Community Development and Justice Standing Committee

# In Safe Custody

## Inquiry into Custodial Arrangements in Police Lock-ups

**Report No. 2**
**November 2013**

Legislative Assembly
Parliament of Western Australia

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# Community Development and Justice Standing Committee

# In Safe Custody

## Inquiry into Custodial Arrangements in Police Lock-ups

Report No. 2

Presented by

**Ms M.M. Quirk, MLA**

Laid on the Table of the Legislative Assembly on 28 November 2013

# Chair's Foreword

ON 28 September 1983 a young Aboriginal man died in a police lock-up in Roebourne. John Pat had been arrested earlier in the evening along with four others after a fight outside a local Hotel involving several police officers and an Aboriginal police aide. At some point he sustained closed head injuries and was placed either unconscious or semi-conscious in the juvenile cell of the lock-up where he was later found dead during a cell check. He was not yet seventeen. The ensuing inquest and trial which acquitted the police officers and the police aide added to a growing community discontent and feeling of injustice around the treatment of Aboriginal people and acted as a catalyst for the Royal Commission into Aboriginal Deaths in Custody. The final report in 1991 was a culmination of four years of comprehensive and far ranging inquiry and resulted in 339 recommendations.

Thirty years on when the anniversary of the death of John Pat again reminds us of the depth of family grief and sense of loss felt by a whole community, it is an appropriate moment to examine whether the important lessons about custodial arrangements in police lock-ups have indeed been learnt. There is no doubt that since the Royal Commission there have been marked improvements in lock-up conditions and detainee care. The Perth metropolitan area has recently seen the commissioning of a new state of the art watchhouse facility and many of the underlying principles within the Royal Commission recommendations are now embedded in legislation and WA Police policies and procedures.

The picture in regional WA is less encouraging and whilst the Committee only visited a small selection of lock-ups in the Kimberley and Wheatbelt, what we saw did cause concern. Pressures on staffing levels outside the station meant adequate supervision within lock-ups was sometimes sacrificed. In some cases transport of detainees for many hours was required because of inadequate local lock-up facilities. Where the use of private transport contractors was available, inflexible and illogical contractual arrangements led to suboptimal service and a high level of frustration by police.

There was universal agreement from all witnesses that the jurisdiction of the Inspector of Custodial Services should be extended to police lock-ups. This would enable a regular and system wide oversight of standards and practices. Inevitably this means an increase in the resources allocated to the Inspector but there was also a consensus that the greater use of the expertise of that Office would invariably lead to greater efficiencies.

The evidence on current arrangements for external oversight of alleged breaches of the law in police lock-ups was, however, equivocal. We heard that it was up to the Corruption and Crime Commission whether it chose to examine a matter. It is not

always apparent what the basis is for it choosing to investigate a particular case whilst declining to look at any number of others. Moreover the Committee became aware that the lengthy duration of these reviews had a major impact on police morale.

The Committee was mindful and gratified that statistics show a clear decline in the rate of Aboriginal deaths in custody over time. However this may actually be masking an underlying increase in the number of Aboriginal people being detained. We know that the recommendations in this report need to be implemented in parallel with efforts to reduce the contact of Indigenous Western Australians with the criminal justice system.

In this context expectations that detainees in lock-ups will receive timely legal advice are routinely not met. This has a flow on effect of hampering the efficient running of the justice system. In the case of the Aboriginal Legal Service of WA its capacity to meet demand to assist its clients is a direct result of lack of funding. The fact that ALSWA receives no state funding to provide this key service is dubious.

There are still areas where work needs to be done. There is still scope for detainee access to medical, legal and third parties to be improved, there are still deficiencies in lock-up design and cultural competence lacking in some custodial staff which should be addressed, and there are still ways in which the independence and breadth of oversight mechanisms can be reinforced. The Committee had its attention drawn to a number of examples of systemic racism which led to unequal outcomes before the law.

Common themes also continue to emerge regarding the need for a greater variety of alternatives to imprisonment, and more access to youth and wellbeing services for Aboriginal people. The Committee's inquiry has found a number of gaps and makes recommendations on how to move forward to achieve even better custodial arrangements in police lock-ups. That said the Committee's inquiry has merely scratched the surface and a number of complex and interrelated issues still need addressing. But that does not mean we should relegate them to the "too hard" basket. Rather it demonstrates why we cannot become complacent even now after decades of these matters first gaining public attention. Vigilance remains important as there is a tendency to become desensitised to the many challenges that exist in the largest police jurisdiction in the world.

This inquiry would not have been possible without the contributions of my Committee colleagues whom I would like to acknowledge: Deputy Chair Mr Ian Britza, MLA, and Committee members Dr Tony Buti, MLA, Mr Chris Hatton, MLA and Mr Mick Murray, MLA. I would also like to thank the Committee staff for their assistance, namely Principal Research Officers Mr John King and Ms Dawn Dickinson, and Research Officer, Dr Sarah Palmer whose consistent professionalism is especially appreciated. On behalf of the Committee I would like to thank all the witnesses who contributed their time and expertise to this inquiry. Last but by no means least I also acknowledge the work of

the WA Police personnel tasked with custodial responsibilities in police lock-ups. These men and women do a commendable job in sometimes testing situations and are at the frontline of ensuring a safe and appropriate environment for all detainees.

It is fitting that John Pat's legacy should be better and safer custodial arrangements. On the thirtieth anniversary of his death the Western Australian Parliament, on behalf of all Western Australians and in the spirit of reconciliation, apologised to Mrs Mavis Pat and her family for the untimely death of her son. Moving forward with this same spirit of reconciliation, governments, service providers and local communities all have a role in ensuring such tragedies never happen again and all must continue to strive to make this a reality.

MS M.M. QUIRK, MLA
CHAIR

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# Executive Summary

THe death of 16-year-old John Pat in a Roebourne police lock-up in September 1983 became the catalyst for the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). When the comprehensive four-year inquiry concluded in 1991, it made a total of 339 recommendations, many of which related to the design of police lock-ups and treatment of detainees.

Since the RCIADIC, annual reporting of deaths in custody by the Australian Institute of Criminology has shown there to be in general a low rate of Aboriginal deaths in custody although this is as much a product of a proportional increase in the Aboriginal prison population over time as a sign of any great improvement. The overall trend for Aboriginal deaths in police custody (as distinct from prison custody) over the past 20 years has been stable and deaths in lock-ups have declined gradually but markedly in this time period. What the data cannot do however is reveal the level of amenity and treatment afforded to people in custody. While custodial arrangements in prisons are subject to an inspection regime, the same level of scrutiny does not currently exist for police lock-ups and incidents of mistreatment will not usually come to light unless a complaint is made and investigated.

The perceived gap in the oversight of police lock-ups was a significant factor prompting the Community Development and Justice Standing Committee ("the Committee") to establish its inquiry into custodial arrangements in police lock-ups in June 2013. The 30th anniversary of the death of John Pat in September 2013 also made it an opportune time to examine whether current arrangements fully comply with the RCIADIC recommendations and also the Optional Protocol to the Convention Against Torture (OPCAT). The latter is the international agreement adopted by the United Nations in 2009 to assist states in ensuring that torture or other acts of cruel, inhuman or degrading treatment or punishment do not occur in places of detention. Australia signed the OPCAT in May 2009 but has not yet ratified the agreement.

**Chapter 1** of this report expands on the process and rationale for the Committee's Inquiry. The circumstances of John Pat's death in 1983 are explained, highlighting why the RCIADIC had to happen. An overview is presented of deaths in custody data over time and while figures are generally encouraging, it is not possible to draw definite conclusions about lock-up amenity or detainee welfare without closer analysis.

**Chapter 2** reviews RCIADIC implementation and monitoring. The first response report was released in March 1992 by a joint ministerial forum comprising Commonwealth, State and Territory ministers. The first annual report followed in 1994 charting the implementation of Commonwealth Government responses, and individual states and territories subsequently tabled similar implementation reports in their respective

parliaments. The Aboriginal and Torres Strait Islander Commission (ATSIC) was initially tasked with monitoring the Commonwealth's implementation of RCIADIC recommendations but came under criticism in a Federal parliamentary review in 1994. Many Aboriginal communities complained that reports and progress updates were not being received and that ATSIC merely compiled responses for annual implementation reports without independent critical analysis. By 1996 Australian governments claimed to have implemented the majority of the recommendations however this was difficult to gauge given that ATSIC could only report on Commonwealth activities and most recommendations related to State and Territory government departments and agencies. At the time, State and Territory reports were also found wanting because they were hastily compiled and lacking in independence.

The history of implementation and monitoring in WA has been equally sporadic. Implementation reports were prepared almost annually by the Aboriginal Affairs Department between 1992 and 1997. Reports addressing implementation were also released at various times by the Aboriginal Justice Council, Aboriginal Legal Service of WA and the Deaths in Custody Watch Committee (WA), a common theme being the lack of complete implementation of RCIADIC recommendations despite government assertions to the contrary. The most recent implementation report covering all WA government departments and agencies occurred in June 2001. The report, prepared by the Aboriginal Affairs Department, found that the vast majority of recommendations had been implemented or implementation was ongoing.

**Chapter 3** examines detainee access to medical and legal services and other third parties. While WA Police policies emphasise duty of care and establish procedures for screening, regular cell checks and when to seek a medical opinion, the Committee found that lock-up personnel often lack clinical expertise and/or ready access to medical professionals. This can hamper the screening of detainees for medical issues and the timely provision of medical assistance. Similarly, detainee access to essential medications is prescribed within WA Police policies but difficulties associated with checking that medications are appropriate and as prescribed often frustrate this process in practice.

