

**COMMUNITY DEVELOPMENT AND JUSTICE
STANDING COMMITTEE**

**INQUIRY INTO CUSTODIAL ARRANGEMENTS
IN POLICE LOCKUPS**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 11 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 10.12 am**BLACK, MS LINDA****President, Criminal Lawyers Association, examined:**

The CHAIR: Welcome Ms Black. Today I have some preliminary stuff that I have got to put to you. On behalf of the Community Development and Justice Committee, thanks for your interest and for appearing today. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into custodial arrangements in police lockups. You have been provided with a copy of the terms of reference?

Ms Black: I have.

The CHAIR: At this stage I will introduce myself. I am the Chair, Margaret Quirk. To my left is Deputy Chair Mr Ian Britza, the member for Morley. To his left is Mr Chris Hatton, the member for Balcatta. To his left is Mr Mick Murray, the member for Collie–Preston. To my right is Dr Tony Buti, the member for Armadale. We are a committee of the Legislative Assembly. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses 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 document during your evidence, it would assist Hansard if you could provide the full title for the record. Before we proceed to questions we have for you, I need to ask a series of questions. Have you completed the “Details of Witness” form?

Ms Black: Yes.

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

Ms Black: Yes.

The CHAIR: I felt a bit embarrassed asking you that question. Did you receive and read the information for witnesses briefing sheet?

Ms Black: Yes.

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

Ms Black: No.

The CHAIR: I do not know if you would like to make an opening statement or maybe describe the membership of the association or what the association’s particular interest is in this inquiry?

Ms Black: Yes. The association, as its name suggests, represents the interests of not just criminal lawyers. We also have members of the judiciary and magistrates who are members. It is really the only association of people involved in criminal justice in Western Australia that incorporates all of those groups. We basically deal with the big issues and the small issues. So we will deal with government policy issues, mandatory sentencing, and those sorts of things that might affect our members. We deal with day-to-day issues—the length of waiting times in court and those sorts of things. And the committee members and myself will often receive feedback, usually from members, about particular issues that are of concern to them, and we will liaise with either government or the police or the judiciary, depending on what those issues are. It has an informal side—we are a very social group—but also we have a fairly good standing in the community, in the sense that we try to

be representative. We have members on our committee from the Director of Public Prosecution's office; we have people across the breadth of criminal justice.

The CHAIR: I think that is relatively clear now, thanks. Having seen the terms of reference, what concerns do the members of the association have?

Ms Black: Can I just clarify one aspect of that? Is the committee interested in what happens in that period from when a person is arrested and in police custody or only when they are in fact taken back to the formal police lockup?

The CHAIR: Probably I think with the broader scope. Just to clarify for you the background as to why we are doing this inquiry, it is two-and-a-bit decades since the royal commission. This month actually marks the thirtieth anniversary of John Pat's death, and there seems to have been a lack of vigilance as to whether the royal commission's recommendations have been implemented. There is also I think the tension now between getting police out on the streets and whether they are exercising their duty of care and having enough supervision in lockups. That is the background. It is a reasonably short and sharp inquiry, so we do not purport that at the end of it there will be a really comprehensive report, but it is just an update and report card, I suppose.

Ms Black: The Criminal Investigation Act came into existence several years ago now, and that has made a marked difference in what happens from the point at which police arrest people. They can arrest people as an arrested suspect, and then, as you probably know from the submissions you have received, there are all sorts of rights that the police have to give to arrested suspects. What you may not know is that in more serious matters the police will frequently suspend those rights for a period of time, and will in fact tell a person they are. As an example, they get called to a house where there has been a stabbing death. They find the person who has allegedly done the stabbing. They tell him he is under arrest as an arrested suspect. They then tell him what his rights are—the right to a lawyer, right to this, right to contact family friends—"but we now suspend all those rights until further notice". The way in which they explain that is that they say for operational reasons it is necessary to do that—that is, they may need to restrict contact between an arrested person and, say, their wife who may have been in the house earlier or something like that. But it is important to know that because it forms quite an interesting basis for what happens thereafter. So a person is told, "You have all these rights but you can't exercise any of them until we let you know otherwise." There is quite often a significant period of time. In the case of, say, a murder investigation, they may be kept at the house or in the back of the police van for two or three hours before they are taken back to the police station. The person who has allegedly committed the crime is usually still in the clothes that they were wearing at the time. They are then kept at the police station, sometimes for several hours after that, and during most of that time they have had no access to anyone—not to a lawyer, not family, and not to friends. It is important in terms of understanding what rights they have the fact that people with more serious offences will often not be able to exercise any rights for a time. Then what will occur is that the person will be told they have, for example, the right to contact a lawyer.

