say, we have not got any money and, look, it is hard not to feel despondent.

Mr C.D. HATTON: That is the next question. You must feel very despondent having spent some time on that.

Mr Collins: Yes. It is hard not to feel despondent.

Mr C.D. HATTON: Okay, thank you. Lastly—and I am sure Mick will have a question—in my previous career, I guess going to the 1980s, I was involved in the Pilbara, predominantly in the education of Aboriginals and also playing sport alongside them and being involved in community groups. I believe at that time in the 1980s there were Aboriginal liaison officers in policing and I found them to be good friends and very good people, and very much of what we were talking about—liaising, communicating, understanding. Is there such a thing as Aboriginal liaison officers now; or why not or is there an answer?

Mr Collins: My understanding is that the APLOs, as they are called, Aboriginal police liaison officers, are being phased out but I might be wrong about that.

Mr C.D. HATTON: That is my understanding.

Mr Collins: I think it is a matter of great regret that that is occurring, if that is the case.

Mr C.D. HATTON: Do you place a lot of importance on those sorts of people?

[10.50 am]

Mr Collins: I know some APLOs as well, and they are really decent people. If their role is properly recognised and fostered and supported, the good that they can do is enormous, and I would be very supportive on that level. There is a risk that some get immersed in police culture and adverse consequences follow in terms of the way in which they relate to their community. But any measure of that type which achieves better relationships between police and the Aboriginal community has my absolute support, and I dare say of the ALS itself. The other point you raised about education and sport, you are talking to the right person about that as well, because in my view education is the linchpin to address Aboriginal disadvantage in this state and, in turn, the appalling rates of Aboriginal incarceration. There are kids who are eight and nine years of age who are not going to school at all. They are completely disengaged at school, and we all know that if that is happening at eight, let alone 13 and 14, you have no hope. It is almost inevitable that they are going to end up immersed in the criminal justice system.

On sport, again I think we all know how important sport is to Aboriginal kids. I know when I go and talk to kids out at Hakea or Banksia Hill that sport can often be the trigger to get them to open up. You might try to talk to them about their offending and it might be the most serious offending,

and actually I have got kids out there who are charged with murder and they will not even talk about the offending. They will not even talk about themselves. But you talk to them about, "How did your team go on the weekend?" and it opens doors. If you can get Aboriginal people, in the way the Clontarf model works, to engage in education and job–skill training and things of that nature through sport, it should be given all the emphasis in the world because it works and will have a spillover effect in a positive way in terms of what we are talking about here today and, in my view, what this committee is investigating.

Mr M.P. MURRAY: Back to probably the basics. One is: what is your amount of current funding per year? The other is: how many people are employed as lawyers under that current funding?

Mr Collins: The funding might change very soon, because the coalition announced just before the election that it was proposing to cut $42 million from the Indigenous legal aid sector over the next four years. So, ALS is acting —

Mr M.P. MURRAY: Can I just clarify that? Is that $42 million Australia-wide?

Mr Collins: Yes, nationally; that is, over four years. The CEOs of the respective ALSs are meeting in Sydney as we speak to discuss those cuts. There have been some positive developments in this sense. Warren Mundine, who is going to be one of the Aboriginal people with the Prime Minister's ear, has indicated that he is hoping that that decision will be reversed, but who knows? ALS's—I probably should have come armed with these figures—is around $10 million or $11 million a year. That works out in WA to us resourcing a head office in Perth and 14 regional offices from Kununurra in the north through to Albany in the south. In comparison with legal aid, in terms of the numbers of lawyers we have on the ground, we only have nine offices out of those 14 which are staffed by lawyers; the others are staffed by Aboriginal court officers. We do not have the resources to employ lawyers in the other five offices. But, generally speaking, the areas where legal aid operates in regional WA will have anywhere between four and six lawyers, sometimes more perhaps. The highest number of lawyers we have in any of our regional offices is in Kalgoorlie where we have three; we have two in most of the other offices and single-lawyer offices in a couple. But in comparison, legal aid gets about in excess of $50 million a year; $25 million of that roughly speaking is commonwealth funds. So, we are very much the poor relation in the equation, but I am very strongly of the view that we provided fantastic value for money for government, especially in regional and remote areas because in some regional and remote areas we are either the only legal service provider going to court in particular areas or, if we are not, we do the lion's share of the lists; we do all the work.

