

**COMMUNITY DEVELOPMENT AND JUSTICE
STANDING COMMITTEE**

**INQUIRY INTO CUSTODIAL ARRANGEMENTS
IN POLICE LOCK-UPS**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 17 SEPTEMBER 2013**

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 10.04 am

O'CALLAGHAN, DR KARL

Commissioner of Police, examined:

PANAIA, MR LAWRENCE

Acting Assistant Commissioner, Judicial Services, WA Police, examined:

PENN, MR MALCOLM RICHARD

Assistant Director, Legal and Legislative Service, WA Police, examined:

The CHAIR: On behalf of the Community Development and Justice Standing Committee, I would like to thank you for your interest and your appearance 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.

Commissioner, Mr Penn and Mr Panaia, have you been provided with a copy of the committee's specific terms of reference?

The Witnesses: We have.

The CHAIR: At this stage I will introduce myself and the other members of the committee present. I am Margaret Quirk, chair; on my right is Dr Tony Buti, member for Armadale; on my left is Mr Ian Britza, the deputy chair; and we are expecting the member for Collie-Preston, Mr Mick Murray to attend as well.

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

Before we proceed to the questions that we have for you today, I need to ask each of you a series of questions. Have you all completed the "Details of Witness" form?

The Witnesses: Yes.

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

The Witnesses: Yes.

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

The Witnesses: Yes.

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

The Witnesses: No.

The CHAIR: You are an old hand at this Commissioner, I know. You provided a written submission to the inquiry. Together with the information that you provide today your submissions will form part of the evidence of the inquiry and may be made public. Are there any amendments you would like to make to your submissions?

The Witnesses: No.

The Chair: We have a series of questions to ask today Commissioner, but prior to asking those questions, would you like to make an opening statement?

Dr O'Callaghan: No I have not got anything to say.

The CHAIR: I might start. Commissioner, in December 2010, which was just before the twentieth anniversary of the Royal Commission into Aboriginal Deaths in Custody final report, you wrote an article in *The West Australian* in which you lamented the condition of police lockups and the fact that many of the royal commission's recommendations had not been implemented. At that stage, the Perth watch house had not been built, but you did make reference in that article to the Kevin Spratt case and indicated that whilst a new watch house would not necessarily have prevented the unacceptable conduct of police in that matter, the existence of electronic surveillance systems would have provided swift answers to allegations of cover-ups. On a statewide basis, do you still consider there are still issues to do with the condition of lockups?

Dr O'Callaghan: Yes I think that is definitely the case. There are many police stations at which the lockups are, for want of a better word, condemned because they cannot be used; simply because they do not comply with the recommendations of the deaths in custody royal commission.

The CHAIR: In fact, I think in that article you mentioned Fremantle, Armidale and dozens of watch houses in regional Western Australia. Would that still be the case?

Dr O'Callaghan: Yes it would.

The CHAIR: This has, in fact, led to having to transport prisoners long distances.

Dr O'Callaghan: In the bush at least; it is very common at the smaller country stations for the watch house not to be used at all because of the cost of refurbishment of the cells to make them safe. Most often, where it is possible, the police officers will convey the prisoners to a regional centre where the watch house has reached the level of compliance that is necessary.

The CHAIR: Have you done any work in terms of the cost of having to transport prisoners over some distance in regional and remote Western Australia?

Dr O'Callaghan: I have not done any. I will ask Mr Panaia if anything has been done in that regard. I think there are two separate costing items here of course. There is the actual recurrent cost of paying salaries to do that sort of work or what you might call an opportunity cost, where the police officer leaves the centre to go to another centre. But of course, the expense on watch house improvement itself is capital funding which comes from a separate budget as you know.

[10.10 am]

The CHAIR: In Boddington, where we went, for example, there was no compliant cell and two officers had to drive to Armadale, leave the prisoner there and drive back. That is a four-hour round trip.

Dr O'Callaghan: Yes, I think there is another element to this. Armadale has a critical mass of police officers that are available to provide the right level of custodial service, whereas a place like Boddington, or a smaller country centre, does not. It would mean that police officers would have to work much longer hours than normal if there was a prisoner in the cell for a period of time. Often the decision is made not only on the fact that the cells are noncompliant, but that there is a critical mass of police officers at Armadale and Fremantle police stations and the Northbridge watch house.

The CHAIR: We have heard evidence that a recent practice in some stations is to have one officer in the station rather than two to provide that supervision. How widespread is that? What is the reason for that? Do you consider it prudent?

Dr O'Callaghan: Yes, as a general policy where there is a person in custody they obviously have to be watched by a police officer on duty. If the station ceases duty at midnight and there is a prisoner in custody, someone has to remain in the station to look after that prisoner. Representations have

been made in Parliament and other places that this is a risk and two officers are required in those circumstances. I think there is a risk to everything that the police do and the question is how much risk is acceptable. In the case of most country centres, help is usually available quite easily from someone who lives nearby. For argument's sake, we have had a couple of issues raised at Laverton, where most of the police officers live within a couple of minutes of the police station, and if there is an issue I do not see any reason why the police officer on duty cannot call someone in and we would pay the requisite overtime if that was required.

Mr I.M. BRITZA: Several times we heard about the investigative procedure. I want to make sure that I have heard it correctly, Commissioner, because I think that I heard the intent, I just want to know whether you would agree with this, about who should actually investigate a death or an incident in custody. It appears to me that those coming from the outside do not have as clear a picture or as articulate an understanding of what is going on, as those on the ground. In every situation that we heard, the officers or the authority in control said it would be better that those who were at the incident could conduct the investigation with those in authority physically looking over their shoulder. I think that I have got that right. How do you feel about that?

Dr O'Callaghan: Are you suggesting that if there is a custodial incident at a particular police station, some of the officers at that police station conduct the inquiry? Is that what is being suggested?

Mr I.M. BRITZA: Certainly, the authority at that place —

The CHAIR: I think what is being suggested, which is in the context of Broome where there are some issues with the Corruption and Crime Commission, is that maybe internal affairs has the training and set procedures. I think the assertion was that the CCC did not have the right investigative skills to investigate.

Dr O'Callaghan: I will make this answer plain and simple; there is absolutely no reason for the CCC to be involved in investigations. It is not corruption, does not require a covert response and is a straight up potential breach of policy and maybe a fairly simple criminal charge. Our internal investigators deal with this every day and have the legitimate power to make police officers answer questions. The CCC will represent that the reason it was involved in that particular issue was because it wanted to establish whether there was some sort of course of conduct by a particular police officer. Again, it is a fairly simple investigative process. We have very well-trained investigators who have the powers to make police officers respond. I do not see any reason whatsoever why the CCC are involved in that investigation.

The CHAIR: There was also the assertion, which I think has some validity, that the time that the CCC is taking to conduct that investigation is really hampering the morale of the other officers in the station.

Dr O'Callaghan: I would agree with that. I think that the Corruption and Crime Commission Act 2003 makes it unnecessarily complex for it to go in and do something like that. My interpretation is that the original intention of Parliament was for the CCC to do something a little bit more high-end than an assault in a police watch house. I think this happened on 19 April, we are now almost at 19 September and there is no resolution and I think those police officers are quite concerned about the course of the investigation. I raised a concern with the commission a couple of weeks ago that when they recently served notices on the police officers it did not bother to advise me, so I could not provide the requisite support for the police officers. I think that it shows the unnecessary response by the CCC in this case. If we had been doing it, I am pretty sure that our investigators would have resolved this months ago.