A significant subset of comments received by the Committee pertained to mental health. Definite scope was identified for improving practices in lock-ups to ensure more timely and appropriate access by detainees to medical services, including mental health services although the extent to which this can be achieved will depend on a commitment to provide the necessary resources. While the ideal solution to all these issues would be for lock-ups to have access to 24/7 professional medical services including mental health care, limited resources preclude this option. The Committee has recommended that WA Police provides 24/7 medical coverage at the primary metropolitan lock-up (Perth Watchhouse), and improves arrangements for on-call medical assistance (including mental health) at all lock-ups. Further, that the State

Government implements mechanisms for diverting people with mental health problems/illness from arrest and transfer to lock-ups.

A detainee's right to access legal services is stated in the *Criminal Investigation Act 2006* and WA Police policies detail procedures in this regard. Procedures are also in place for WA Police to notify Aboriginal Legal Services in relation to the detention of an Aboriginal person as per RCIADIC recommendations. Nonetheless, the Committee found that detainee access to legal services does not always occur in a timely way. Poor lock-up design was also found to be a contributing factor due to a lack of suitable and confidential meeting spaces.

More concerning was that although the *Criminal Investigation Act 2006* requires an arrested person to be informed of, and afforded the right to legal access, there is no requirement for this to occur with any immediacy following arrest and the Committee heard anecdotal evidence to suggest there can be lengthy delays. Legislative amendment would ensure that detainees (and Aboriginal detainees in particular) receive prompt access to legal services. The Committee has therefore recommended that the *Criminal Investigation Act 2006* be amended to ensure that detainees receive timely access to legal services and evidence is rendered inadmissible in court proceedings where it can be demonstrated that a detainee's right to legal access has been deliberately suspended. Aboriginal detainees in particular would benefit from legislative provisions requiring immediate notification of legal services, however this would need to be supported by State Government contribution to the Aboriginal Legal Service of WA.

The Committee has also recommended that WA Police should adopt a consistent policy regarding detainee access to family members and/or other third party supports (with a view to maximising access) and engage with local Aboriginal communities in order to better exploit informal networks of support.

The issue of detainee access to family members is particularly pertinent in relation to juveniles where the Committee heard concerning evidence that young detainees may have been denied access to family members in some instances and/or family members may not have been notified of a young person's detention or interview by the police. It is critical that WA Police adhere to the procedures in the *Young Offenders Act 1994* pertaining to notification of a responsible adult and the Committee has recommended that evidence be made inadmissible in court proceedings where this is obtained from a juvenile when a responsible adult is not present.

Another key theme concerned access to interpreters, since interviews with Aboriginal people are often compromised by language difficulties. Despite provisions in legislation and WA Police policies for interpreter services to be sought where required, evidence suggests that Aboriginal detainees have limited access to interpreters in lock-ups. The

Committee found however that this is part of a much broader issue around awareness and availability of Aboriginal interpreter services and has recommended that the State Government expedites the development of a national Indigenous interpreter framework through its participation in the Council of Australian Governments.

In **Chapter 4** lock-up design, staffing and administration are examined. Western Australia has approximately 125 lock-ups with an average age of 45 years. Through evidence received and direct observation the Committee found that the physical condition of police lock-ups varies. Some are old, dirty and unfit for use while many others are functional but poorly designed. The WA Police Custodial Design Guidelines developed in the wake of the RCIADIC outline the essential features of a safe cell; however the Committee found that many lock-ups in WA do not comply with the guidelines or with RCIADIC recommendations, lacking vital items such as alarms and resuscitation equipment.

The Committee also found that recorded CCTV footage from the inside of lock-up cells can offer valuable protection to both detainees and police officers; however across lock-ups the ability to record (in particular) is very limited. It is important that the ability to record CCTV footage from inside cells is made a requirement for all lock-ups and WA Police should upgrade all CCTV systems in lock-ups and formulate rules governing the access and retention of recordings.

Other design issues highlighted in the chapter include the lack of suitable facilities for detainees to meet with lawyers or visitors prompting the Committee to recommend that WA Police should prioritise the provision of suitable spaces for confidential consultations in all lock-ups. The absence of compliant holding rooms in any lock-up in the State suggests that the *Criminal Investigation Act 2006* should also be amended to better reflect current facilities and police preferences for holding arrested subjects.

Overall, it is clear that ageing infrastructure associated with many of WA's lock-ups is having a bearing on the conditions experienced by detainees and on the ability of police to provide a decent standard of care. Bearing in mind the high cost of fully upgrading all lock-ups, the Committee has recommended that interim measures should be implemented to ensure that at least minimum standards of safety and comfort are being met.

There are currently no official police directives around minimum staffing requirements for custodial care and single officer custodial care duties are common, particularly in regional areas. This carries potential risks for officers and compromises detainee care and has prompted the Committee to recommend that WA Police ensure a minimum of two officers are rostered for custodial care duties at any time. While the Committee received a mixture of views regarding the merits of outsourcing custodial services, WA Police are still considered best-placed to provide custodial care in lock-ups. Other

improvements to WA Police staffing recommended by the Committee include greater emphasis on employing Aboriginal community officers in areas with a high Aboriginal population, and abolishing the maximum tenure period of four years in locations where staff continuity would assist in building trust with the Aboriginal community.

The administration of lock-ups is complex with responsibility shared to varying degrees by WA Police, Serco, the Department of Corrective Services, and the Department of the Attorney General. The Committee heard numerous concerns regarding the Court Security and Custodial Services contract with respect to less than ideal custodial care and transport arrangements. The Committee has therefore recommended that at the next opportunity for contract review, attention is given to various matters including the collection of detainees from locations other than hubs, provision of custodial care by Serco in the context of detainees and their court appearances, and collection of detainees early in the 24 hour lock-up clearance period.

Other administration matters such as documentation processes, supervision and standard procedures are also examined in Chapter 4. The Committee found that standardised procedures are not always adhered to although this may be the result of inadequate supervision, imprecise wording and/or inappropriate lock-up facilities. The use of video links is also briefly examined in the context of alternatives to transporting detainees over long distances. While the use of video links for court appearances is becoming more common, regional areas often lack appropriate AV facilities. The opposite is true of the new Perth Watchhouse which has sufficient AV facilities to allow magistrates to process arrests from across the metropolitan region and some regional areas – however it cannot currently operate beyond Saturday mornings. While severe contractual limitations regarding court security currently restrict the court’s operation, processes are in train to rectify this.

**Chapter 5** examines the adequacy of oversight mechanisms and disciplinary measures for personnel tasked with custodial processes. Western Australia currently lacks a comprehensive system of oversight for police lock-ups. Currently the Office of the Inspector for Custodial Services (OICS) has a narrow scope for overseeing prescribed lock-ups, which excludes lock-ups operated by the WA Police. The Department of Corrective Services has a broader remit to annually inspect police lock-ups used to detain prisoners, however inspections are limited to a single-page tick-box assessment to determine suitability of the lock-up. NGOs like the Deaths in Custody Watch Committee (WA) also play an important role in ensuring the adequacy of custodial processes, but can only really complement the more formal agency-based mechanisms.

As it stands, the jurisdiction and scope of lock-up inspections by agencies is poorly defined which only increases the risk that issues will not be detected or promptly addressed. The Committee heard significant support for the OICS to assume independent oversight of police lock-ups and considered such a remit appropriate as it

would be consistent with existing OICS functions and would provide independent oversight of systemic issues. The Committee has recommended amendment of the *Custodial Services Act 2003* to enable OICS to assume oversight responsibility for all police lock-ups in Western Australia. It will be important however for the OICS to be appropriately resourced so it may carry out this expanded role.

The chapter also presents an overview of existing disciplinary measures for personnel involved in custodial processes. This includes the Code of Conduct applicable to all WA Police personnel which requires any unprofessional conduct to be reported to bodies including but not limited to the Police Internal Affairs Unit or the Corruption and Crime Commission (CCC). Independent avenues of complaint for individuals aggrieved with treatment received during detention include the Ombudsman or CCC although the avenues by which members of the public can complain about minor matters are not generally known.

The WA Police and/or the CCC will investigate allegations of misconduct with responsibility generally determined on the basis of seriousness of the allegation. Resource limitations necessarily restrict the number of investigations that can be conducted by the CCC so in the majority of instances matters are referred back to the WA Police for investigation. However, the CCC has the power to monitor the agency's progress and review how appropriately it has dealt with misconduct. In determining when to conduct investigations, the CCC will usually reserve this power for more serious allegations and/or to further particular strategic purposes, particularly as its own investigations are broader in scope and take in organisational failings as well as the conduct of individuals. That said, it is unclear exactly what criteria the CCC uses to select the cases it chooses to investigate. Currently the CCC has a strategic focus on police lock-ups as it has identified scope to deliver greater objectivity and rigour in this regard.

The Committee considers disciplinary measures for personnel involved in custodial processes to be adequate although greater public reporting of police internal investigations through the WA Police Annual Report and/or periodic reporting in Parliament by the Minister for Police (subject to *sub judice* rules) is needed to foster greater public confidence. The Committee considers that current investigative processes between the WA Police and CCC should be retained and reinforced through additional oversight by the OICS to address systemic causes of misconduct.

**Chapter 6** explores cultural awareness and looks at the cultural training currently available for custodial officers. Despite the Committee hearing about some positive experiences, it is disappointing that issues around victimisation, over-policing, systemic racism and a general lack of cultural understanding continued to emerge from submissions, hearings and meetings with Aboriginal community members.