[10.20 am]

What strikes me, and certainly from canvassing the view of our members, is the real problem in terms of how the police deal with people in their custody from that point at the lockup stage is that the police have a conflict. On the one hand they want to do their best to comply with the Criminal Investigation Act, you might think, but first and foremost in their minds seems to be the desire to get the accused into an interview room and on camera so that they can, hopefully from their perspective, extract a confession. They know that once a lawyer talks to an accused person, the accused is much less likely to speak or to tell them what happened. So what happens in practice is that as a lawyer you might be contacted by a family member who says, "My husband has just been taken by the police into custody. I want you to speak to him and check he is okay. He hasn't got his medication" or whatever the issue might be. The practical reality is that it is impossible to get hold

of them until after the police have tried to interview them. What the police will do is say, “We can’t produce him at the moment because he’s being interviewed” or “he’s in another room” or “I don’t know who is dealing with this”. You basically get the runaround. The practice that many solicitors now adopt, usually at my suggestion, is that I get them to send a fax through to the police to say, “We’ve been contacted by the family. We would like to speak to him. Can you please put us in contact?” But the reality is that you cannot very often get to speak to them. To give you an example, without giving the name, a gentleman was, under a ruse, brought into the police station. Upon arriving there—he was with his friend—he was then arrested as a suspect in a murder. His friend rang me in great distress because he said, “Look, he’s on a heroin recovery program. He needs his medication and various things. I don’t know what’s happening.” I said, “No problems. We’ll get in contact with the police.” Over several hours they would not put us through to him, would not tell us whether he was okay or not, would not provide any means by which we could provide the medication. They eventually said, “We’ve sent him to hospital and you’ll have to try and get hold of him there.” The hospital would then not give us any information. The first time myself or my instructing solicitor was able to speak to him was the next morning when he was waiting in the cells to go into court that morning. That was a good 14 hours later. That is a very common experience.

Being able to get hold of someone at a police station, if it is a serious offence particularly, is near impossible. On the rare occasions that you can, you are given a police-issue mobile phone or you are given the phone at the police station, and you are having a conversation with your clients knowing that the police officer is standing right next you listening to the entire conversation. The opportunity to be able to meaningfully assist or advise a person who has been arrested, at any time prior to the entry to court—quite often the next day—is in a real sense very, very limited if not impossible.

The CHAIR: Have things improved with the new lockup or not?

Ms Black: Not yet, no. I do not think anyone has noticed any great improvement. In fairness, it has not been in operation for very long, but no. The fundamental difficulty is—and I do not criticise the police for this in the sense that I understand what is behind it—the police do not want lawyers involved too early, because once the lawyers are involved, the police opportunity to be able to get what they need from them is limited. This probably leads to a second point. A fundamental difficulty is getting medication to a person when they are in the lockup. Another example that was given to me was a young man who was arrested, again for a suspected murder. His parents were extremely distressed and concerned that he did not have his ADD medication and other things that he had been using for some time. They tried to ask if they could speak to him. They were told they could not. The lawyer tried to speak to them. They were told they could not because he was being interviewed. The parents eventually left the medication at the desk of the police station. When eventually he was seen at court next day, it had never been given to him. He did not know it was there. He was quite distressed at not having the medication. One of the very big issues of not being able to have early contact between a lawyer and the suspect is that you are not going to be able to find out those sorts of issues—do they have their medication and are there some mental health issues. As you will appreciate, lots of times these people are heavily intoxicated, affected by drugs and all sorts of issues.

I realise I am jumping around, but you also have the problem that you have, for example, Vietnamese people—I am generalising—who have a strong distrust of police when they come to Australia. They are not comfortable telling the police, “I feel sick. I have this problem.” The person they might be prepared to tell is a lawyer engaged by their family or, indeed, a lawyer they have dealt with previously, but they are not going to tell the police that. I think you have very real risk factors that will come to a head if you do not have a system that ensures that lawyers are able to have early contact with their clients. Although in theory these rights are available under the Criminal Investigation Act, the reality, as we see it, is that it is not happening. The earliest contact

realistically that lawyers are having with clients, in any meaningful sense, is not until they get to court, which is usually the next day.