The CHAIR: The corollary of that question is that some would say that police investigating themselves does not inspire public confidence. That does not necessarily mean that the CCC is the appropriate body. Is there any way that you think that you can preserve the current system, where

you have internal affairs investigating but there is some capacity to enhance public confidence in that investigation?

Dr O'Callaghan: Ultimately, this is a reportable matter to the CCC, so it has have oversight of it and can make certain directions about whether it thinks the job has been done properly. There was a recent incident at the Perth police station, which you may or may not be aware of, where we charged a police officer within a couple of days for alleged assault. The issue with abrogating the responsibility for investigations to another agency for these, what I would call, fairly low-level things is that it would then be easy for the police force to say that it is not our problem; it is the CCC's problem and it can come in and sort that out. I think that we have a responsibility to investigate things that go wrong. I am very happy for oversight. I have not seen many instances where the internal investigators come in and show any bias whatsoever in the investigation. I think that second level of checking by the CCC gives the public some confidence that there is independent oversight of the job.

The CHAIR: Some of the minor issues tend to be investigated in house, can you tell me at what level does internal affairs get involved?

Dr O'Callaghan: Internal affairs will get involved on most criminal matters but it may actually direct the local district office to do the investigation, and they will oversight it as well. It depends on a whole raft of things, including the workload of the internal investigators at the time. Generally, the more serious types of matters that would result in a criminal offence, if not directly investigated by the internal investigators will be overseen very closely by them.

Mr I.M. BRITZA: Commissioner, we obviously were not looking for problems, we just wanted to see how many of the recommendations had been implemented by the force after the commission. The questions that we have come up with are, I would say, innocent questions. The issue concerning Indigenous people was very high on the agenda. It appeared that even though there are courses and inductions for officers to have an understanding of Aboriginal people, it did not appear to follow all the way through. We had just had a submission about an Aboriginal woman who was stripped naked in a jail and the response was that this was done regularly to calm them down. We have just read that remarkable comment. I have come back thinking, I wonder whether it is an instruction that the officers be given some instruction about dealing with Indigenous affairs, but does it actually happen and is it actually put into practice?

Dr O'Callaghan: I am not aware of any instruction to tell police officers to do what you have just described. One of the issues we are trying to resolve in regional Western Australia, particularly where there is high number of Aboriginal people brought into watch houses, is to employ local Aboriginal community officers to work closely with the Aboriginal community to provide that level of support. We are currently in the process of recruiting local community officers for Broome and Kununurra, in the Kimberley. I would like to expand that program. These are locally recruited and employed Aboriginal people who can work with their own communities to provide a more sensitive level of support. You can provide lots of training to police officers about dealing with Aboriginal people. There comes a point where the best people to deal with these circumstances are Aboriginal people themselves, because every Aboriginal skin group has a different culture and way of dealing with situations. If you can recruit locally from those cultures and provide a service from your police station, you get a much better outcome. That is where I think I would like to take the police force over the next couple of years, as we get more flexibility with our employment and salary arrangements.

[10.20 am]

The CHAIR: While we are on that, Commissioner, the Kimberley is a vast area; you are talking about five officers who are unsworn. They do not even have the authority, if you like, of a police officer. We have heard evidence frankly that the culture and induction of police officers in the Kimberley is patchy; that there has been, I think, quite genuine and legitimate attempts to try to give

officers, who move into a station, a bit of knowledge about cultural issues specific to the area. But basically, they have had to cannibalise training kits from other agencies; from education and so forth. I do not think that is really good enough. I think the resources should be there to provide a decent training induction when an officer is stationed at a new station.

Dr O'Callaghan: Yes.

The CHAIR: I want to know why it is not done now?

Dr O'Callaghan: I believe it is sufficient for what they do now. There has been a lot of work done on Aboriginal community relations over the last few years through the academy and through the training program. Now we have been talking about this for years and years. Every time there is a new iteration of information or education to do with—whatever it is, whether it is to do with Aboriginal groups or other people, there is always a counterargument that it is insufficient for dealing with the challenges that the police face on a day-to-day basis. Bear in mind that they get more and more complex and there is more and more compliance and more and more oversight of the police. So you have to interestedly improve your curriculum all the time.

I would actually argue the fact that these community officers will not have powers because, as you know, under the Police Act, I can give them limited powers and special powers to do certain things. We do that with auxiliaries now. We are about to do that with the health department in terms of allowing—giving them special powers to be able to move mental patients, so we are not involved in the transport of mental patients. I think it makes perfect sense to—at least, with these community officers—give them some powers to do custodial work under limited circumstances.

The CHAIR: But where we are getting evidence, and I am very pleased that we are no longer at the stage of the John Pat saga, the police force has definitely moved on and that is terrific. But frankly, an unsworn person does not have the authority. Where I think there are allegations, quite often it relates to the bad attitude by the OIC, which just filters down and infects the culture of the whole station.

Dr O'Callaghan: Yes, I would agree with that. But I think that then equally applies to anybody they deal with. If you have got a bad attitude by an OIC it does not matter whether the people you are dealing with are Aboriginal or non-Aboriginal or any other culture. That has an impact on the station. So the way a station is run and the way it is managed by the supervisors is critical to good policing. I think a big challenge for us is always to performance manage those places. If you look at the history of the Kimberley, for argument's sake, over the last 20 years, you will see there has been some spectacular failures with OICs going up there. It is usually not about training, but about attitude and their own cultural approach to the world.

The CHAIR: But what percentage of the recruits are from overseas these days? Are you able to give me a ballpark figure?

Dr O'Callaghan: No. Well, I do not know what the percentage is, but we have a limit imposed upon us by the DIA of 150 a year. I do not believe we took many last year, but a couple of years ago, for two years we took about 300. We are proposing to maybe move up to our limit in the next 12 months, so that will be another 150. But if you factor that 500, that would be probably seven or eight per cent of the police force, in total.

The CHAIR: All right. You can assume those recruits have less than basic knowledge of Indigenous issues and the complexities around that; you would accept that, would you not?

Dr O'Callaghan: Yes. I would also accept that a lot of younger people coming into the police force from the metropolitan area have no contact with Aboriginal people either and no knowledge of it. So they are probably not in any better situation.

The CHAIR: I think in your submission it talks about—I am trying to think of the number of days it says or—I will just have a look at it.

Dr O'Callaghan: I think this has probably also been based on a national curriculum as well; so there would be national competencies to be followed on these things.

The CHAIR: Yes, but with all due respect, what they do in Victoria, where there is a very small number of the population—it is irrelevant to here. Here it is, page 9 —

The WA Police Academy strives towards diversity training and awareness for police recruits by working with the Aboriginal and Community Diversity Unit to provide a comprehensive two (2) day Cultural Diversity Training program.

I did it about four years ago, and thank you very much, Commissioner for letting me sit in with the recruits. But that two-day program, which was then a three-day program, also involved dealing with culturally and linguistically diverse groups other than Aboriginals, seniors, people with disabilities, gay and lesbian offenders and about five other things. I think the Aboriginal component probably came down to about two or three hours. I can recall the training started off with a PowerPoint presentation of various pictures of various AFL footballers, and being asked to spot which ones were Indigenous and which were not. Frankly, you did not equip your officers enough to have to go up to the Balgos of this world and adequately deal with a foreign culture.

Dr O'Callaghan: You have me at a disadvantage because I am not sure what the current curriculum looks like on a day-to-day basis. Now I am not sure whether anyone from the academy has come down to the committee to talk to you about what is going on now. I am not sure whether you have even spoken to Superintendent Mick Sutherland about what the local induction package is like in the Kimberley.

The CHAIR: Well, we have.

Dr O'Callaghan: Okay.