Overall it demonstrates a clear need to enhance cultural competency, made all the more acute by the grossly inadequate Aboriginal cultural competency training currently offered to police recruits. Currently police recruits receive approximately 11 hours of cultural diversity training as part of their 26-week Police Academy training. Of this approximately two hours is instruction on Aboriginal culture. Ongoing training and standardised cultural induction programs for sworn officers are also severely lacking. While WA Police offers staff induction programs whenever officers transfer to new locations, these vary widely in terms of cultural content. The Committee has recommended that WA Police expand its diversity training module for recruits in relation to Aboriginal culture and ensure that Aboriginal people are involved in its delivery. Further, WA Police should ensure sworn police officers receive ongoing cultural competency training and that officers transferring to locations with a significant Aboriginal population receive a comprehensive induction program as standard.

In **Chapter 7** implementation of RCIADIC recommendations is evaluated against the inquiry terms of reference. In general this inquiry has demonstrated that the key principles underpinning RCIADIC recommendations relevant to police lock-ups have been embedded into legislation and/or WA Police policies and procedures. While this has seen improvements in custodial arrangements in police lock-ups since the RCIADIC, the inquiry has nonetheless highlighted gaps in translating policy into practice and has identified scope to further improve arrangements and reinforce compliance. Overall, many lock-ups still do not fully comply with RCIADIC recommendations partly because of limited funding.

A number of miscellaneous issues came to the Committee's attention which relate to the RCIADIC but are not otherwise captured in the inquiry's terms of reference. Among these is the issue of training delivered to lock-up personnel around the identification of "at risk" individuals, resuscitation measures and restraint techniques. The Committee has recommended that WA Police reviews training to ensure: a more comprehensive program that meets duty of care requirements; and that opportunities exist for in-service training.

Alternatives to police custody and prison sentences are also explored, a major frustration being the lack of sufficient facilities (such as bail hostels) and/or programs, especially in regional WA. The lack of alternatives contributes to individuals spending time in lock-ups who might otherwise not need to, for example those serving out warrants of commitment. In turn this generates transport and detention costs and undue hardship for the detainee. The RCIADIC recognised the value of non-custodial sentencing options and pre-sentence programs in breaking the cycle of offending, however there is clearly some way to go and much investment needed before these are widely available. The same unfortunately applies to Aboriginal diversion and justice

reinvestment programs as well as youth and welfare services aimed at addressing the underlying issues of Aboriginal disadvantage.

Lastly, given there has not been any regular reporting around RCIADIC compliance for more than a decade, other more regular reporting mechanisms aimed at uncovering flaws in lock-up arrangements and preventing further deaths in custody have assumed greater significance. The Committee heard evidence supporting a central repository of coronial findings/recommendations and has recommended that the State Government maintains a list of coronial recommendations showing implementation status, and that this list is published and tabled annually in Parliament.

The final chapter also examines compliance with the OPCAT which will require state parties to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention. Until the OPCAT is ratified by the Commonwealth Government, jurisdictional legislation is drafted and the exact form of the NPM is known, it is uncertain exactly what implications there will be for police lock-ups in WA. That said the Committee considers that oversight by the OICS will likely facilitate Western Australia's future compliance with the OPCAT as it will help meet the requirements for a NPM under the Protocol.

# Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Community Development and Justice Standing Committee directs that the Premier, Attorney General, Minister for Police, Minister for Corrective Services, and Minister for Mental Health report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

# Findings and Recommendations

**Finding 1** **Page 16**

That police lock-up personnel often lack clinical expertise and/or ready access to medical professionals which can hamper the screening of detainees for medical issues and the timely provision of medical assistance where required.

**Finding 2** **Page 17**

That it is already Western Australia Police policy to ensure detainees in lock-ups have access to essential medications, however implementation can be hindered by practical difficulties in checking that medications are appropriate and as prescribed.

**Finding 3** **Page 19**

That scope exists for improving practices in police lock-ups to ensure timely and appropriate access by detainees to medical services including mental health services. The extent to which this can be achieved is dependent on a commitment to provide the necessary resources.

**Recommendation 1** **Page 22**

That Western Australia Police provides 24-hour, 7 day a week medical coverage at the Perth Watchhouse and improves arrangements for on-call medical assistance (including mental health) at all lock-ups.

**Recommendation 2** **Page 23**

That the Minister for Police and Minister for Mental Health implement mechanisms for diverting people with mental health problems and/or mental illness from arrest and transfer to lock-ups.

**Finding 4** **Page 28**

That access by detainees to legal services does not always occur in a timely way which can have serious consequences if delays are significant.

**Finding 5** **Page 29**

That poor lock-up design can impede detainee access to legal services due to a lack of suitable and confidential meeting spaces.

**Finding 6** **Page 30**

That although the *Criminal Investigation Act 2006* provides for an arrested person to be informed of and afforded the right to legal access, there is no requirement for this to

occur with any immediacy following arrest which can pose unacceptable risks for individuals detained in lock-ups.

**Finding 7** **Page 33**

That legislative amendment is needed to ensure that detainees in lock-ups receive timely access to legal services, and that Aboriginal detainees in particular are afforded immediate notification of, and access to, legal services.

**Finding 8** **Page 33**

That any form of mandatory custody notification relating to Aboriginal people needs to be supported by State Government contribution to the Aboriginal Legal Service of WA.

**Finding 9** **Page 33**

That a legislated sanction is needed to render evidence inadmissible in court proceedings where it can be demonstrated that a detainee's right to legal access has been deliberately suspended.

**Recommendation 3** **Page 33**

That the Minister for Police initiates amendments to the *Criminal Investigation Act 2006* to:

- Ensure that detainees in lock-ups receive timely access to legal services, and in particular ensure there is immediate notification of, and access to, legal services by Aboriginal detainees; and
- Make evidence inadmissible in proceedings in court where a detainee's right to legal access has been deliberately suspended.

**Recommendation 4** **Page 33**

That, given the unmet demand, the State Government supplements the funding that the Aboriginal Legal Service of WA currently receives from the Federal Government.

**Finding 10** **Page 37**

That the absence of a consistent approach and/or policy by Western Australia Police hinders detainee access to family members and/or other third party supports.

**Recommendation 5** **Page 37**

That Western Australia Police develops a consistent policy regarding access to family members and/or other third party supports by detainees in lock-ups. Such a policy should be consistent with maximising access.

**Recommendation 6** **Page 37**

That Western Australia Police engage with local Aboriginal communities with a view to identifying and using informal networks of support such as Aboriginal elders in instances where family members and/or formal supports are not available.

**Finding 11** **Page 39**

That it is critical that Western Australia Police adhere to the procedures in the *Young Offenders Act 1994* pertaining to notification of a responsible adult when a young person has been taken into custody and before any interview takes place.

**Finding 12** **Page 39**

That police may expend considerable time endeavouring to locate a responsible adult with little success. The Committee concedes that this is a situation which prolongs time in detention for young people.

**Finding 13** **Page 39**

That a legislative provision is warranted to make evidence obtained from a juvenile inadmissible in court proceedings if it is obtained when a responsible adult is not present.

**Recommendation 7** **Page 39**

That the Minister for Corrective Services initiates amendments to the *Young Offenders Act 1994* to make evidence inadmissible in court if this is obtained from a juvenile when a responsible adult is not present.

**Finding 14** **Page 42**

That evidence suggests Aboriginal detainees have limited access to interpreters in police lock-ups and this relates to a broader issue around awareness and availability of Indigenous interpreter services.

**Recommendation 8** **Page 43**

That the Premier expedites consideration and resourcing of the development of a national Indigenous interpreters framework through Western Australia's participation in the Council of Australian Governments.

**Finding 15** **Page 46**

The physical condition of police lock-ups in WA varies. Some are old, dirty and unfit for use, while many others are functional but poorly designed.

**Finding 16** **Page 49**

Many of Western Australia's lock-ups do not comply with RCIADIC recommendations and/or with the WA Police Custodial Design Guidelines, lacking vital items such as alarms and resuscitation equipment.

**Finding 17** **Page 50**

While almost half of all lock-ups have CCTV monitoring inside the cells, only three have the ability to record CCTV footage.

**Finding 18** **Page 50**

Recorded CCTV footage from inside all lock-up cells is valuable for its ability to offer protection to both detainees and police officers.

**Recommendation 9** **Page 50**

That there be a program rolled out to upgrade all CCTV systems in lock-ups; that the ability to record CCTV footage from inside cells be a requirement for all lock-ups; and that Western Australia Police formulate rules governing how recordings are accessed and duration of retention.

**Finding 19** **Page 51**

Many lock-ups lack suitable facilities for detainees to meet confidentially with lawyers or visitors.

**Recommendation 10** **Page 51**

That the Western Australia Police, with funding from the State Government, prioritises the provision of suitable spaces for confidential consultations in all police lock-ups.

**Finding 20** **Page 52**

No lock-ups or police stations in Western Australia have holding rooms that are compliant with Section 139(3) of the *Criminal Investigation Act 2006*.

**Recommendation 11** **Page 53**

That the Minister for Police reviews section 139(3) of the *Criminal Investigation Act 2006* and considers how it might be amended to better reflect current police facilities and police preferences for holding arrested suspects.

**Finding 21** **Page 54**

The fact that many lock-ups are old and consequently do not meet the current standards of custodial care means it can be difficult for officers to provide the expected standard of care. This makes it more difficult to identify the extent to which poor care is due to poor conditions or poor treatment by officers.

**Recommendation 12** **Page 54**

That given the high cost of fully upgrading all police lock-ups, interim measures are implemented to ensure at least the minimum standards of safety and comfort are being met.

**Finding 22** **Page 57**

Single officer custodial care duties are common, particularly in regional areas, potentially endangering officers and compromising the quality of care afforded to detainees.

**Recommendation 13** **Page 57**

That Western Australia Police discontinue single officer custodial care duties, ensuring a minimum of two officers are rostered for custodial care duties at any time.