The CHAIR: Do you think it is necessary to amend the act, or what solution would you recommend?

Ms Black: I do think it may be necessary to amend the act, because if you have a right but no means of enforcing it, you might as well not have the right in the first place. Let us take an example. Under the Criminal Investigation Act, if you are arrested, you have the right to a lawyer. What the police will often do is say, "You have a right to a lawyer." The person will say, "I don't have a lawyer." Now, if you are an Aboriginal person, it seems to me, and it is perhaps ironic, in this way at least the Aboriginal people are perhaps better off under the system, because the police are well aware of the fact that ALS have to be contacted and ALS will look after them and make contact. Obviously, you have heard from ALS, who would have talked to you about those issues. If you are a non-Aboriginal person, then the police will not usually go on and explain, "There is a means by which you can get free legal advice." Everyone thinks they have to pay for lawyers and everyone thinks that lawyers are expensive. If a person says, "I don't have a lawyer" and the police go on to say, "You have a right to contact someone from legal aid or you might be able to have a lawyer who is willing to speak to you initially for free," and most lawyers will, then this person says, "I don't know who to contact." "Okay, so you don't want to exercise that right?" "I guess not. I don't have a lawyer." "All right, let's move on." That is what happens in real life.

Dr A.D. BUTI: That is different, though, isn't it, in the sense of a lawyer actually contacting the police and being refused?

Ms Black: That is right.

Dr A.D. BUTI: When a lawyer contacts the police and they do not put you through to your potential client, is that in violation of the act?

Ms Black: It seems to me that it should be, but I have to say the courts at this stage have been reluctant to ever exclude interviews that have been occurred in those circumstances, because there is this overriding discretion, where notwithstanding that the act may not have been strictly complied with, they can still allow it in. It seems to me it is potentially a breach of the act but it has not been interpreted in such a way that there has ever been, that I can recall, any real consequences.

The CHAIR: I can recall when the legislation was being discussed that that was one of the issues; that, frankly, it should maybe lead to the inadmissibility of the evidence.

Ms Black: The act may need to have things spelt out more clearly because, to use that situation, which is the most common situation, you as a lawyer have been contacted by Mr X's family. "I understand he's in custody. I wish to speak to him." The response will be, "Oh yes, he is with Detective so-and-so." "Okay, can you put me through?" "No, they are in the middle of an interview." "I would like to speak to him." "I am not interrupting him"—that is what will happen—or, "I don't know where he is." You will get fobbed off. The reality is that every lawyer knows that the opportunity to speak to your client before they have been interviewed is very, very low. That is just the reality.

Dr A.D. BUTI: Would you go as far as suggesting that the act should be changed to say that unless the client waives their right to a lawyer, any evidence taken without a lawyer is inadmissible?

Ms Black: I think perhaps the way in which it needs to be dealt with is that it needs to set out that the obligation on police officers to give a person access to legal advice means more than just saying, "Look, at some stage, buddy, you can talk to a lawyer, which may well not be until tomorrow morning." It needs to be a real attempt to assist a person, particularly in the cases I am giving you examples of, which are murders. They are serious matters where there are extremely vulnerable people, where there are enormous consequences for them and, of course, where you have got potential issues of either intoxication or mental illness, because, quite obviously, normal, sane

people in their right state of mind do not tend to commit murders as a general rule. So you are talking about a category of people who need lawyers just about more than anyone else. They are the type of people who seem to be waiting the longest, because if you add the time period, you have got the two or three hours before they even get into lockup. Then you have got the several hours before they are interviewed. You are looking at people who may well have nine or 10 hours at the earliest before they have ever actually been speaking to a lawyer. So I think there needs to be some consideration as to doing something more than simply saying a police officer simply has to tell a person, "Here's your list of rights"—because they do it, if you actually watch it on the videos. "You have a right to contact a family member. You have a right to contact a lawyer. You have a right to do this. Do you wish to seek any of those rights?" The person is sitting there going—

The CHAIR: Catatonic probably.