The CHAIR: They were unable to provide us with a copy because it was not authored by the police department. It was something that they had begged, borrowed and stolen from another agency and they said it was subject to copyright. We have no evidence before us on the nature of the induction package. We are also concerned that it is not more universally rolled out and there is not a proprietorial one.

Dr O'Callaghan: Well, I think maybe the copyright thing is a bit of a furphy. In my mind I do not see any reason why the committee could not be provided with it. It is not as if you are going to onsell it to anybody. So I will get you a copy of that curriculum.

The CHAIR: Well, we certainly need some assurances, I think.

Dr O'Callaghan: Yes.

Mr I.M. BRITZA: I just wanted to refer back to that incident, Commissioner, about the Aboriginal girl.

The CHAIR: Just on that, member, I do not think it is fair to put an allegation to the Commissioner when he has not had a chance to investigate. What I would like to do in relation to that is give the Commissioner a copy of the allegations and give him the opportunity to respond to us about that.

Mr I.M. BRITZA: I would appreciate that, because it only happened in July; that is why I wanted to know why it appeared that all of the instruction had been given. That one was a pretty important one to have happened in Northbridge.

Dr O'Callaghan: Can I just clarify whether that is a complaint that the committee has received?

The CHAIR: Yes, it is.

Mr I.M. BRITZA: Yes.

Dr O'Callaghan: It has not come from the police, as an example, it has come directly to you, and you are asking me to look into it?

The CHAIR: Yes.

Dr O’Callaghan: Okay. Will we be provided with that information to make an investigation for you?

The CHAIR: Yes. I really think that is the best way to go.

Mr I.M. BRITZA: Yes, because they rang —

The CHAIR: There are some pretty shocking allegations in here, but I do not think it is fair to you to put you on the spot.

Mr I.M. BRITZA: I agree. I accept that.

Dr O’Callaghan: I can undertake to come back personally and inform the committee of the outcome of that if I get the details.

The CHAIR: As we said, your submission says one thing, and yet we are getting instances as late as 14 July this year which suggests that a woman detained was strip-searched by a male officer. It worries us that stuff we thought was in the past is still happening.

Dr O’Callaghan: Well, that would clearly be a breach of policy, if that occurred, so we will find out.

Dr A.D. BUTI: Police Commissioner, I just wanted to change tack. Hopefully this was not asked while I was out of the room and I apologise for that. Last week, we had a hearing with the President of the Criminal Lawyers’ Association of Western Australia and also the President of the WA Police Union. The issue about medical officers being available in regard to lock-ups, there was a strong urge at the Perth lock-up that there should be a doctor available 24/7. Also, in the submission —

The CHAIR: Article —

Dr A.D. BUTI: In your article, all major watch-houses would have a 24/7 mental health professional—that was in your article. That seemed to be a real concern in regard to prisoners receiving their medication. It has also put an incredible onus on the police officers if they become the de facto medical officer in respect of that, and I believe they often transport the prisoner to the hospitals.

Dr O’Callaghan: Yes.

Dr A.D. BUTI: That is quite inefficient. If there was a doctor available, that would not be the case. Also, there are the issues in regard to regional areas. How are they going to be addressed?

[10.30 am]

Dr O’Callaghan: Of course the current scenario is that if a person is arrested and has injury or is in distress—issues like that—they are in the first instance to be taken to hospital to be dealt with before the watch house can accept them. I think you are right; I think it is unacceptable in the Perth metropolitan area, particularly where you have got such a high throughput of prisoners in the Perth watch house, to have police officers running them up to hospitals where, in fact, they are not prioritised in the queue, so police officers are spending several hours waiting for some sort of attention to the prisoner. It would be probably three weeks ago that I spoke to our corporate executive team and Mr Panaia about making sure we have 24/7 coverage by at least a qualified nurse—we have not got as far as a doctor yet—who can render assistance, give advice. We have just got the costings on that through. I think it is about \$700 000 a year because we have to have more than one person. I think it is important because the opportunity lost by sending police to RPH or one of the other emergency centres around Perth is too great for us. So we are working through providing 24/7 coverage at Perth. The challenge of extending that to other watch houses is one of cost, I suppose. Probably in the metropolitan area if we had anyone who was likely to be a problem, the best place to take them would be to the Perth watch house where there is sufficient capacity to deal with the issue. It is a lot different in regional Western Australia. I do not see in the short term

that we will be able to employ medical professionals to work at regional watch houses because the throughput is just not there.

Dr A.D. BUTI: In your article you mention a number of lockups that should be condemned. If I am reading your article correctly, you include metropolitan watch houses like Fremantle and Armadale. Is that still your view? If that is the case, the problem is that they are now being transported to Perth. That also seems to be quite inefficient.

Dr O'Callaghan: Fremantle has been closed anyway because of the problem with the building, so that is no longer in use. To my mind there was not any value in spending \$12 million on that building.

The CHAIR: What will happen with that Fremantle station?

Dr O'Callaghan: There is no immediate solution for it. It is not my preference to move back into it. The cost of refurbishing a station that is already not fit for purpose is just not worth the investment, so we are in these alternative accommodations now. We have to work out—we still go back to government—what we are going to do in the next couple of years and where we are going to acquire land. There is some talk about Queensgate being demolished and some land becoming available there, but it is early days yet. Armadale has been improved. There are a number of compliant cells at Armadale which enable the police there to deal with most cases. They do not necessarily have to take every one to the watch house in Perth, but I think sometimes there is a preference not to have police stations at suburban units anyway, because it means you have to provide extra capacity there to look after the prisoners.

Dr A.D. BUTI: If they are brought to Perth from Armadale, it is my understanding, that come Monday morning they are transported back to Armadale Courthouse for a hearing. One of the issues when we visited Perth lockup—you have got a fantastic courthouse there—is that it is just a wasted resource if that is not going to be utilised for a greater period of time. I am wondering what are your views on that and any developments in trying to get more hearings occurring at that courthouse.

Dr O'Callaghan: It is a complete waste of resource, because there is no court security being provided by DOTAG for that particular area. In the metropolitan area, it is DOTAG's responsibility to provide companies like Serco to provide the court security. Currently, they are moving prisoners from the Perth police complex to Central Law Courts, when there is no reason for it to occur.

The CHAIR: On a Monday morning, for example.

Dr O'Callaghan: On a Monday morning. It seems to me that the easiest way to deal with this is to renegotiate the contract with Serco to provide the service at the watch house and then people do not have to be transported and you do not have all those inefficiencies.

The CHAIR: While we are on Serco, we have situations in regional Western Australia where Serco brings a prisoner to a police station or to court, effectively, which is at a police station, and the Serco people sit in the kitchen twiddling their thumbs and then the police officers have to be taken off other duties to guard the court. How did that happen in terms of negotiating the contract?

Dr O'Callaghan: The contract has been negotiated by DOTAG, not us. In trying to resolve this issue over the years, the most frequent response that has come up is that they are not contracted to provide those extra services. That is not how the contract was struck in the first place. I believe that the contract comes up for renegotiation—is it next year?—in which case, there is a whole raft of things that we want to see changed in the way Serco delivers the contract, particularly to regional Western Australia.

The CHAIR: Commissioner, this has sort of fallen into this inquiry so we would be grateful to have a list of the things you think, from a police perspective, need renegotiating?

Dr O'Callaghan: Yes, Mr Panaia will be able to provide that.