**Finding 23** **Page 58**

Despite some points in favour of out-sourcing custodial services, Western Australia Police is the agency best-placed to provide custodial care in police lock-ups.

**Finding 24** **Page 60**

Police officers do not necessarily engage effectively with the Aboriginal community, missing opportunities to apply discretion. There is gap in communication between the two groups, which has not been helped by the absorption of Aboriginal Police Liaison Officers into the mainstream police force.

**Recommendation 14** **Page 60**

That in areas where there is a high Aboriginal population, the State Government supports Western Australia Police in employing more Aboriginal community officers, dedicated to liaising between the police and the Aboriginal community.

**Finding 25** **Page 62**

The Western Australia Police policy on tenure can inhibit the development of healthy working relationships with regional Aboriginal communities.

**Recommendation 15** **Page 62**

That Western Australia Police considers abolishing the maximum tenure period of four years in locations where continuity of staff would assist in building trust with the Aboriginal community.

**Finding 26** **Page 66**

Inadequacies in the Court Security and Custodial Services contract between Serco and the Department of Corrective Services have created some illogical and inefficient custodial care and transport arrangements. This places an extra burden on police officers in regional police stations who do not necessarily have the resources to cope and also generates resentment from police officers towards Serco staff.

**Recommendation 16** **Page 66**

That the Minister for Corrective Services reviews the Court Security and Custodial Services contract between Serco and the Department of Corrective Services, with attention to:

- Collection of people in custody by Serco from police lock-ups that are not hubs;
- Provision of custodial care by Serco for people in custody before, during and after their court appearances;
- Variation of the requirement for Serco to collect people in custody from police lock-ups within a 24-hour period, so that detainees are collected in the early part of that period rather than the latter part.

**Finding 27** **Page 71**

Standardised procedures for lock-up management exist within Western Australia Police but are not always adhered to. This might be due to inadequate supervision, the non-specific wording of procedure guidelines, and inappropriate lock-up facilities.

**Finding 28** **Page 78**

That Western Australia currently lacks a comprehensive system of oversight in relation to police lock-ups.

**Finding 29** **Page 79**

That oversight by Non-Government Organisations like the Deaths in Custody Watch Committee (WA) fulfil an important complementary role to more formal agency-based mechanisms in ensuring the adequacy of custodial processes.

**Finding 30** **Page 82**

That standards in police lock-ups warrant uniform oversight by an independent body.

**Finding 31** **Page 82**

That the Office of the Inspector of Custodial Services would be the appropriate body to assume responsibility for the development, promotion and inspection against standards relating to all police lock-ups in Western Australia.

**Recommendation 17** **Page 82**

That the Minister for Corrective Services initiates amendments to the *Inspector of Custodial Services Act 2003* to enable the Inspector of Custodial Services to assume oversight responsibility for all police lock-ups in Western Australia and that consideration is given to appropriate resourcing of the Office of the Inspector of Custodial Services to undertake this function.

**Finding 32** **Page 83**

The avenues by which members of the public can complain about minor matters relating to their time in custody are not generally known.

**Finding 33** **Page 85**

It is not clear what criteria the Corruption and Crime Commission uses to select the cases it chooses to investigate. There are also concerns about the time it takes to investigate matters and the impact that delay has on station morale.

**Finding 34** **Page 86**

The Corruption and Crime Commission does not investigate the vast majority of allegations of serious police misconduct in lock-ups. Most investigations are undertaken by Western Australia Police internal affairs.

**Finding 35** **Page 87**

While Western Australia Police internal affairs has an expeditious and well established regime for investigating allegations, this can be viewed by the public as lacking independence.

**Recommendation 18** **Page 88**

That there is greater public reporting of the outcome of police internal investigations through the Western Australia Police Annual Report and/or through the tabling of periodic reports in Parliament by the Minister for Police subject to consideration of *sub judice* rules.

**Finding 36** **Page 90**

Current investigative processes between Western Australia Police and the Corruption and Crime Commission should be retained, with implementation of additional oversight by the Inspector of Custodial Services to better address systemic causes of misconduct.

**Finding 37** **Page 99**

Lack of cultural competence leads to misunderstanding and escalation of incidents, contributing to the high rate of Aboriginal incarceration.

**Finding 38** **Page 102**

Aboriginal cultural competency training for police recruits is insufficient. Similarly, ongoing training and standardised cultural induction programs for sworn officers are severely lacking.

**Recommendation 19** **Page 106**

That Western Australia Police expands the diversity training module for recruits which deals with Aboriginal culture, and ensures that Aboriginal people are involved in its delivery. Recruits should be able to demonstrate cultural competency – that is, a well-developed understanding of Aboriginal issues and the skills to deal effectively with Aboriginal communities.

**Recommendation 20** **Page 106**

That Western Australia Police ensures: (1) that sworn police officers receive ongoing cultural competency training; and (2) that it is standard procedure for officers transferred to a location with a significant Aboriginal population to receive a comprehensive induction program, tailored to reflect the issues and challenges of the location, and involving members of the local Aboriginal community.

**Finding 39** **Page 113**

That adoption of RCIADIC recommendations has seen improvements in custodial arrangements in police lock-ups in Western Australia. However many lock-ups still do not fully comply with the recommendations partly because of limited funding.

**Finding 40** **Page 115**

That in order to fully comply with relevant RCIADIC recommendations, the training delivered to police lock-up personnel around the identification of "at risk" individuals, resuscitation measures and restraint techniques needs to be more rigorous and more regular.

**Recommendation 21** **Page 115**

That Western Australia Police should review the content and delivery of training to personnel with custodial responsibilities to ensure there is a comprehensive program to meet the demands and duty of care requirements relevant to lock-ups and ensure opportunities also exist for in-service refresher training.

**Finding 41** **Page 118**

That cost-effective alternatives to taking a person into custody such as bail hostels and sobering up centres do exist in Western Australia however options continue to be limited in regional areas due to a lack of services.

**Finding 42** **Page 121**

That the practice of serving out warrants of commitment in police lock-ups and prisons is costly.

**Finding 43** **Page 121**

That there is no capacity for people served with warrants of commitment to undertake an alternative form of payment, such as community work, once a warrant has been issued.

**Finding 44** **Page 123**

That there is still some way to go to ensure the availability of a range of non-custodial sentencing options.

**Finding 45** **Page 125**

That justice reinvestment as a means of prevention and diversion is a mechanism worth exploring for reducing offending behaviour and reducing the number of people in custody.

**Finding 46** **Page 127**

RCIADIC recommendations around breaking the cycle of Aboriginal youth offending and improving the health and wellbeing of Aboriginal communities are not well advanced. Regional Youth Justice Services such as those operating in Midwest/Gascoyne, Goldfields, Pilbara and Kimberley need to be extended to other regions such as the Wheatbelt and Great Southern.

**Finding 47** **Page 129**

That coronial findings and recommendations continue to be an important mechanism for identifying deficiencies in lock-up arrangements and preventing further deaths in custody.

**Finding 48** **Page 130**

That separate inquests quite often produce similar recommendations but there is no system in place for consolidating them.

**Finding 49** **Page 130**

That Western Australia does not currently have a web-based searchable database of coronial findings and recommendations or a mandatory requirement for public entities to respond to coronial recommendations.

**Recommendation 22** **Page 130**

That the Attorney General maintains a list of coronial recommendations showing the status of their implementation and publishes and tables this information in Parliament annually.

**Finding 50** **Page 133**

That until the OPCAT is ratified it is uncertain exactly what implications there will be with respect to police lock-ups however oversight by the Office of the Inspector of Custodial Services will likely facilitate Western Australia's future compliance with the OPCAT.

# Chapter 1

# Introduction

**This chapter provides the historical context for the Royal Commission into Aboriginal Deaths in Custody and the rationale and process for this Inquiry.**

## 1.1 Why there needed to be a Royal Commission into Aboriginal Deaths in Custody

September 2013 marked the 30th anniversary of the death of a 16-year-old Aboriginal boy in a police lock-up in Roebourne. In 1983 John Pat died of head injuries sustained during a fight with a group of off-duty police officers in the Pilbara town. Pat was punched multiple times and hit his head when he fell to the ground. He was dragged unconscious along the ground by his hair and thrown into a police van "like a dead kangaroo" according to witnesses,[1] and then taken to the Roebourne police station where he and several others were again beaten and dropped on to the cement path. Pat was put in a cell in the lock-up where he died later that night from his injuries.[2] The officers were tried and acquitted of manslaughter.

John Pat's death became a symbol of oppression and injustice for Aboriginal people across the nation, and has been commemorated every year since. It served as a catalyst for the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), a comprehensive nationwide inquiry which commenced in 1987 and reported in 1991. The final report made 339 recommendations. Many of these relate to the design and physical conditions of police lock-ups and the treatment of people held in lock-ups.

Among the recommendations was that numbers and details of deaths in custody be documented annually. The Australian Institute of Criminology (AIC) was tasked with data collection and reporting and set up the National Deaths in Custody Program (NDICP) for this purpose. Its latest report, released in May 2013, reports on 32 years of data (from 1979 to June 2011), with a focus on the 20 years since

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1 Western Australia, *The Queen Against Terrence James Holl, Steven Alan Bordes, Ian Frank Armitt, James Young and Michael Walker: Proceedings, Supreme Court of Western Australia*, No. 31, 1984, p875.