[10.30 am]

Mr M.P. MURRAY: What about a small step forward? Is there any assistance or questions asked by the magistrate about, "Have you had your legal rights explained to you?" So there is no help from the bar at all?

Ms Black: No. The reality is that by the time a person comes to appear in court, the lawyer situation has usually been sorted because there is an opportunity to see your client in custody before they appear. Having said that, I am told by a number of solicitors that the hardest thing of all is actually to find your client. You get called by mum, "My son's just been arrested on suspected murder." Mum is crying. "I don't know what's happening. He hasn't got his tablets with him. Is he okay?" The lawyer says, "No problems." The lawyer then has to find out who has arrested him, which is often not easy. They get through to the station. They do not get a chance to speak to him because they are told he is being interviewed and he cannot be contacted. The next morning they ring there and the lockup will say, "He's gone now." "Where has he gone to?" "I'm not sure." There is finding out which court your client is in, because of course we now have Stirling Gardens Magistrates Courts. We also have the suburban Magistrates Court. Finding out where he is, what time he is appearing and which list he is on is often extremely difficult. The practical ability for a lawyer to get hold of their client is far more complicated than it should be. There should be a very early, simple process of enabling an accused person to speak to a lawyer, otherwise that right available to them under the Criminal Investigation Act might as well not be there at all.

Mr C.D. HATTON: I am very concerned at what I am hearing and I am just wondering how long this has been going on to this degree, and you are saying it is quite a common practice?

Ms Black: Yes.

Mr C.D. HATTON: How long has it been going on, and if it has been going on for quite some time, has there been a lobby for it to be changed previously, like amending, or is this something that has just been let go and has just evolved, or what?

Ms Black: Perhaps a little of the latter. I think when the Criminal Investigation Act came in there was a sense that now things were actually put down into statute things would be better. There is a tendency, I think, for people to accept things the way they are, so lawyers will say amongst themselves, "Typical. Major crime. They wouldn't put me through to the client. Couldn't get to see him until the morning." There is that sort of sense of "this is just the way of the world". But the reality, I think, is that it is a difficult process. Obviously ALS would be much better than me at dealing with this. I think it may be that it is not quite as bad where you are talking about an Aboriginal person, because police are very conscious now, if not before, of the need to ensure that ALS are involved. But it seems to me that while Aboriginal people are obviously a very vulnerable group, and we have seen evidence over the years of why, people who do not speak English as a first language are also vulnerable group. People with severe mental illness are also a vulnerable group.

And we have not yet put into place the sort of measures we need for those groups that we seem to have at least started to address in the context of our Aboriginal population.

Dr A.D. BUTI: What about juveniles?

Ms Black: With juveniles, again I think the police are a little more conscious. I think Aboriginal people and juveniles are categories that the police have had drummed into them for some time now. They are aware that they cannot speak to kids without responsible parents, and all those sorts of things. My concern really from what I have seen over the years is with those groups that have not fallen into those well-understood categories. If you do not tick one of those two boxes, then the likely position is that if you are arrested for murder, the first time you will see or speak to a lawyer, in any real sense, is in the cells 10 seconds before you walk into the courtroom.

Mr I.M. BRITZA: Linda, whether I agree or disagree, I understand why the police would want to speak to a possible accused before anything and while it is still fresh. I understand that. What I do not understand and find hard to accept is this. I want to ask two questions. The second is, is it systemic, but the first one is on the lack of assistance in getting medication that is genuine to someone. I can almost deal with the other one but the medication issue is really worth bringing up as an issue.

Ms Black: If I can tell you this—and I know it goes a little beyond the lockup situation, but it may help you to understand—during a trial that I was involved in in more recent times, the accused man had serious mental illness issues. He appeared to be in quite a bad state by about 11 o'clock in the morning. When I spoke to him he said, "The prison won't let me have my medication." I said, "Okay." I spoke to the security officers. They said, "We can't let him have it either unless we get permission from the judge." So we had to go through a process of getting authorisation from the judge to allow the accused to have his medication, which required the prison to then send it up to the courts, which took about two hours. We lost hours of court time. I spoke to the security officers at the District Court, who, I should add, are absolutely terrific people in terms of trying to deal with their job. They are bound by the system; it is not a personal thing. But they were saying to me, "Look, it's a really big problem for us. You can't even give them a Tic-Tac," because they have rules about needing to know what the medication is and so forth. It seems a very common problem that this issue of medication is just not looked at from the moment a person is arrested right through to appearing in court. I do not know why that is, but I know that in the case of the parents I spoke to in a recent matter, they said, "We took his medication to the police station. We asked for it to be given. It was not given." When I spoke to the client later he said, "No-one ever told me it was there. I was quite worried but I did not know what to do."