Mr M.P. MURRAY: The question might have been asked, and my apologies for being late. Regional prisoners are brought down, say, to Armadale, then bailed and no way in the world, not having even 10c in their pockets, are they able to get home or get something to eat. I can see social problems straightaway out of that. Are there any ideas about how that can be addressed? I am not saying that they should get a taxi back or whatever, but maybe a bus fare or something like that to probably stop some problems, such as going to someone else's house and maybe even pinching a car to get back?

Dr O'Callaghan: You are talking about prisoners taken to Armadale from nearby regional stations, like Boddington or Pinjarra?

Mr M.P. MURRAY: I think it was Narrogin or Katanning from where they are taken to Armadale. Then if they are bailed when they get there, they are just turned outside.

The CHAIR: I think Katanning is Albany and I think Narrogin is Armadale.

Mr M.P. MURRAY: Okay, so it was Narrogin. They would come back the other way. It does not matter whether they go from Katanning to Albany or Narrogin to Armadale; the issue is still the same.

Dr O'Callaghan: I am not sure, unless one of my colleagues can assist me, how frequently that occurs and I am not sure why it is being done that way. For argument's sake, I am not clear on why we would transport a prisoner from Narrogin to Armadale. For what purpose would that be done?

The CHAIR: Because they were not given bail. It was a serious enough case for them not to be given bail. That is what we were told.

Mr Panaia: I am assuming that is a person in custody who does not have bail and has to stay overnight. So rather than hold him at Narrogin, they drive him to the nearest 24/7 that can hold him. He would then appear before a magistrate, which would either grant them bail or remand them in custody further, depending on what the result might be. You are asking what would be the issue of getting that person back to their home town?

The CHAIR: Yes, obviously, if they get bail.

Mr Panaia: Yes, if they get bail.

The CHAIR: That begs another question, and I think you raised that with us when we looked at the East Perth watch house, of whether it is possible to have some video links and have an application for bail made from Narrogin to, effectively, the courthouse at Perth, and obviate the whole palaver.

Dr O'Callaghan: That would be a much efficient way of doing it.

There is also another question, of course: once the prisoners have been to court and been dealt with by the magistrate, whose responsibility are they? They are no longer the police's responsibility at that point in time; they fall into the court system.

Mr M.P. MURRAY: Further to that, I point out the inefficiencies of that where they might be on the road for two and a half hours each way, so it is five hours out of a day.

Dr O'Callaghan: Yes. One of the things that was mentioned when you were out of the room was that there are inefficiencies in terms of the police being out of Narrogin, taking the prisoner there. There are also inefficiencies in terms of leaving them at Narrogin because you would have to have a team of people stuck in the station looking after the prisoner as well, all night long, until something could be arranged the following day. So, both ways there are inefficiencies.

Dr A.D. BUTI: During our hearings, the issue of the jurisdiction of the Inspector of Custodial Services and whether he or she—he at the moment—should have the jurisdictional power to investigate police lockups has arisen. I am wondering what your views are on that.

The CHAIR: That is in the context, I think, of systemic issues rather than complaints.

Dr O'Callaghan: I have had meetings with Neil Morgan over the years about this. I have got no objection to it at all.

Dr A.D. BUTI: Do you think it would it be a good idea?

Dr O'Callaghan: I think so. I think the audit of a police watch house by an independent authority has a lot of benefits to it because in terms of securing funding or any change, it is not the police commissioner who is asking for it, it is somebody independent who comes in, so I think it is a perfect scenario.

The CHAIR: I want to dwell a bit on warrants of commitment. For people who have unpaid fines and elect to offset them by serving time, I think the rule is that they are permitted to serve only two days in a police lockup.

Mr Panaia: It is a three-day warrant maximum. Above three days, they will get transferred to Hakea.

The CHAIR: We have a situation in, say, East Kimberley, where someone is on a warrant of commitment, \$1 600 or whatever. That is too long to be spending time in the lockup at Kununurra, so they are transported, as I understand, by air —

Mr Panaia: Must be.

The CHAIR: — to Broome prison where they serve their time.

[10.40 am]

The CHAIR: So we have a situation in, say, East Kimberley, where someone has got a warrant commitment, \$1 600, or whatever. So, that is too long to be spending time in the lock-up at Kununurra so their transport as I understand it is by air to Broome prison where they serve their time. They might get a bus ticket back, which in one instance we were given was that the person then sold the bus ticket for grog and stayed in Broome. So, you have got an expensive sum, \$8 000, for transporting into Broome. The state does not get any money because he has served his time. You get the four days or whatever at Broome prison, which is not insubstantial either. This seems an incredibly inefficient system in terms of the money involved and also the distances having to cover and so forth. Presumably you have been looking at this or is this just a cost-shifting exercise of the Department of Corrective Services?

Mr Panaia: In a way that is almost the way it would be. If you like, those types of prisoners are the responsibility of the Department of Corrective Services, not really ours. There is some agreement there that under three days we will bill them but you are absolutely right. It is just high cost all the way along, whether it is the WA Police doing it or whether it is DCS doing it, there is a high cost attached to warrants of commitment, the way they work.

The CHAIR: So that is, as I understand it, not an isolated case —

Mr Panaia: No, we still get them through the Perth watch-house as well.

The CHAIR: Do you think that at that stage when they are picked up, there should still be the opportunity maybe to give community work orders an option or community service an option even at that late stage?

Mr Panaia: Absolutely, but I think the problem is the warrant is specific in that once we have executed that warrant, the only two options available to us at that point is you are going to be placed in custody to cut it out or you can organise to get paid. So, they have still got that opportunity to get someone in to pay it, of course, but they are the only two options as I understand it, that are available to us.

Mr Penn: If I could just make a comment, under the fines enforcement legislation, I think before the fines registrar issues the warrant of commitment, they have gone through a process looking at

some work and development orders. But yes, if there is an opportunity for the Fines Enforcement Registry to revisit that again, that is probably something the WA Police would support.

The CHAIR: Are you able to provide, commissioner, some figures around how many people would be in police lock-ups and serving out their times effectively?

Dr O'Callaghan: Yes.

Mr I.M. BRITZA: Commissioner, we have harder anecdotal evidence of how access by detainees to legal services can be a little ad hoc—quite a few hours after people have been brought in and whether they are Aboriginal or not, just not being advised until many hours after the arrest. Would you like to make a comment on that?

Dr O'Callaghan: I am not aware that there are any particular concerns raised about access to legal support as is required under the CIA when someone is being charged with an offence. So I think what has come up recently is that people who are going to court where their lawyer has come to the police station and they are being transported to court in the morning, lawyers often want to sit and talk to them before they go to court, which is not part of a CIA responsibility. It is just something that occurs. My understanding is that at many police stations we are simply not equipped to do that. One, the flow of prisoners between the police offices and court can be quite high. There are limited police resources attached to that and also there are no meeting places built in police stations for lawyers to come in and have those conversations just before court. It might be that in the interests of expediency they cannot be accommodated, but I am not aware, unless you have got specific instances, that we are breaching the CIA.

Mr I.M. BRITZA: I will stand corrected but we got the impression that it is a regular occurrence that lawyers when asking to see their clients are put off for one reason or another, either because they are being investigated by officers or others but —

Dr O'Callaghan: I think this is in connection with their court appearance so as they are being moved from the police station to court in the morning when they are due to go to court, the lawyers want to come in and see them, but it is not a requirement for us to give them access under the CIA and we do not have the capacity in all police stations to allow that to occur. So, it does in some places and some in others, but it requires police officers to be available to make that happen. It requires meeting rooms to be available, and a lot of police stations are not built with that in mind. So far as our requirements under the CIA are concerned, they occur at the time of arrest.

The CHAIR: What do you say the police obligations are under the CIA in terms of giving a person access to legal advice?