2 Grabosky, P.N., *An Aboriginal death in custody: the case of John Pat*, Chapter 5 in "Wayward governance: illegality and its control in the public sector", Australian Institute of Criminology, Canberra, 1989, pp79-92.

the RCIADIC (1991 to 2011). The data shows that Aboriginal deaths in prison custody peaked in the mid to late 1990s and declined steadily until 2005-06, increasing again in the five years to 2011 (the figure of 14 Aboriginal deaths in custody in 2009-10 was equal to the highest figures previously recorded in 1999-2000 and 2000-01).[3]

However, the *rate* of Aboriginal deaths in custody is reported as being low, due to the increase in the number of Aboriginal people imprisoned. Hence, the 14 deaths recorded in 2009-10 represent a smaller proportion of the Aboriginal prison population than the 14 deaths of 1999-2000. One in every 288 Aboriginal prisoners died in custody in 1999-2000, compared to one in every 538 in 2009-10. In the 10 years from 2000 to 2010, the Aboriginal prison population increased by 84% compared to an increase of 24% for the non-Aboriginal population. Aboriginal people accounted for 14% of deaths in prison custody in 1991, and for 21% in 2011. In 1991 Aboriginal people accounted for only 14% of the prison population compared to 26% in 2011.[4] In Western Australia, Aboriginal people represent 3.8% of the population but 38.5% of the adult prison population.[5]

**Table 1.1 Aboriginal people as a percentage of the prison population**[6]

| | Australia | Western Australia |
|---|---|---|
| Aboriginal people as a % of the total population | 2.5% | 3.3%[7] |
| Aboriginal people as a % of total juvenile detention population | 46.2% | 68.0% |
| Aboriginal people as a % of total adult prison population | 26.1% | 38.5% |

## 1.2 Deaths in police custody

The trend for Aboriginal deaths while in police custody is different from that of deaths in prison custody. For monitoring purposes, the AIC defines deaths in police custody as “deaths occurring in police institutional settings, such as cells, watchhouses

3 Lyneham, M. and Chan, A., *Deaths in Custody in Australia to 30 June 2011*, Australian Institute of Criminology, Canberra, 2013, p*xx*.

4 Ibid, p*vi.*

5 Ibid, p2.

6 Ibid, p2.

7 These are the Australian Bureau of Statistics (ABS) population figures quoted in Lyneham and Chan (see reference above). Aboriginal population estimates were updated by the ABS in August 2013, and the updated figure of 3.8% for WA is quoted elsewhere in this report.

or divisional vans, as well as deaths occurring in police custody-related operations, such as motor vehicle pursuits, sieges, raids and shootings".[8] While numbers of deaths have fluctuated substantially year by year, the overall trend for Aboriginal deaths in police custody over the past 20 years is stable.[9] In 2010-11 and in 1989-90, 31% of the deaths in police custody were Aboriginal (8 out of 26 deaths and 9 out of 29 deaths respectively). This percentage is the same for 2004-05, and similar to 2002-03 (27%) and 2003-04 (24%).[10]

**Table 1.2 Number of deaths in custody from 1979-80 to 2010-11**

| | Total | Aboriginal | Non-Aboriginal |
|---|---|---|---|
| Deaths in prison | 1397 | 238 (17%) | 1159 (83%) |
| Deaths in police custody | 905 | 204 (23%) | 701 (77%)[11] |

**Table 1.3 Deaths in police custody and custody-related operations[12]**

| | Australia | | | Western Australia | | |
|---|---|---|---|---|---|---|
| Period | Total | Non-Aboriginal | Aboriginal | Total | Non-Aboriginal | Aboriginal |
| 1989-90 | 29 | 20 | 9 | 5 | na | na |
| 2010-11 | 26 | 18 | 8 | 6 | 1 | 5 |
| 1989-90 to 2010-11 | 702 | 560 (80%) | 142 (20%) | 95 | 53 (56%) | 42 (44%) |

*na = data not available*

In the past 20 years, the report shows that deaths in police custody or custody-related operations were most likely to have occurred in a public place (42% of all deaths). Deaths in cells accounted for 10% of deaths and deaths in other custodial settings (such as interview rooms or police vans) accounted for 5% of the total. From a high of 16 out of 29 deaths (55%) occurring in cells or other custodial settings in 1989-90, deaths in these places declined gradually but markedly over the subsequent 20 years to only one out of 26 deaths in 2010-11.[13] The NDICP data shows that since 1990, Aboriginal people are more likely to die in a vehicle pursuit or siege than in a police cell or watchhouse.[14] Of the 22 Aboriginal deaths in police custody in the past three years,

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8 Lyneham, M. and Chan, A., *Deaths in Custody in Australia to 30 June 2011*, Australian Institute of Criminology, Canberra, 2013, p78.
9 Ibid, pp80-82, 112.
10 Ibid, pp85-87.
11 Ibid, p*v*.
12 Ibid, pp84, 181, 183.
13 Ibid, pp106-107.
14 Ibid, p*xxi*.

eight (36%) occurred in WA. This is similar to the proportion for the past 32 years: 61 of the 204 (or 30%) of Aboriginal deaths in police custody were in WA.[15, 16]

**Table 1.4 Deaths in police custody or custody-related operations 2010-11 – location of death[17]**

| | Cell | Other custodial setting | Public hospital | Private property | Public place | Other | Total |
|---|---|---|---|---|---|---|---|
| Aboriginal | 1 | 0 | 1 | 1 | 5 | 0 | 8 |
| Non-Aboriginal | 0 | 0 | 1 | 7 | 10 | 0 | 18 |
| All | 1 | 0 | 2 | 8 | 15 | 0 | 26 |
| WA | 1 | 0 | 0 | 1 | 4 | 0 | 6 |

**Table 1.5 Deaths in police custody or custody-related operations 1989-90 to 2010-11 – location of death[18]**

| Period | Cell | Other custodial setting | Public hospital | Private property | Public place | Other | Total |
|---|---|---|---|---|---|---|---|
| 1989-90 | 11 | 5 | 6 | 1 | 6 | 0 | 29 |
| 2010-11 | 1 | 0 | 2 | 8 | 15 | 0 | 26 |
| 1989-90 to 2010-11 | 67 (10%) | 35 (5%) | 184 (26%) | 106 (15%) | 296 (42%) | 14 (2%) | 702 |

The NDICP monitoring provides a valuable record of deaths in custody across a range of variables. Through its analysis and reporting of the data, the AIC is able to suggest reasons for trends and highlight areas that require attention. What the deaths in custody data cannot do, however, is reveal the level of amenity and treatment afforded to people in custody. People in custody may not have died (and hence do not show up in this reporting) but they may have been poorly treated. While the welfare of people in prison custody is monitored by the Inspector of Custodial Services, police lock-ups and watchhouses, for the most part, avoid official scrutiny. Incidents of mistreatment – generally physical – usually only come to light when a complaint is made and referred to the Corruption and Crime Commission (CCC), as with several recent cases in WA (the repeated tasering of Aboriginal man Kevin Spratt in the East Perth Watchhouse in September 2008, the alleged assault of an Aboriginal man by police at the Broome

15 Ibid, p85.
16 Note that the proportion of the population that is Aboriginal is slightly higher in WA (3.8%) than nationally (3.0%).
17 Lyneham, M. and Chan, A., *Deaths in Custody in Australia to 30 June 2011*, Australian Institute of Criminology, Canberra, 2013, p105.
18 Ibid, p106.

Watchhouse in March 2013, and the death of Aboriginal elder Mr Ward while being transported in a custodial vehicle after being refused bail at Laverton Police Station).

The Committee notes that the number of deaths in custody from hanging has declined, but this is the outcome of the implementation of only one RCIADIC recommendation. What other recommendations, designed to ensure that the treatment of Aboriginal people in police lock-ups is just and humane, have been implemented? And what of the recommendations aimed at reducing the number of Aboriginal people who come into contact with the criminal justice system? This inquiry grew out of these concerns. The focus of this inquiry is police lock-ups because of a perceived gap in the system of oversight of lock-ups.

## 1.3 This Inquiry

In accordance with its functions and powers (see Appendix 1), the Committee notified the Speaker of its intention to undertake this inquiry on 13 June 2013 and provided its terms of reference (see Appendix 2).

The Committee immediately called for submissions and organised for witnesses to appear before the Committee during August and September. The Committee received nine submissions (see complete list at Appendix 4) and conducted public hearings with 24 witnesses (see complete list at Appendix 5).

The Committee also resolved to visit several regional police lock-ups. In August 2013 the Committee visited lock-ups in the South West of the State (Boddington, Narrogin and Katanning) and met with regional WA Police personnel and members of the local Aboriginal communities in Narrogin and Katanning. In September 2013 the Committee visited lock-ups in the Kimberley (Kununurra and Halls Creek) and met with regional WA Police personnel, local shire representatives and Aboriginal health and legal service representatives. Visits were also conducted to the metropolitan lock-up facilities at the former East Perth Watchhouse (following decommissioning) and the new Perth Watchhouse.

While the focus of this inquiry on Aboriginal people reflects the rate at which they are detained, most of the findings and recommendations are applicable to any person detained in a police lock-up.

# Chapter 2

# Implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody

**This chapter provides an overview of the Royal Commission into Aboriginal Deaths in Custody and the history around implementing and monitoring the recommendations in Western Australia.**

## 2.1 Background

The RCIADIC was established in October 1987, initially as a 12-month inquiry under the Hon. James Muirhead, QC. It was prompted by concern about the high number of Aboriginal deaths in custody and the inadequacy of explanations provided by authorities. More commissioners were appointed in 1988 to assist with the investigation of the 99 Aboriginal and Torres Strait Islander deaths in custody which occurred nationally between 1 January 1980 and 31 May 1989. The 32 deaths which occurred in WA in that period were investigated primarily by Commissioner Daniel O'Dea. In addition, Commissioner Pat Dodson worked closely with Commissioner O'Dea to investigate the underlying issues associated with WA deaths in custody. Two WA-based groups – the Aboriginal Issues Unit and the Aboriginal Advisory Working Group – assisted both commissioners in consulting with the Aboriginal community.