Mr I.M. BRITZA: My colleagues will correct me, but we have been told by custodial officers that asking about the medical situation is one of the initial questions asked.

Ms Black: Yes.

Mr I.M. BRITZA: I never thought to ask if they would actually give it to them. I never even thought to ask that question.

Ms Black: No. You need to also bear in mind that when asking the person who has just been arrested for the alleged murder, "What medication are you on?" he may not be in any state of mind to sensibly answer that question. He is just thinking, "Oh my goodness, I'm in police custody. They're accusing me of this." He may be intoxicated. He may be mentally ill. So if asking an insane man what medication he is on, you may not get the answer that you need. Where the real problem with the medication, in my view, kicks in is that if you have suspended a person's right to speak to anyone else, then you give him a right that he is in no practical way able to access, and you as a police officer are entirely dependent on what this person is able to tell you about their medical needs, there is a very real risk that you are not going to know what the true situation is and something disastrous might happen. As you would know, if you are talking about an 18-year-old

boy who is a heavy drug user and has got all sorts of issues, talking to his mother may well give you a much better insight into what you need to do medicine-wise, or at least allowing a lawyer to be involved. I am sure that is part of the reason that Parliament introduced the Criminal Investigation Act and enshrined the fact that a person is supposed to have access to legal advice. It is that you have the ability of someone who is not emotional, not affected by the immediate situation, to be able to ask the questions that need to be asked to ensure that this person can get the medical attention they need.

Mr I.M. BRITZA: Are you implying that suspension of these rights is done over 90 per cent of the time?

Ms Black: No, I am not suggesting it would be anything like that. What I am saying is that in the more serious matters it is done. And I also want to make this clear: I am sure it is done for good reason. I can well understand why there is a period of time when you cannot have people communicating to others, but I do not understand why you should ever have to suspend a person's right to speak to a lawyer. I do understand why they should not be allowed to speak to a family member and those other rights suspended, but for my part, I do not understand why the police have the right to suspend a person's opportunity to speak to a lawyer. I suppose there may be a circumstance where they are concerned that the lawyer might then go and ring someone else. But it seems to me that it is something that should be done sparingly, given what the Criminal Investigation Act sets out is required.

Mr I.M. BRITZA: I never knew they could do that.

Dr A.D. BUTI: In regard to medication, would a solution be that there should be—you may not be able to do it in the country because of lack of resources, but in a major city like ours—a medical officer rather than that lawyers should be responsible for trying to get information as regards to medication?

[10.40 am]

The CHAIR: We have heard evidence from police in various locations, “Oh, if we have any doubts, we take them down to the hospital.” Apparently, that may or may not happen. I suspect it does not. They do all complain that their access to mental health services is very limited after hours, so they feel very badly about the fact that they have their hands tied when trying to get decent mental health assistance to them. That is something I think you have highlighted, too.

Ms Black: I think for the police, in fairness to them, they are trying to be a police officer, a social worker, a medical officer and a lawyer, and that is why I think certainly the suggestion of having a dedicated medical officer who is not a police officer is an excellent idea. I imagine there is a resourcing issue with that but, subject to that, I think it is a very good idea. But it does reinforce the reason why. The police cannot do everything. They are questioning a person about a murder and trying to find out whether they did it and completely protecting their interests at the same time, which is the very reason we have the right to legal advice, which should be offered at an early stage.

Mr C.D. HATTON: We are hearing in lesser cases, not more serious crime, that particularly in the country they can go to the hospital. They are saying, “We send them to the hospital if there is a problem and we feel they need medication or if they are sick or whatever, we go to the hospital.” In more serious cases, though—back to the lawyer—you are saying that the person detained has the right to have a lawyer before they go to the magistrate?

Ms Black: Yes.

Mr C.D. HATTON: But it is the delay in time that is the problem, isn't it—

Ms Black: That is right.