Dr O'Callaghan: They are advised of what their legal rights are so if they want a lawyer at that point in time, they can get them for interview et cetera.

The CHAIR: The evidence given by the Criminal Lawyers' Association last week, commissioner, is that that is not happening.

Dr O'Callaghan: If that is the case, that would be a breach of the CIA and I would like to have those referred to me to look at.

The CHAIR: Speaking of breaching the CIA, there is a situation where breaches do not necessarily mean that evidence is then inadmissible. Do you see what I mean? Sorry that is a double negative. We have been asked to consider whether or not it is appropriate to amend the CIA so that if it is breached, that automatically excludes evidence. What would your views be about that?

Dr O'Callaghan: It depends in what circumstances I suppose that that is considered and it depends what the type of breach is. Are you talking about all breaches or just some breaches? Is there a threshold?

The CHAIR: The breach would be not providing provision to seek legal advice.

Dr O'Callaghan: I think you could consider that, providing that there was some reasonableness clause. If it was practicable at the time or not practicable—it would have to have those sorts of qualifiers in it.

Mr M.P. MURRAY: We have evidence, submissions, I should say, about in the Halls Creek area, police requesting curfews and virtual house arrest for offenders on their bail conditions. We were then told about how some of those houses that they have been told they have to stay in are not safe houses at all, so then they move to an auntie's place where they know the extended family, or an elder brother's or something like that. Then they are picked up, arrested and jailed for breach of terms and conditions of bail. Again, you know, this is from the community. They were not very happy about that. They understood the issue but they were saying that why the terms of bail that has been requested by the police hold a young person especially in a house where there might be sexual abuse, drunken parents, that sort of issue, and the young offenders have moved to another house to be in a safe house, yet when the police see them there, they say, "You are breaking your terms and conditions of bail. In you go." That was one of the major issues in Halls Creek area. Have you got any comment on that?

Dr O'Callaghan: You can see the need to impose curfews on young people, particularly those who are committing offences at night in a town like Halls Creek. I think the principle of imposing a curfew makes perfect sense. The translation of it is a bit more complex, as you say. I am sure it happens when we pick up kids off the street; often it is hard to find a responsible adult to look after them, because of the difficulties with families being in crisis up there. So, I am not sure what the answer to that is, but I had been happy to receive some sort of suggestion on what could be done. The determination ultimately about where the kid resides would be made by the magistrate, I would imagine. I guess that needs to be made on some reasonable information from the police about where the child would be safe. It is a bit of a moving feast in a place like Halls Creek. A house is safe one minute, but if someone else turns up, it is not safe the next minute. So, it is a very difficult scenario.

Mr I.M. BRITZA: Is there a fine line, commissioner, where an officer on duty is given discretion with something like that where absolutely down the line, okay, they have transgressed a curfew, they are technically trespassing on an empty house, but they are there because it is safe for them. Are they allowed discretion?

Dr O'Callaghan: Absolutely, they are allowed discretion. They do not have to breach a young person just because they consider they breached a curfew if there is a reasonable explanation for it. I would have thought the police officers at Halls Creek at least would have good knowledge about when a child was in crisis or in a place where they should not have been.

The CHAIR: You would think so.

Dr O'Callaghan: You would think so. So, the commonsense act applies in those cases, although I have never seen one written.

The CHAIR: This is where the community engagement officers are —

Dr O'Callaghan: Yes, that is really important.

The CHAIR: Ideally your officers would have that level of community engagement, but it is apparent to us that that had not occurred. While we are talking about kids and lock-ups, there was the infamous case in Kununurra I think in 2011 when a 12-year-old spent nine days in the Kununurra police lockup because a responsible adult could not be found. I understand there will be a bail hostel as part of this juvenile justice thing that is being rolled out in Geraldton and various other places and that should obviate it there but is the obvious answer to these sorts of situations to have bail hostels?

[10.50 am]

Dr O'Callaghan: Bail hostel is one solution, but the obvious answer is to have a mechanism where those kids can be taken care of one way or the other—whether the state takes care of them or there is a hostel—and not to leave them in police watch houses.

The CHAIR: Do you feel let down by agencies like DCP or other agencies that should have some responsibility for these sorts of issues?

Dr O'Callaghan: I think it is fair to say, and I have been on the public record for saying this, that we are sometimes frustrated by other agencies like the DCP when we require assistance out of hours. Not just in Kununurra, but anywhere in the state, trying to get some assistance out of hours is very difficult. I think there has been some effort to improve that over recent times, but there are still many parts of the state where, for want of a better term, we are left holding the baby, because you cannot get anybody else to do those sorts of jobs. Unfortunately, we are the ones who get criticised if we are breaching policy, but you cannot find people to actually take care of these kids in many instances. As you know, it goes back to the Halls Creek situation. It is very, very difficult to find places to put them where they are going to be safe.

Mr M.P. MURRAY: I will make a comment just here in defence of the police. When Carol Martin was the member of that area for the Labor Party, she pleaded that areas be set aside as safe houses with adults supervising, and unfortunately nothing happened.

Dr O'Callaghan: I know Carol's work there. I think that is the sort of thing we need to see happen in those areas.

Dr A.D. BUTI: Just even looking at Armadale, I know John Bowman at Armadale has tried to get more interagency involvement between the DCP, the education department et cetera. Do you see how that could be achieved or how that could be facilitated, because, as you say, you are often left with the outcome of a breakdown with a government agency and the families et cetera? Is there one way that we could try to improve that?

Dr O'Callaghan: There are a couple of things we are trying to do. We have been talking a bit publicly about some of our reform strategy, which will be rolled out in south east metro, of which Armadale is a part, we will create critical masses in the district that will be split basically into two resources. One group will just be first responders and the other group will be the local police who will do the follow-up work with families and make connections to the other government agencies and NGOs, because at the moment what you have is a scenario where police officers and police stations get jobs and they go out and do them, and they could be out all day on one or two jobs, depending on how complex a job is. There is not a lot of time to make all the other connections with agencies, so we want to try to split those two things apart and have the first responders and the local place police sort of isolated from each other so the local police can do the job and do all the follow-up work with the families, kids and things the next day, and connect them to other services. I think the other thing that generally happens across governments—not just governments in Western Australia—is that often there is disproportionate investment in the reactive end of the spectrum, so police are the beneficiaries of more resources most of the time, because I think there is a general view that if you put more police on the streets, you are going to reduce crime, when in fact the reverse is true. When you are making an investment across government, it is often better to come up with a balanced way, so do not freeze resources in one agency and increase resources in another, but actually try to balance your investment across the whole lot, so that if we get an increase in resources, the proactive end of the string gets an increase in resources and we can get some assistance, because the way it is at the moment we cannot.

The CHAIR: I think we have had the figure of 80 per cent given to us of people in police custody who are affected by drugs and/or alcohol. Do you think that assessment is about right?

Dr O'Callaghan: I am not sure about the figure. I think it is probably reasonably correct, but I know about 80 per cent of those who either admit to taking a substance or test for substance are detected with alcohol as their primary substance, in the DUMA report. But it probably is correct.

The CHAIR: We have also had it said to us that there is some frustration from your officers that that might be masking mental health problems and I understand access to mental health personnel after hours is nigh on impossible.

Dr O'Callaghan: Yes, and again one of the things that I have been considering as part of the reform process is whether we employ our own mental health workers and have them on the site. Often it is better to have your own resources that you can direct rather than relying on another agency to produce resources for you. It is something to look at in the next few months in terms of having them available in the key areas. So where we know there are significant social problems, will try to have those works in place.