The final report, containing the 339 recommendations, was presented in April 1991. The Royal Commission also produced a number of other reports, among them Commissioner Dodson's *Regional Report of Inquiry into Underlying Issues in Western Australia*,[19] individual reports for each death investigated and a series of regional reports by the commissioners assigned to the various States.

## 2.2 Recommendation implementation

The RCIADIC recommendations focused mainly on procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information. Some recommendations were pertinent to a specific government department or agency at the Commonwealth and State level, while many were relevant to more than one department or agency. Commonwealth, State and Territory ministers

19 Dodson, P.L., *Regional Report of Inquiry into Underlying Issues in Western Australia*, Australian Government Publishing Service, Canberra, 1991.

with responsibility for responding to the RCIADIC report formed a joint ministerial forum and in March 1992, a response report outlined steps that would be undertaken to implement the recommendations.[20] In October 1992, the Commonwealth Government produced a booklet which outlined specific program allocations, responsible government agencies, actions which had been taken and planned actions to implement the responses to the recommendations.[21] In March 1994, the first annual report of the implementation of the Commonwealth Government responses to the RCIADIC[22] was tabled in Federal Parliament. State and Territory implementation reports were tabled in the respective parliaments and subsequently in the Federal Parliament.

## 2.3 Responsibility for monitoring implementation of the recommendations

Primary responsibility for monitoring the Commonwealth's implementation of the recommendations was allocated to the Aboriginal and Torres Strait Islander Commission (ATSIC). The RCIADIC Government Response Monitoring Unit was set up within ATSIC especially for this purpose. Its brief included: liaising with community organisations to ensure Aboriginal and Torres Strait Islander people had the opportunity to comment on progress; and consulting with ATSIC Regional Councils so that they could inform communities about progress and identify issues and concerns that needed to be addressed by governments.[23] Other groups, departments or agencies with some responsibility for coordinating implementation of recommendations and/or monitoring were:

*The Department of Prime Minister and Cabinet:* Responsible for convening a Standing Group of representatives of all departments and agencies with responsibility for implementation.

*The Standing Group of Commonwealth Representatives:* Consisted of officials responsible for co-ordinating contributions to reports on implementation undertaken

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20 Commonwealth, State and Territory Governments, *Aboriginal Deaths in Custody: Response by Governments to the Royal Commission*, Australian Government Publishing Service, Canberra, 1992.

21 Aboriginal and Torres Strait Islander Commission, Royal Commission Government Response Monitoring Unit, *Response to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Commonwealth-funded Initiatives*, Office of Public Affairs, Aboriginal and Torres Strait Islander Commission, Canberra, 1992.

22 Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government responses to the recommendations of the Royal Commission into Aboriginal Deaths in Custody: annual report.* Royal Commission Government Response Monitoring Unit, Aboriginal and Torres Strait Islander Commission, Canberra, 1994.

23 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, Australian Government Publishing Service, Canberra, 1994, pp13-14.

by their department/agency. They agreed to a schedule of responsibilities for assessing the policy effectiveness of implementing programs.

*State-based Aboriginal Justice Advisory Committees (AJAC):* Established in each State and Territory, in response to *Recommendations 1* and *2* of the RCIADIC report. They consisted of representatives of local/regional/non-urban committees who conveyed the views of Aboriginal people to the State committee. A National AJAC, made up of the chairs of the State AJACs, was established in October 1995.

*Deaths in Custody Watch Committees*: These were established in most States, in line with a RCIADIC recommendation. The WA Deaths in Custody Watch Committee (DICWC (WA)) is a community-based group unaligned to any political party. It was established to provide an alternative monitoring mechanism to public sector monitoring.

*Aboriginal Legal Service of WA (ALSWA):* Provided detailed examinations of both the WA Government and the Commonwealth Government initial implementation reports.[24]

## 2.4 Criticisms of the initial monitoring system

Following its tabling in March 1994, the first annual report of the implementation of the Commonwealth Government responses to the RCIADIC[25] was referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs for inquiry, along with the implementation reports of the State and Territory governments.[26] The Standing Committee's inquiry report,[27] tabled in December 1994, was critical of the monitoring. Many of the concerns raised related to the role and performance of ATSIC in monitoring and evaluation. The report noted that while ATSIC administrators regarded the implementation processes as working well, there was considerable criticism from Aboriginal and Torres Strait Islander communities, who complained that they had not received reports and updates of progress.

There was also concern that ATSIC was seen as a "postbox" for gathering responses by Commonwealth departments and agencies for inclusion in the annual implementation report, with no mechanism in place for scrutiny or independent critical analysis.[28] Annual implementation reports by all State and Territory governments were supposed

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24 Ibid, pp14-26.

25 Aboriginal and Torres Strait Islander Commission, *Implementation of the Commonwealth Government responses to the recommendations of the Royal Commission into Aboriginal Deaths in Custody: annual report.* Royal Commission Government Response Monitoring Unit, Aboriginal and Torres Strait Islander Commission, Canberra, 1994.

26 Apart from Victoria and Tasmania, which had not tabled their reports at the time of the inquiry.

27 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, Australian Government Publishing Service, Canberra, 1994.

28 Ibid, pp22-23.

to provide transparency and accountability of the implementation process – however the inquiry found evidence to suggest that departments and agencies were "glossing over deficiencies".[29] The Standing Committee was also concerned over the tardiness of some States in tabling annual implementation reports, seeing it as an indication of the lack of commitment by those governments to implement the recommendations and to Aboriginal and Torres Strait Islander affairs in general.[30]

Given these concerns, the Standing Committee inquiry recommended an independent monitoring and evaluation unit be set up within the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner (in the Human Rights and Equal Opportunity Commission), and operate for five years. The Government rejected this recommendation in its response to the Standing Committee's inquiry report,[31] regarding it as being "inconsistent" with the statutory role and responsibilities of the Commissioner.[32] It recommended that ATSIC retain responsibility for monitoring and evaluation on the understanding that it would "adopt a more rigorous assessment of the monitoring, evaluation and reporting of policy initiatives and programs carried out by responsible agencies".[33]

## 2.5 The state of play in 1996

By the time the Aboriginal and Torres Strait Islander Social Justice Commissioner, Michael Dodson, published his report *Indigenous Deaths in Custody* in October 1996, Australian governments claimed to have implemented the majority of Royal Commission recommendations. The Commissioner's report, prepared for ATSIC, examined the deaths of Aboriginal people in custody which had occurred since the end of RCIADIC investigations in May 1989. The circumstances of each death were examined to determine whether RCIADIC recommendations had been implemented. In a chapter devoted to accountability for implementation, the report claimed that "the reporting process was flawed from the outset, and has not resulted in accurate evaluations of progress in implementing recommendations".[34] Implementation by State and Commonwealth governments only went as far as reviewing current activities. However, departments should have been developing policies and programs, setting

29 Ibid.

30 Ibid, p6.

31 Commonwealth of Australia, *Justice under scrutiny : report recommendations and the Commonwealth Government's response.* Australian Government, Canberra, 1995.

32 Ibid, p7.

33 Ibid, p3.

34 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Deaths in Custody 1989 to 1996 (Chapter 11 – Summary).* Aboriginal and Torres Strait Islander Commission, Canberra, 1996. Available at: www.humanrights.gov.au/publications/indigenous-deaths-custody-3.

targets, allocating responsibility for implementation, ensuring adequate communication and training support, and establishing evaluation mechanisms.[35]

One of the problems identified was that the Royal Commission was a Commonwealth undertaking and the Government Response Monitoring Unit within ATSIC was only empowered to report on the activities of Commonwealth agencies. However, most of the recommendations were directed at State and Territory government departments and agencies. While all governments had agreed to regular reporting on implementation, they had taken "a 'public relations approach' to monitoring"[36] and assertions of compliance were made without any supporting evidence. The report also criticised the State and Territory reports for being hastily compiled, poorly organised, and lacking in independence – that is, departments responsible for implementing the recommendations prepared their own responses.

## 2.6 Monitoring in WA

In WA, implementation reports were compiled by the Aboriginal Affairs Department and issued in 1992, 1993, 1994, 1995 and 1997. Implementation reports were also released by the AJAC[37] and by the Aboriginal Justice Council in 1996[38] and in 1998.[39] ALSWA released reports addressing implementation in 1993, 1994 and 1996,[40] which questioned the Government's assertion that most recommendations had been implemented. ALSWA said that only eight per cent of 216 recommendations it analysed had been fully implemented, almost half (49%) had been partly implemented and 43% had not been implemented at all/to a satisfactory level.[41] DICWC(WA) released a report in 2000 which raised issues regarding the lack of complete implementation of RCIADIC

35 Ibid.

36 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Deaths in Custody 1989 to 1996 (Chapter 11 – Introduction – The reporting process).* Aboriginal and Torres Strait Islander Commission, Canberra, 1996. Available from: www.humanrights.gov.au/publications/indigenous-deaths-custody-3

37 Aboriginal Justice Advisory Committee, *Getting Strong on Justice: The 1994 Report of the Aboriginal Justice Advisory Committee on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, Aboriginal Affairs Department, Perth, 1994.

38 Aboriginal Justice Council, *Getting Stronger on Justice: 1995 Monitoring Report of the Aboriginal Justice Council on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody in Western Australia*. Aboriginal Affairs Department, Perth, 1995.

39 Aboriginal Justice Council, *Our Mob, Our Justice: Keeping the Vision Alive, Building Stronger Community: The 1998 Monitoring Report of the Aboriginal Justice Council on the Recommendations Implementation of the Royal Commission into Aboriginal Deaths in Custody in Western Australia.* Aboriginal Justice Council, Perth, 1998.