Mr C.D. HATTON: —in more serious cases?

Ms Black: And it is the delay in time at the critical stage, because, as the early deaths in custody committees and all the rest found out, the most vulnerable time for people is that first 12 hours. That is when the risk factors are at their highest. That is the time period when we are finding people are in fact not having any access or any real access. When I say that I mean belated access by a phone call using the police officer's mobile phone is about as good as it gets, if you even get to that point.

Mr C.D. HATTON: I understand that. With medication, in your view why would the police not want to give medication?

Ms Black: I am not even sure is that it is "the police would not want to". I think there is a problem with the communication systems that enables the right police officer. Let us take Beaufort Street—big, busy police station. You have got your accused up in the major crimes interview room and you have got two detectives interviewing him. Downstairs you have got some overworked junior constable who has got mum yelling at the front desk, saying, "Give this to my son," and holding the medication. I think the issue is that there is not the right system of communications that are flowing there potentially to get it up to the detectives. Then, of course, the police say that they have obligations to check first the validity and authenticity of the medication, so there are issues that the police will often raise about, "Do we need to first ring the doctor and check this is valid prescription medication?" and so forth. The security office will often tell you, too, "We can't just give it to them just because you tell us that he needs it." So there is a real issue with the medication. I think having a medical officer, if that could be done, would make an enormous difference.

The CHAIR: I think that was a recommendation of the original royal commission; that at the larger lockups there would be a nurse on 24/7. That certainly does not happen.

Mr C.D. HATTON: In the central lockup there is, though, isn't there?

The CHAIR: No, not 24/7.

Dr A.D. BUTI: In regard to the Criminal Investigation Act, you are saying that you believe it is not being complied with. What about any other procedures or legislation, like the Optional Protocol, the Convention against Torture and the Royal Commission into Aboriginal Deaths in Custody et cetera? Is there anything else in the way that things are operating now that needs criticism?

Ms Black: I think there is a real issue for women prisoners at the moment. It is something that we as an association have been trying to deal with with the Inspector of Custodial Services. To give you an example of what I am talking about, and again, it seems to me loosely within your field of reference, we had a girl who was charged with murder, who was in Bandyup Women's Prison. The trial was to take place in Bunbury. She had been initially refused bail because it was a murder, which is unsurprising. The issue came up as to what would happen to her for her trial, because of course she had to be in Bunbury each day for the trial. There is no facility to house a female prisoner in Bunbury. The two suggestions offered were these: first, she could be driven from Bandyup to the Bunbury courthouse every day, which, you can imagine, is two hours plus the extra for Bandyup, so about a three hours' drive there and back during the most stressful week of her life. The second option that was suggested was that she could be housed at the police station in one of the lockup cells each night. They were the only two options able to be provided. The court became very concerned about that and made some of its own inquiries. It was confirmed that they were the only options available. On that basis the judge ended up giving her bail and said that the exceptional circumstance was that there was nowhere for her to be housed during the course of the trial. In her instance it was not a problem because she was a very decent person who was not going to run away or do anything, but when you have someone who may well otherwise not be entitled to bail, it seems an extraordinary situation to be in in this day and age. The difficulty for women prisoners is that there are a lot of bigger problems in trying to get in contact with them. Lawyers at the Legal Aid Commission tell me it is near impossible to get hold of a female accused before they turn up in court. Getting through to Bandyup prison is very difficult. So there is a real issue all around for females at the moment in our system. We are not catering for those who are being kept in custody.

Housing female prisoners and providing access to lawyers is even harder than with men. I think it is because traditionally women often got bail whereas the men did not.

Dr A.D. BUTI: And that goes for Aboriginal women as well?

Ms Black: I suspect so, although again, the one advantage for Aboriginal women is that there is the ALS. As I understand it, and I may be wrong, the ALS will be involved with a female Aboriginal prisoner regardless of their means or anything else, whereas for a white female prisoner, they will only get access to legal aid if they satisfy the means requirements, which are relatively difficult to satisfy. In fact, the main complaints to me about getting in contact at an early stage with female prisoners have come from the legal aid lawyers who have had great difficulty in being able to get hold of them at any stage prior to them literally turning up in court. So there is a real issue there.