Mr M.P. MURRAY: Just one more: the way I see the system, people turn up to the court and have not had that legal representation, and one of your people is there. It is very shallow—I am not going crook at people; it is the system I am looking at—representation. They walk in with, say, an 18-year-old and say, "Yes, say this and say that", and then the magistrate makes a decision because they are represented. But representation, to me, is not someone standing next to you; it has got to be deeper than that. That causes some of the problem.

Mr Collins: Yes.

Mr M.P. MURRAY: The magistrate gets a very, very small brief —

Mr Collins: Yes.

Mr M.P. MURRAY: — and then makes a decision on that. I find that a bit—I am not quite sure how to say that. But to see some of those young people—yes, you had legal representation, but at what depth is probably what I am saying, because there is a queue outside wanting to be the next one to get legal representation. I understand where you are coming from on that.

Mr Collins: It is a daily problem. It makes the system a sausage factory.

Mr M.P. MURRAY: Perfect; that is a good way to say it.

Mr Collins: Look, it was a while ago now, but I have experienced that. I can vividly remember it. When I first came to ALS from Victoria, I remember I appeared in Geraldton Magistrates Court. That is a big regional town in the scheme of things. I did 46 pleas of guilty in one day and 15 bail applications on my own. I had the whole list. You are just running around like the proverbial. Despite your best endeavours and all of your experience and accumulated knowledge, as best you can bring to bear on the exercise, it really does become an exercise in the thing being a sausage factory. You do your best, but the thing that really troubles me is that sprinkled amongst those 42 people I did pleas of guilty for were people who went to jail, and I had spoken to them for five minutes because that is the way the system operates.

Dr A.D. BUTI: I have a number of questions. In respect to the issue of funding and also Legal Aid, some Indigenous people obviously want to be represented by the Aboriginal Legal Service for cultural reasons and so forth. Has there ever been talk about Legal Aid contracting you to provide services?

Mr Collins: Not specifically. It is one of the ongoing fears of not only ALSWA, but ALSs across the country, of what we describe as mainstreaming. We are passionately of the view that we ought to remain as stand-alone, completely independent legal services and that government of any complexion ought to recognise that. We are of the view that we are unique in that we can provide a culturally appropriate legal service which Legal Aid cannot. We are wonderfully assisted by Aboriginal court officers, as you would know, who can provide cultural input, and we now employ Aboriginal lawyers as well, which provide that Aboriginal perspective into representation. What we have canvassed, however, with Legal Aid, to no avail, is this: Legal Aid currently have a system of freedom of choice of lawyer, so if you are an Aboriginal person, you can go to a private lawyer, and provided your matter and your circumstances meet their qualifying criteria, that lawyer will be paid out of Legal Aid funds to represent you. So there are any number of private lawyers in Perth as we speak who have a whole file workload of Aboriginal clients.

However, ALS cannot access Legal Aid funding to brief a lawyer. It is a difficult concept to try and explain, but one of the reasons that young lawyers are attracted to come into ALS to work is that if you want to be a criminal lawyer in particular, you fast-track your experience of necessity, but the positive flipside to that is that you get exposed to serious matters at a relatively early stage, which you would not necessarily get at Legal Aid, because they have a whole lot of structures in place that do not facilitate that. For example, we have some very capable, relatively young lawyers in the Perth office as we speak who are running murder files—clients charged with murder—serious stuff. Some of the times they will want to appear as counsel themselves, and provided they have got the right level of experience and expertise, that is encouraged and supported and happens; and it happened to me when I first started at the ALS. But there are some matters that are just too complex, and they would not be doing the client justice if they appeared, and what we would prefer to do is to be able to brief an experienced barrister. What we would like to be able to do is to access Legal Aid funds, as everybody else does, to be able to bring that to pass, and we cannot; they will not let us. The same argument is relied upon: you are the responsibility of the feds, not the state government, and that is the end of the story.

[11.00 am]

Dr A.D. BUTI: I am just looking at the time. I have got a lot of questions, but I am going to narrow it down to a couple of important ones—but they are all important. When we talk about juveniles, of course, for the Aboriginal Legal Service and the justice system, the issue about juveniles is incredibly important. I note that in your submission you talk about the fact that often whether a guardian or a parent is contacted varies with the police officer or the police station.

Mr Collins: Yes.

Dr A.D. BUTI: That is absurd.