40 Aboriginal Legal Service of Western Australia, *Striving for Justice: Report to the Western Australian Government on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, Volume 1, Volume 2 and Volume 3.* Aboriginal Legal Service of Western Australia, Perth, 1993, 1994, 1996.

41 Garfoot, Pam, *Annotated Bibliography of RCIADIC implementation reports*, electronic resource, Australian Institute of Criminology, Canberra, 2002, Available at: www.aic.gov.au/research/dic/bibliography.html

recommendations,[42] and also in 2000 the Parliamentary Commissioner for Administrative Investigations released a report[43] which considered the extent to which recommendations had been implemented by the Ministry of Justice.

The most recent implementation report covering all WA government departments and agencies was coordinated by the Aboriginal Affairs Department in 2000 and released in June 2001.[44] The report reverts to a recommendation by recommendation reporting format rather than the outcomes-based reporting format, which had been adopted for a while but apparently made monitoring more difficult.[45] While there is no summary, perusal of the report reveals that the status of the vast majority of recommendations is "implemented" or "ongoing implementation".

In 2012 the Community Development and Justice Standing Committee of the 38th Parliament wrote to relevant departments and agencies requesting an update on implementation of recommendations pertinent to their department/agency. These are presented in Appendix 6. Recommendations relevant to police lock-ups are examined in more detail in the following chapters.

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42 Deaths in Custody Watch Committee (WA) Inc, *Report to the Committee Against Torture for Consideration Together with Australia's Reports to the Committee: Pursuant to Article 19 of the Convention Against Torture,* Deaths in Custody Watch Committee, Ascot, 2000.

43 Western Australia, Parliamentary Commissioner for Administrative Investigations, *Report on an Inquiry into Deaths in Prisons in Western Australia*, Parliamentary Commissioner for Administrative Investigations, Perth, 2000.

44 Aboriginal Affairs Department, *Government of Western Australia 2000 Implementation Report*, *Royal Commission into Aboriginal Deaths in Custody*, Government of Western Australia, Perth, June 2001.

45 Ibid, p1.

# Chapter 3

# Access to medical and legal services and other third parties

**This chapter examines access by detainees to medical and legal services and other third parties.**

> *… if we are going to lock people up, first, we want them to survive; and, secondly, they need to be treated humanely and appropriate medical services need to be provided where necessary.* – Peter Collins, ALSWA

## 3.1 Access to medical services

The WA Police Lock-up Manual directs that any detainee apparently in need of medical treatment is not to be admitted to a lock-up and that the officer with responsibility for care must obtain medical treatment for the detainee prior to admission. Similar provisions apply for detainees who are unconscious/semi-conscious or highly intoxicated. Detainees who are found to require medical treatment while in custody must be conveyed to a place for medical treatment.[46]

WA Police Policy AD1.8 also emphasises that in satisfying duty of care requirements, personnel are responsible for the provision of medical attention to any detainee who requires it. Police procedure requires that regular[47] cell checks occur to ensure safety and welfare of detainees, with more frequent checks and continued surveillance to be maintained for "at risk" individuals including those suffering from an emotional, psychological, mental or drug induced problem or exhibiting anxiety or medical issues. If there are any doubts concerning the health, welfare or medication for a detainee, WA Police personnel are directed to seek a medical opinion.[48]

### 3.1.1 Initial screening and timeliness of medical care

Upon admission to a lock-up, police officers carry out a screening process to assess the health and wellbeing of detainees. The *pro forma* assessment is not extensive and appears to rely on observations by the responsible police officer and self-reporting by the individual in custody.[49] This process has attracted some criticism for being

46 Western Australia Police, *Lockup Manual*, 14 June 2013, LP4.2 and LP4.2.1.

47 Refer to Chapter 4, section 4.3.2, p70, for discussion of what constitutes "regular".

48 Submission No. 8 from Western Australia Police, 13 September 2013, pp2, 4.

49 Ibid, p2 and attachment.

inadequate.[50] However, it has been acknowledged by ALSWA that more often than not this is a consequence of police officers not having the medical knowledge to comprehensively assess medical/mental health issues.[51] Similarly, research by the CCC has indicated that "Police staff are not clinically trained and therefore sometimes limited in their ability to adequately screen detainees".[52] Police in the Kimberley demonstrated this by highlighting the difficulties faced by officers in identifying and dealing with individuals with Foetal Alcohol Spectrum Disorder (FASD) since it often resembles other antisocial behaviours. The Committee heard that further support/training would be required by officers to handle such cases as a custodial response is probably not appropriate but is often the only option.[53]

Detainees can sometimes feign illness which makes it difficult for police officers lacking the necessary medical skills to determine whether or not symptoms are genuine.[54] Another factor which complicates the assessment process in some situations is that detainees themselves may withhold medical information. This may be because of a perceived risk that their medical information will be used for purposes other than lock-up screening.[55]

A possible consequence is that there may be an unwillingness to disclose information to a police officer. According to ALSWA, Aboriginal people in particular are wary of volunteering personal information to police, therefore making it difficult to construct a complete picture of medical issues which may have an impact on custodial care obligations.[56] Some detainees may also feel more comfortable discussing medical issues with a legal representative or other third party. Legal Aid WA highlighted situations where on entry to the lock-up detainees with medical issues had not divulged that they needed medical attention and later relied on the assistance of the duty lawyer to bring the matter to the attention of the relevant custodial officer.[57] According to the Criminal Lawyers' Association (CLA), this point also speaks to the importance of ensuring there is early access to legal services by detainees so that these

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50 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p3.

51 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p7.

52 Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p2.

53 Mr Mick Sutherland, Superintendent Kimberley Region, Mr Frank Audas, Inspector Kimberley District Office, and Mr Rod Boehm, Senior Sergeant, Western Australia Police, *Briefing*, 3 September 2013.

54 Submission No. 7 from WA Police Union, 15 August 2013, p10.

55 Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p2.

56 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p7.

57 Submission No. 1 from Legal Aid WA, 15 July 2013, p2.

issues can be identified.[58] The issue of legal access is covered in greater detail in section 3.2 below.

The timeliness of medical attention received by detainees has also been raised. The Committee heard anecdotal evidence in Narrogin of two instances in the past few years where individuals had been left waiting in a police van for some time without receiving medical attention for injuries.[59] DICWC(WA) Chair Mr Marc Newhouse similarly suggested that timeliness is a problem:

> *There is a constant issue with health problems, people complaining about what sounds like fairly serious respiratory and other conditions and having to wait long periods to see a medical practitioner, only to be given Panadol, and there is a raft of problems with that.*[60]

The Office of the Inspector of Custodial Services (OICS) highlighted interviews undertaken with Corrective Services and contractor staff where they heard anecdotal evidence of occasions police tried to sign over custody of individuals who appeared to require medical attention or were under the influence of substances and not medically stable at the time. The OICS indicated it is not possible to assess the actual extent of this problem.[61]

The WA Police Union (WAPU) suggested that the health and wellbeing of detainees is definitely a priority for personnel providing custodial care, however more often than not, "officers are providing medical assistance to detainees beyond their expertise, capabilities and responsibilities".[62] There are also issues around ease of access to medical professionals which further compounds issues around the timeliness of medical attention. Details provided by WAPU members indicated that while detainees in need of medical attention could be seen to at the lock-up or transported to hospital by St John Ambulance, on many occasions detainees had to be transported from the lock-up to the nearest hospital by police van. In remote areas, police often have no option but to transport detainees to hospital themselves.[63]

While access to medical staff is easier within the metropolitan area, it is still not comprehensive. The Perth Watchhouse has a nurse on duty each night of the week for an eight-hour shift and at other times can access a 24-hour Registered Nursing Service,

58 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p3.
59 Narrogin Aboriginal community members, *Briefing*, 9 August 2013.
60 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA) Inc., *Transcript of Evidence*, 12 June 2013, p4.
61 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p2.
62 Submission No. 7 from WA Police Union, 15 August 2013, p10.
63 Ibid.

although this can mean a wait of up to an hour.[64] The 24/7 on-call Registered Nursing Service is available to other stations within the metropolitan area,[65] however the WAPU has highlighted instances where requests for nursing assistance had been declined. In regional areas the availability of locum services available to attend lock-ups is variable[66] and is compounded by a lack of local services.[67]

Overall the evidence points to a cursory health assessment conducted on entry to the police lock-up which often relies on police personnel without extensive clinical expertise. It also points to insufficient access to medical professionals who could facilitate this process.

**Finding 1**

That police lock-up personnel often lack clinical expertise and/or ready access to medical professionals which can hamper the screening of detainees for medical issues and the timely provision of medical assistance where required.

### 3.1.2 Access to medication

RCIADIC *Recommendation 127* is captured by the WA Police policy for managing detainees requiring access to medication and is contained in the Lock-up Manual. This states that police must ensure any medication is administered to a detainee in accordance with the requirements of a dispensing physician.[68] However, the Committee has heard various concerns regarding detainees not receiving their medication:

- ALSWA has stated that "it is not uncommon for police to fail to administer prescribed medications for arrested persons suffering from a mental illness" which can have significant psychiatric ramifications if the required doses of antipsychotic medication or mood stabilisers are not administered for gaps of 12-48 hours.[69]
- Legal Aid WA highlighted occasions where "accused persons with psychiatric illnesses have indicated that they have not been permitted to collect medication or a prescription at the time of arrest. Some have also said that they have not been allowed to take medication while in the lock-up".[70]

64 Mr Steve Foster, A/Inspector Custodial Services Division; Mr Lawrence Panaia, A/Asst Commissioner; and Sergeant Vicki Fourie, Operations Supervisor Perth Watchhouse, Western Australia Police, *Briefing*, 16 August 2013.
65 Submission No. 8 from Western Australia Police, 13 September 2013, p2.
66 Submission No. 7 from WA Police Union, 15 August 2013, pp11, 38.
67 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p6.
68 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.2.
69 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p7.
70 Mr George Turnbull, Director of Legal Aid, Legal Aid Western Australia, *Transcript of Evidence*, 14 August 2013, p3.