The CHAIR: How effective, when police officers bring someone in and the odds are that they are either affected by alcohol or drugs, is them self-reporting in terms of their medical conditions? How accurate? Is there some level of robustness in a system?

Dr O'Callaghan: In the DUMA research that has been done—the drug-use monitoring research—about 60 per cent. While all of them self-report, you can understand why someone might not self-report if they have been taking an illicit drug. My understanding is that about 60 per cent of them agree to urinalysis and it very much supports the oral reporting information that we get.

The CHAIR: There have been some suggestions going back to the royal commission about when alleged offenders are brought in that they be breathalysed, not to the extent of having an admissible level in court—that sort of level of robustness—but just to give officers an idea about how much they need to pay attention with a person in custody. That seems to have been rejected and I just wonder why.

Dr O'Callaghan: I do not think it is something we need to reject, I just wonder what the value in it is, because at the end of the day it is the people who are visibly affected who we are concerned about. The fact that someone has 0.02 or 0.03 or 0.05 in their system is a bit irrelevant. What is more relevant is their conduct and their physiological reactions to certain things, which police officers can make a decision on. If we have to go one step further and find out whether that is alcohol or some other drug, then maybe there is a case for that, but I would not think there is a case to automatically breathalyse everyone who walks through the doors of the watch house.

The CHAIR: It just looks as though they are sleepy, but they blow a particularly high level, I would have thought that that would have meant maybe a bit more vigilance.

Dr O'Callaghan: True, so I think it is based on their physiological reactions to that. The watch house staff may apply a test, but do not have to in every instance. If someone comes in and they are clearly alert and there are no outward symptoms, there is no cause for concern.

The CHAIR: Just about the use of CCTV, there seems to be inconsistent practice in terms of recording while someone is in the cell or not—some people do it and others do not. What are the actual standard operating procedures in terms of having, not only the visual live-time surveillance, but having the capacity to record that?

Mr Panaia: I think that is where available. I know that Perth watch house has it and some of the major centres have it, but I do not think any of the smaller ones have the ability to record. I think it is more a monitor, for example, within the station that is connected to cell. It does not have the ability to record. I could get you a spreadsheet of who has got what.

The CHAIR: That would be helpful.

Mr I.M. BRITZA: I apologise; I have to leave, Commissioner. I wanted to make the comment, seeing as we are talking about CCTV, that I came away positive—it is a positive and it is good to

have a positive comment—because I did not realise until we did the inquiry up in the north that with the young officers who come on I do not know of another employment sector that is under CCTV or monitoring pretty well the whole time they are on duty. Whether it is in the office or in the car, except when they go to the bathroom, they are monitored and when I heard that I thought it was something to be commended, because it is not an easy thing. I was thinking about us and if we were under that kind of surveillance. It is a tough ask and I thought they were doing an excellent job under that. I wanted to put on record that I thought the young people—I call them young people!—were upholding very well to be under such scrutiny like that.

Dr O'Callaghan: Thank you, I appreciate that.

The CHAIR: The subject of food has come up a bit at lockups—the standard of it—how is that being addressed?

Mr Panaia: There is a caterer in the Perth watch house, so that one is taken care of well. Across the state, corrective services has that responsibility, so where one of our stations is close to a prison environment, the prison delivers frozen meals. Where the distance is too great and we have someone in custody, it is up to the officer. For example up at Newman, where there is nothing close, they will just purchase meals at local supermarket and have it on an account that is then paid by corrective services. So it will vary depending on availability.

[11.00 am]

The CHAIR: We have had examples of people detained being given meat pies. We have got an example of someone being given a sandwich that was still frozen. Is that acceptable?

Dr O'Callaghan: If that is happening; no.

Mr Panaia: No. Although I do say, sometimes their food of choice is a meat pie or a sausage roll. One of the biggest complaints when we moved into the new watch house was: where are the sausage rolls?

The CHAIR: We certainly saw a fridge where food was stored that, frankly, would have been condemned by the health department, I think.

Mr M.P. MURRAY: In addition to that, was that some of the food is brought up because it is of a different make-up from what their stomachs have been used to—and then there is a hell of a mess to clean up afterwards.

I refer to the issue of hanging points in lockups. Yes, some places had been done and there was no problem. I was a bit astounded to look at the Halls Creek lockup and see weldmesh over the top. I do not know what you would put over the top; I have got no idea. But to see mesh down the sides and over the top, one would think that that was quite an easy attachment point for anyone who really wanted to do themselves in.

The CHAIR: That was in the exercise yard, but we were told that that is where the detainees spend most of their time. There were areas there that were not readily viewable by the CCTV. The combination of not being necessarily covered by the CCTV and there being multiple hanging points seemed to be a problem.

Dr O'Callaghan: I am just trying to think when Halls Creek was constructed. It would have been back in the early 1990s, from memory. So, it is probably getting on for 20 years old and was built according to the standards then. I also understand that in Halls Creek local families sometimes talk to the prisoners through the mesh, so there is some benefit in that, of course, in that they get to interact with people who are inside the exercise yard. I am not sure what the forward plans are on that. I am happy to provide them for you, if you are interested.

Mr M.P. MURRAY: Another station that I thought was appalling, to say the least, has the police officers were in one end and the cells were at the other—CCTV all the way through, I must say.

That was Katanning. Honestly, I do not know how you could work there. It is a rabbit warren with a heap add-ons. I just wonder what the future of that station might be as well.

Dr O'Callaghan: I do not think it is on the estimates for capital replacement at the moment.

The CHAIR: Royalties for regions had better kick in, had it not, commissioner?

Dr O'Callaghan: I am very happy for people to fund new police stations all over the state, but there are a lot of police stations like that. I think Katanning is just one example of a number of police stations. A couple of years ago, I said the average age of police station infrastructure in Western Australia was 44 years; at the current rate of replacement, it would be about 90 years before they all get replaced. That is one of the issues we are facing because we have got 170-odd sites around the state. That is a fairly significant capital works challenge for us. I think Katanning Police Station is probably the best part of 50 years old.

Mr M.P. MURRAY: Walls had been moved and parts added on —

Dr O'Callaghan: Yes.

Mr M.P. MURRAY: — and that just makes it very inefficient as a police station. Things could happen by the time an officer got from one end to the other.

Dr O'Callaghan: Yes.

The CHAIR: We did want to speak to the magistrate in Kununurra, but she made herself unavailable. From a police perspective—obviously, this is anecdotal—are there occasions when the courts make orders or dispositions on matters that actually create difficulties for police?

Dr O'Callaghan: No.

The CHAIR: They are either impracticable or an issue —

Dr O'Callaghan: I have heard anecdotal things about Kununurra, but I cannot remember specifically what they are. We did deal with the Albany magistrate at one point about making orders to return prisoners to their point of origin. If prisoners had been brought down from Katanning, the magistrate in Albany at the time, wanted the police to take them back to Katanning after court—but we sorted that out.

The CHAIR: How did you sort it out?

Dr O'Callaghan: We told her that we were not going to do it. That was the end of that.

There were some issues at Kununurra; I cannot remember what they were at the moment. Something was raised with me about a year ago about certain orders that were made in relation to children by the magistrate in Kununurra.

Dr A.D. BUTI: Commissioner, in the profession, what is the attitude or status of being on lockup duty? Is it considered to be a job that police officers do not want to do? How is it considered in the general range of duties that police officers have to do?