Mr Collins: It is.

Dr A.D. BUTI: So, would you be encouraging a legislative provision to make that mandatory?

Mr Collins: Yes, I would; I would. And what I would like to see occur in the juvenile justice space is this: the government—and it is a positive thing—has established bail hostels in many of the regional areas of WA to enable kids who might otherwise be remanded in custody to remain in the community at the hostel on bail.

The CHAIR: Can I just say that it started under the previous government. It is one of the things I managed to get done before we were thrown out.

Mr Collins: It is a very positive development. The criticism is this: capacity. These hostels are way too small, and there are all sorts of ridiculous restrictions placed on who can go into the hostel, which means that not enough can be bailed to the hostel, and they end up down here in Perth, which is a real issue.

Dr A.D. BUTI: Conversely, though, I note on page 2 of your submission that you are not aware of any examples in which police officers refused people in custody the right to access legal advice. That is interesting, because Linda Black from the Criminal Lawyers' Association implied—well, I thought she had implied; I thought she expressly said—that she had examples of the police denying access to a lawyer. So you would not go that far?

Mr Collins: It is an interesting proposition. We are not going to get clients who will necessarily complain about police denying them the opportunity to speak to a lawyer, because Aboriginal clients do not make those sorts of complaints, except in very rare circumstances. What we do experience—perhaps it has not made its way into the submission and it ought to have—is that, to use the vernacular, police play funny buggers. It varies. Some officers are tremendous, and they observe the letter of the law and there are no issues whatsoever, and they are very cooperative and understand what their rights and obligations are. Others are not. And the more serious the charge, the greater the likelihood that something unusual might transpire. What often happens with us is that somehow or another the message will get to us that someone is in police custody in relation to a serious offence and the police want to interview them. We will ring the police station and we will be given the run-around. In particular, we will be given the run-around when the police say, "The interview has commenced and we're not going to interrupt the interview in order for your client to speak to a lawyer." That is just nonsensical from my point of view and completely improper. The other big issue we face is that if a client is given advice not to speak to the police—and that does not involve them being obtuse or difficult or malicious; that is their right, and it is a right that applies to everyone—police will persist in asking questions. They will persist in asking multitudes of questions because they know that eventually, especially with Aboriginal suspects, at some point in time they will crack. They might not do that in an overtly oppressive way, but the persistence with which questions are asked inevitably results in the person blurting out an answer and the dam walls open, and then they end up completely ignoring the advice that they receive and answering questions and maybe making admissions against their interest.

Dr A.D. BUTI: I have one final question. You would say that the CIA should be changed so that that would probably be inadmissible.

Mr Collins: Yes.

Dr A.D. BUTI: You start your submission, Mr Collins, and you end your submission basically reiterating that you think the Office of the Inspector of Custodial Services should have the ability to inspect police lockups. That has seemed to be a consistent theme throughout our hearings; no-one has objected to that.

Mr Collins: Thanks for raising it. It is absolutely vital in my view that the act be amended to give the inspector the same powers with police lockups that he currently has with respect to prisons. That will go a long way to ensuring that there is a proper level of accountability around what occurs in

police lockups, and it will minimise the number of deaths in custody. I have no doubt about that. I am a very strong supporter of that proposition.

The CHAIR: Can I just put one final question to you? If you were the police commissioner for a day, what would be the one thing that you would want to address in terms of police lockups? What would you think would be your highest priority?

Mr Collins: In not directly answering your question, number one on my wish list is that police focus on policing what is required to be policed. The over-policing of Aboriginal people is a disgrace in this state and the charging of Aboriginal people with completely trivial, innocuous, spurious offences beggars belief, and it needs to stop. We do not have the resources to deal with it for a start. I went to Roebourne in 2011 and spoke to some kids in the community there—Aboriginal kids do not lie about these things; they just do not make it up—and they said that they would often be stopped eight times a day by the police if they were in a public space and name checks done to check whether there were warrants for their arrest. What sort of attitude is that going to engender towards police? Where I grew up, I do not reckon I was ever stopped once by a police officer because I am white and middle class. But these kids are hounded to death over what I describe as rubbish offending. That would be number one on my wish list; that would stop.

The CHAIR: That is great. Thanks very much for your evidence. You have been very generous with your time today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within the 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. Thanks very much.

Hearing concluded at 11.08 am