The CHAIR: You made reference earlier to people from culturally and linguistically diverse backgrounds and how the liaison with police and the need to see the lawyer were particularly amplified, if you like. Does the association have any views in terms of training for police for these kinds of cross-cultural issues, be they Aboriginal from another background?

Ms Black: Yes, I know from another committee—I think this was to do with women's issues—that, for example, the police service are trying very hard to deal with the issue of the increased African population we now have and dealing with African prisoners. I certainly think that in the Vietnamese community there seems to be a lot of people within that community who got caught up in the drug culture. There are very real cultural issues we are dealing with. As I say, there is a fundamental fear of police and authority figures, which probably stems back to where they have come from. I do think there is a need for training there. Training is all very well but you need to have clear rules about how things are to be done and enforced. In a way I think the police would prefer if they just had a clear set of rules of what they had to do. Then they do not have to be exercising discretion all the time and trying to be able to work out the best way to handle the situation. If they are told, "If you have a person in your custody where English is not the first language, you must immediately get an interpreter. That person must communicate with a legal representative prior to you commencing an interview. There is this process that has to be followed," I think it is going to be a lot more effective than saying, "We need to educate our police generally in how to recognise these various issues that exist."

[10.50 am]

The CHAIR: Yes, the system has got to be robust so that it can allow for the most poorly behaved individual within them and people's rights are still preserved. I suppose that is how to put it.

Ms Black: I think that is right, and I think in fairness to the police, most of them want to do the right thing either because they are good people or they do not want to get into trouble, or perhaps a bit of both. But I think at the moment if you have a particular police officer who is struggling with the fact of, "I want to get this person on camera and try and get them to confess to the crime I think they have done—on the other hand, I know they need to see a lawyer," they are going to have a little juggling exercise about how they are going to go about it so as to achieve whatever objective is more important to them, which understandably is usually to get it on camera. If there is a system which says, "You have to allow them access first to a lawyer," then there is no discretion to be exercised. There is no juggling going to take place. They are just going to have to allow this process to take place, as I think the act was set up to ensure it did take place.

The CHAIR: I have got just one more question. We have been down to the wheatbelt. One of the issues down there is that if police do not give the suspect bail, then they are shut in a two or three-hour car ride to Armadale or even the city. Similarly, in parts of remote Western Australia there are also issues there of having to travel vast distances to appear before a court and, in some cases, they leave that person stranded and having to find their way home. I understand that the Chief Magistrate has indicated that he would be prepared to have a seven-day-a-week court run out of the magistrates

court down there so there could video links with the rest of the state really in terms of bail applications. Has the association got any views about whether there are any practical difficulties with that?

Ms Black: As a general rule I think that video links are obviously a very good idea. My only concern, flowing from what I said at the start of this, is that if the first time a lawyer gets to see or speak with their client is just before they appear in court, if they are on video link, you are going to lose that opportunity, which means that where a person is being video linked, if they have not spoken to a lawyer, have not seen a lawyer, and then they are video linked, there is a very real chance that they will not get any access to legal advice until after their first court appearance. So that is my major concern with the video linking processes. You lose that critical first point of contact between a lawyer and a client.

Dr A.D. BUTI: Just getting back to the issue of women prisoners or accused, do women accused have the right or is there a standard practice that they will try to have a female police officer involved; and, if not, that I would imagine is a real concern for maybe certain African cultures. What is the situation?

Ms Black: The answer to the first question is no, I do not think there is any right. There are rules, or I presume it is a policy, that the police have about searching females. Obviously, physical body searches cannot be done by a man. I think the police themselves recognise that as a problem, too, particularly when they deal with a victim, say a victim of domestic violence. An African woman is very unlikely culturally to want to complain about her husband to a male police officer, let alone a female police officer. But, yes, the gender issues are a very real issue. But I note that in the Vietnamese community it seems to be just the fact that the person is in a uniform at all. It is an issue there. Yes, I think there are those sorts of issues.

The CHAIR: Thank you very much for attending. Is there anything else you that you would like to say?

Ms Black: No.

The CHAIR: Thank you. It has been very useful. I have some spiel, I am afraid. Thank you for giving your evidence today. A transcript of the hearing will be forwarded to you for correction of minor errors. Any corrections must be made to the transcript and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it is 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 for your time today.

Hearing concluded at 10.55 am