Dr O'Callaghan: I think it varies; there would be those people who do not mind it. But bear in mind, it is only the 24/7 watch houses where there are police officers, sort of, stationed in them. The Perth complex is, basically, apart from the supervisors, all auxiliary officers providing that service. Auxiliary officers are employed specifically for that purpose. I think when you employ someone on the understanding that it is their job to work in the watch house, you get a much better product than employing a police officer to work on the streets and then directing them to work in the watch house, which is what used to happen years ago at the old central police station. I do not think it is seen as a prestige job by police. I think, for us, a better way of dealing with it, is to employ custodial specialists, which is the way we are heading at the moment.

Mr M.P. MURRAY: Getting back to Kununurra, I think it is quite ironic that the biggest building in town is going to be the courthouse. I find that bemusing to say the least, but that is the case. I

thought moneys would have been better off used fixing some of the problems instead of putting them through the system. But in saying that, the current transportable courthouse on the edge of town is very tidy and well set out—everyone on the committee was extremely pleased to have had a look at it. It was our understanding that the police would love to move into it as a new police station, because of the facilities—the lockups that are in there are very new. It could quite easily be converted into a police station that would fit that community. What are your views on that?

Dr O’Callaghan: If it was available and fit for purpose, I would not have an objection to it. I would point out that the Kununurra Police Station was built in about 1996–97, so it is not that old.

The CHAIR: No.

Dr O’Callaghan: I guess what the police are saying is that the design of our building is wrong and they need to work out of something else. If it was available and it was a viable thing to do, it would certainly be a consideration.

Mr M.P. MURRAY: The committee and I thought the layout, the CCTV and the separated cells was quite good.

Dr O’Callaghan: What typically happens in these scenarios is that I say this sounds like a good idea, but then all the lands and buildings gurus come in and change everyone’s minds. I have not got all the business case details yet.

The CHAIR: Just to follow on from my colleague on the right, do you think that the emphasis on Frontline First and getting police out on the streets means that you are under pressure to have the right level of supervision in stations when you have people in custody?

Dr O’Callaghan: I think there is always pressure and a balance between what you might call compliance policing and getting people out on the frontline meeting response times and all those sorts of things. That is why, I think, for custodial management we are better off employing people specifically for custody and not using police officers, who get pulled back off the street and put back on the street, to do this sort of work. One of the challenges that we are having is recruiting enough auxiliary officers. We are not getting the number of applications that we need. I think that because custodial care is a single-dimension job, they can become a bit jaded with it very quickly, so we have to find better ways of motivating them and rewarding them for what they do.

The CHAIR: There is a fairly high level of, then, lateral transfer into police.

Dr O’Callaghan: Yes.

Mr M.P. MURRAY: I refer to the overall view—again I will go into country towns—of the visibility of police. You drive into Kununurra and, in different people’s views, it is not anywhere near as bad as it used to be—people sitting around in the parks drinking and carrying on and the antisocial behaviour that comes from that. I am not sure whether you have changed away from the hub system, where people sat in an office and waited for the call to come through—or is it far better, especially in smaller towns, where you can manage by being on the street on a regular basis?

Dr O’Callaghan: The hub system is not designed to have people sitting in stations waiting on calls; it is just designed to provide a place to start and finish work. So, you aggregate your resources in one place. The idea is to have the resources out on the road, not sitting in the police station. Ideally, when a police officer goes to work, they should be going on to the road and patrolling or responding to calls for assistance.

[11.10 am]

I think one of the things we have to look at as part of this reform is the amount of time spent on compliance, which is probably the main thing that drags them off the road into police stations to fill out forms and put reports in and those sorts of things. There is a very high focus on trying to

identify exactly what are the things that keep police officers off the road, both metropolitan and country, and trying to reduce that compliance so they can spend more time on the streets.

Dr A.D. BUTI: Reverting to the question that the Chair asked about legal services, in the exchange between the two of you, I think you commented that it is not always appropriate for legal contact to be made when they are about to go off to court. My concern that came out of last week's hearing with the Criminal Lawyers' Association was that there seems to be time at the beginning of the process, when the police take into custody a juvenile or anyone, and sometimes legal representation is prohibited at that stage. You talked about a threshold; that maybe there should be a threshold point where that evidence should not be admissible if there is no legal representation. What would be that threshold, in your opinion?

Dr O'Callaghan: If you were in a remote location like Balga or Kalumburu, where are you going to get legal support at two o'clock in the morning? It is not practicable under the circumstances; so then you may allow access when it is practicable at the earliest opportunity. That is one notion. I cannot imagine why you could not do it in the metropolitan area provided someone is willing to come out and visit the station.

Dr A.D. BUTI: We do not know if it is true or not; this is just a submission that was made last week. A family member rings up a lawyer saying, "Jimmy is in custody; he is being held by police. Could you please ring up?" The lawyer rings and is told by the police, "At this stage, it is not possible for you to speak to the prisoner." That surely cannot be following procedure.

Dr O'Callaghan: No, it is not. It probably is a breach of the CIA. Again, I am completely in the dark about this because no issues about this have been raised with me directly, so I do not have a specific example.

Dr A.D. BUTI: But in a case like that, if that was to happen, do you think that evidence should be inadmissible?

Dr O'Callaghan: I think certainly at trial, it could be presented to the judge as such. There has to be a mechanism for the prosecution to argue that it should be admitted and the defence to argue that it should not be —

The CHAIR: So a persistent, prolonged and conscious —

Dr O'Callaghan: Refusal.

The CHAIR: Yes.

Dr O'Callaghan: Absolutely; I would not have a problem with that.

Mr M.P. MURRAY: Again it is only a north west or Kimberley-type issue where we have been told about 80 per cent of the problems are alcohol or drugs. liquor restrictions have been put in place, or allowed to be used, in different areas. We were told there was migration from the smaller communities that had it to larger communities where they could still get their alcohol. What is your view now, after a period of time, of the effectiveness of those liquor restrictions?

Dr O'Callaghan: Only a percentage of places like Fitzroy Crossing and Halls Creek have migrated out to other centres like Derby and Broome. Bear in mind that more than 70 per cent of the original residents are still there and are being protected by those factors. I think we are courting disaster by lifting those things. The way to deal with it is not to "de-restrict" Halls Creek and Fitzroy Crossing but to actually have a Kimberley-wide alcohol strategy. That is a much better way. One of the things that was raised with me the other day, for argument's sake, is that people are going into liquor stores in Broome and walking out with dozens of cartons of beer and then trading it further up the track. Maybe there ought to be some reporting arrangements when liquor stores are actually selling that amount of liquor to a single person. I think we have got to come up with a better Kimberley-wide strategy. We are working on the same thing in the midwest as well—Wiluna, Meekatharra and Mt Magnet are all sort of suffering from the same sorts of problems that Halls

Creek and Fitzroy Crossing are suffering from—but we cannot solve one town without having a midwest strategy to protect all those towns.

Mr M.P. MURRAY: In your view then it has worked, but not totally because there is not an overall view of that whole region?

Dr O'Callaghan: You will get displacement. But if you look at the health department figures, for argument's sake, about admissions to their emergency centre, they have crashed downwards since the restrictions have been in place. Protective factors for kids, kids going to school, women not being assaulted—all those things are really important outcomes. Yes, we will get some displacement, but there are a lot of people who have been protected and able to live normal lives because of these restrictions.

The CHAIR: Commissioner, in the past you have expressed some frustration about the ongoing investigation of improper conduct by police officers if they have resigned. If you get a situation where there is police misconduct in a lockup—it may be short of criminal conduct, but it is still highly improper—is that a situation that you have some concerns about, or it should be addressed in some way?

Dr O'Callaghan: The current situation if you are investigating a police officer for breaching a policy or they have done something which would bring some internal sanction is that if they resign, those things fall away. I guess this was driven a little bit by some of the media coverage of the Mallard case in particular. What do you do if people move on and there have been recommendations made about them? Maybe one of the things we could consider is that if a police officer resigns, their final salary does not get paid or sorted out until that thing has been cleared. There are ways of dealing with that; otherwise, you do not have any way of —

The CHAIR: Compelling them.

Dr O'Callaghan: — imposing a sanction or compelling them. That might be a way of dealing with the situation, so a component of that gets held behind, pending a possible outcome.

The CHAIR: I must admit when we visited the new watch house we were very impressed. In my case, I had been to its predecessor, and it was chalk and cheese—the new lockup looks pretty good. The union said it believes that it is understaffed. It certainly was not on the day that we visited, but I make no conclusion about that. Is that your understanding? Is that a resource issue, or is that assertion correct?

Dr O'Callaghan: I have had a talk with Mr Panaia about this, and I will get him to talk about it in a minute, but I think there is a general view that there does need to be—we have a new watch house. It has new procedures in it; it has got some streamlined facilities and it has some new compliance mechanisms. I guess what we are trying to do is work out what the right numbers are for that. I think Mr Panaia's early view of that is probably the numbers are not correct at the moment and we need to maybe increase by about 20 overall. I think pending a discussion about that and the ability to recruit the auxiliary officers, we will certainly, in the next few months, increase the numbers of people at the watch house.

The CHAIR: What percentage of fully sworn police officers are Aboriginal? You can take that on notice. Also, the same with auxiliary officers.

Dr O'Callaghan: Yes.

The CHAIR: I talked about breathalysers earlier. Sometimes people mistake someone who is mentally ill for being drunk. Would a cursory breathalyser such as those that are used out on the road be some way of at least assessing that?

Dr O'Callaghan: I do not actually think this issue is one that is really worth arguing over. If police had the power to ask a detainee to undertake a breath test, that would be fine. I do not have an objection to it; it is just another level of compliance, of course.

The CHAIR: Is there any question that they do not have the power at the moment?

Dr O'Callaghan: You cannot make someone undertake a breath test just because they are a detainee. You would have to have some legislation in place. I am not quite sure where that would fit, but you would have to have some sort of power. It is an option. There is no reason why you could not ask someone to volunteer a sample, but if they refused, you do not have any right to make them.

The CHAIR: Certainly in the regions, the ALS are a bit thin on the ground. Is it generally the case that it is difficult to contact ALS?

Mr Panaia: I think it is generally, yes. We get the same reports coming out, particularly in the north west, that they can be notoriously difficult to get hold of after hours.

[11.20 am]

The CHAIR: In relation to juveniles, are there any particular issues that are of concern to police at the moment, commissioner? Is it the responsible parent or are there some other issues?

Dr O'Callaghan: In juveniles, what, just generally?

The CHAIR: Are there any emerging custodial issues for juveniles?

Dr O'Callaghan: I know there have been some issues about trying to find responsible parents, and then we have had discussions with DCS about trying to get them into Banksia Hill if we cannot find a responsible adult after so many hours. But I am not quite sure—unless you know—what the current state of play is with that. There have been tensions between us in the past, but I am not sure whether they are currently there.

The CHAIR: So is that the alternative; is there is no other hostel anywhere where kids in the metro area can be put?

Dr O'Callaghan: Well, if you run out of all options, eventually. They cannot stay at the watch house, so they really have to go into DCS's care if they cannot be bailed.

The CHAIR: How frequent is that?

Dr O'Callaghan: I think it is infrequent. I do not think it is something that occurs very frequently, because in most cases you can find even a relative who is not a direct parent to take care of them.

The CHAIR: The other issue I want to raise with you is that from time to time the coroner has hearings and makes recommendations. They do not seem to be collated anywhere, so, in 2001 the coroner might make a recommendation, another one in 2007 and another one in 2011, but there does not seem to be anywhere where all those recommendations are collated so that we can identify emerging issues.

Dr O'Callaghan: Yes.

The CHAIR: Is that something you would find useful from a policy perspective?

Dr O'Callaghan: Yes; I am sure that if we went back, we could get all the information, but you would have to troll through all the reports to get the recommendations out.

The CHAIR: That is the issue, is it not?

Dr O'Callaghan: Yes.

The CHAIR: If I can use a non-custodial example, there have been recommendations over the years about police pursuits and that sort of thing.

Dr O'Callaghan: Yes.

The CHAIR: How many do there have to be before they are recurring themes and before action is taken?

Dr O'Callaghan: And the reverse also applies, because as part of the review of compliance and red tape, in an organisation like WA Police you have policy that is a response to a recommendation made by a coroner, and they get layered on top of each other over the years and some of those underneath become redundant, but never get taken out. So we are going back to try to look at why certain policies are in place and what the drivers of those are.

The CHAIR: The last question is in relation to move-on notices: Have they lowered the number of people who have actually gone into, say, the Perth lockup? Has that been an effective mechanism?

Dr O'Callaghan: I do not have the detail on that, unless you do.

Mr Panaia: I think the overall number of arrests for the agency has decreased, but I think the number of arrests going through the watch house have increased since the new one, if that makes sense.

The CHAIR: Perhaps you could expand a little.

Mr Panaia: Overall the agency has decreased in its number of arrested persons, which I think may well be a result of move-on notices and their effect on the number of people we are arresting. Although I think there has been an uptake in the use of the new watch house for all other arrests. So, the numbers going through the watch house have increased.

The CHAIR: We visited Boddington—as I have said on radio, it is the exception rather than the rule—and because of the state of the cell there, they were having to keep someone who was detained in a Varley pod in a vehicle for an hour or so while the paperwork was being done. Is that ideal?

Dr O'Callaghan: No, it is not ideal and it is not authorised by policy either. They should have gone straight to Armadale and done the paperwork there. There have been a couple of instances in which we have found people have been kept in the back of a van—admittedly, because the watch house is not suitable—while people have done paperwork. The proper procedure is to do the paperwork at the watch house when you get there, or at the police station there. I know their preference would have been certainly to do it at Boddington, but it is not acceptable to hold a prisoner in a van while these things are done.

The CHAIR: We have been given a figure of \$140 000 or something to get a cell up to compliance. Is that an accurate figure?

Dr O'Callaghan: Yes. I have heard various numbers over the years, but certainly it is more than \$100 000 per cell.

The CHAIR: So what level of throughput at a station is needed before that is economically justified?

Dr O'Callaghan: There will be a formula for working that out. Our lands and buildings people would have that, and we can supply that to you.

The CHAIR: Thank you.

Dr A.D. BUTI: Commissioner, you said that was against policy. So if the police there are acting contrary to policy, what is the sanction or what actually happens?

Dr O'Callaghan: There is a whole range of sanctions. On the back of some recent media on this, on 13 September we sent out a missive saying that it is not to occur. So if there was a breach of policy, then there would be an investigation and there would be some sanction against the police officers. So we have reminded them, and if it occurs again and we get a complaint, we will conduct an investigation and there will be an outcome.

The CHAIR: Finally, are you able to supply some figures, commissioner, for, maybe, the last three years, of the number of complaints investigated by internal affairs and the CCC for police misconduct in the custodial setting?

Dr O'Callaghan: Yes; okay.

The CHAIR: I have a copy of that incident that Mr Britza was referring to, and we will supply that to you now and you can maybe respond as well.

Dr O'Callaghan: Yes.

The CHAIR: I need to thank you all for your evidence and generosity with your time today. A transcript of the hearing will be forwarded to you for correction of minor errors. Any such 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 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. Thank you very much.

Hearing concluded at 11.26 am