- The CLA suggested that poor communication within some lock-ups may contribute to difficulties getting the medication physically from the front desk (if it is delivered by a family member) to the detainee, however it is acknowledged that police cannot simply administer the medication without first verifying that the prescription is valid.[71]

The latter point has been reinforced by the OICS, which noted that dispensing medications can be problematic for lock-up staff where prescribing information is not present on bottles and it is not possible to confirm what the medication is and who it is for. The OICS stresses that the frequency of cases where detainees require essential medication necessitates a mechanism to ensure "(i) that the medication is, indeed prescribed to that individual in custody; (ii) appropriate dosing is confirmed; (iii) access is facilitated; and (iv) records are kept".[72]

Provisions in the WA Police Lock-up Manual around the administration of medication specify that medication must be in the correct packaging and prescribed to the detainee with their details on the package and all dispensing must be correctly recorded.[73] It is clear to the Committee that while the RCIADIC recommendation around access to essential medications has been embedded within police policy and procedure, actual implementation is stymied by practical difficulties inherent in checking that medication is appropriate and as prescribed. Legal Aid WA has suggested that this process would be facilitated by lock-ups having access to a medical service (including a telephone service) that could confirm prescriptions and the appropriateness of the medication to the person in custody.[74] The broader issue of access to medical practitioners is examined further below at section 3.1.4.

**Finding 2**

That it is already Western Australia Police policy to ensure detainees in lock-ups have access to essential medications, however implementation can be hindered by practical difficulties in checking that medications are appropriate and as prescribed.

### 3.1.3 Access to mental health services

A significant subset of comments received by the Committee regarding access to medical services pertained to mental health. In the North West of the State, the Committee heard how people with serious mental health issues can receive poor treatment from police and there is limited understanding of how to deal with

71 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p8.

72 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p2.

73 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.2.

74 Submission No. 1 from Legal Aid WA, 15 July 2013, p2.

individuals with cognitive impairments such as FASD.[75] More concerning, the Committee heard of an incident in which a suicide threat by a mentally ill detainee was ignored because the detainee had previously made such a threat.

ALSWA feedback from regional offices indicated variability in the management of people with mental illness between police lock-ups with initial screening for mental illness incorporating assessment by a mental health nurse in Kununurra but not in South Hedland. In general it appeared that only individuals with overt symptoms of mental illness received psychiatric assistance which could be problematic if mental illness was undiagnosed at the time of arrest. ALSWA also suggested that much of this problem could stem from police not having the necessary skills to identify mental health problems:

> *…police often mishandle situations where the alleged offender has mental health problems. This may be because police are not appropriately trained to identify mental health problems, or they are not appropriately trained to manage people suffering from mental illness. Throughout Western Australia, this issue is exacerbated by the lack of facilities and services for people with mental illness outside the criminal justice system. Against this backdrop, it is easy for police custody to become the default solution.*[76]

The WAPU indicated that a lack of access to mental health providers had been noted by several of their members as being of particular concern. Views included police lock-ups not being the most appropriate place for people with mental health problems and better access being required to medical facilities and/or mental health professionals to assist with detainees with mental health problems.[77] The WAPU emphasised that "access to mental health educators, assessors and amenities are becoming increasingly necessary in the operation of a custodial facility".[78]

The Chief Magistrate, Mr Steven Heath, also pointed to the need for more interaction between mental health services and the police and encouraged a greater emphasis on diversion, even at the arrest stage. As police are usually the first responders to situations, it was the Chief Magistrate's view that it is easy for mental health incidents to escalate to a charge and arrest but that the lock-up is not appropriate for people with mental health problems. Further:

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75 Mr Daryl Henry, Social and Emotional Wellbeing Team Leader, Yura Yungi Health Service; Ms Cobina Crawford, Manager Youth and Community Development, Shire of Halls Creek; Mr Jake Hay, Youth Services Coordinator, Shire of Halls Creek; and Mr Bernie Lafferty, Senior Youth Justice Officer, Corrective Services, *Briefing*, 4 September 2013.

76 Submission No. 2 from Aboriginal Legal Service of Western Australia, July 2013, p6.

77 Submission No. 7 from WA Police Union, 15 August 2013, p13.

78 Ibid, p40.

> *… if they do get to the lock-up, there really needs to be an immediate assessment situation, because custodial officers are not the ones who should be looking after people with mental illness …. Really, once it is within the court environment, we have probably missed a lot of opportunities to take people away from the criminal law system and put them into health care.*[79]

The WA Police are confident that RCIADIC *Recommendations 122 to 167* relating to custodial health and safety have been achieved[80] and the Committee concurs that the essence of the recommendations are now reflected in the Lock-up Manual and other policies/procedures. It is arguable that while the will exists to comply with RCIADIC recommendations, sometimes resources, training and health professionals are not available to implement these procedures. The evidence suggests that there is still scope for improvement to health and safety practices in police lock-ups as far as this relates to detainee access to medical services, including mental health services.

**Finding 3**

That scope exists for improving practices in police lock-ups to ensure timely and appropriate access by detainees to medical services including mental health services. The extent to which this can be achieved is dependent on a commitment to provide the necessary resources.

### 3.1.4 Potential improvements

Underpinning all the issues raised around detainee access to medical services in lock-ups are suggestions that police lack sufficient clinical knowledge and/or access to medical expertise. The WAPU refers to inadequate in-service training with respect to identifying persons at risk or in distress and officers with custodial responsibilities should receive regular and rigorous training in this regard.[81] ALSWA also suggests there is a "clear need for WA Police to strengthen police training in the identification and management of people suffering from a mental illness".[82]

That said, the WAPU concedes that at the end of the day, police officers are not medical professionals so there is a limit to what can be achieved through additional training. A critical trade-off also exists for police in a custodial setting insomuch as responding to medical issues more often than not means removal from core duties:

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79 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p10.

80 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to the Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p70.

81 Submission No. 7 from WA Police Union, 15 August 2013, pp26-27.

82 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p7.

> *The frequency with which Officers take detainees to medical facilities is often withholding them from providing a continued service to the whole of the community.* [Police] *deal with detainees who experience an abundance of medical situations, many of which are due in part to substance abuse, mental health issues or age. Police Officers and Auxiliary Officers are not medical practitioners or nurses or health providers and cannot possibly be trained to recognise every single medical condition.*[83]

There is general agreement that police cannot be criticised for lacking sufficient clinical knowledge, rather there is a need for specially trained medical professionals:[84]

> *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.*[85]

It has been suggested that greater medical support and/or more culturally appropriate medical services would assist in the screening and treatment of Aboriginal detainees.[86] This is particularly important for Aboriginal people who are more likely than the general population to be suffering from more than one chronic medical condition.[87] The Committee is aware that the Lock-up Manual already specifies that the expertise of the Aboriginal Medical Service for Aboriginal detainees should be utilised where this service is available.[88] ALSWA suggests that Aboriginal health workers should be used in lock-ups to assist with screening to ensure the right information is captured to guide medical decisions down the track, and where Aboriginal health workers are not available, elders in the local community could possibly help in this regard.[89]

In terms of overall increased medical support, the WAPU favours the permanent employment of medical practitioners at the Perth Watchhouse and other major centres outside the metropolitan area, with at least one doctor to be stationed at the Perth

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83 Submission No. 7 from WA Police Union, 15 August 2013, p38.

84 Also Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p3; and Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p10.

85 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p7.

86 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p7.

87 Australian Bureau of Statistics, *Selected Chronic Conditions Among Aboriginal and Torres Strait Islander Peoples*, Australian Social Trends, Cat. 4102.0, Canberra, 2007, Available from: www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5AB12BE9F12ABBC7CA25732C002082BD. Accessed on 13 November 2013.

88 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.4.

89 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p7.

Watchhouse 24 hours a day, seven days a week. A doctor would be able to provide medical assistance when necessary and certify that a detainee who presents with medical concerns is indeed well enough to be received into the lock-up. A 24/7 on-call medical practitioner or nursing service is recommended for all other locations, especially where St John Ambulance may be unable to respond quickly.[90]

Other benefits that have been highlighted in relation to medical professionals being available at lock-ups include better handling of individuals who come into the lock-up under the influence of alcohol[91] and/or presenting as intoxicated when other illnesses (such as head injury or diabetes) may be responsible,[92] and the more efficient administration of medication to detainees.[93][94]

The WAPU also supports lock-ups having access to 24/7 mental health care including a recommendation that Perth Watchhouse is staffed with a mental health professional (counsellor/psychologist or mental health nurse) to ensure accurate assessments of detainees before and during detention.[95] This is echoed by ALSWA which considers it important that every lock-up has access to an on-call mental health nurse for the assessment and treatment of any person in custody demonstrating mental health problems. Further, that the process should be standardised across police custodial settings across the State for "identifying mental health issues … and for referring people to mental health professionals for further assessment and treatment, where appropriate".[96]

An increased medical presence at lock-ups would of course have resourcing implications:

> *If one had a doctor and a psychiatrist standing by the lock-up door, that would be perfect. You cannot have that. The question is what is acceptable having regard to necessary scarcity of resources.*[97]

The Police Commissioner, Dr Karl O'Callaghan, indicated that efforts are being made to provide 24/7 medical coverage at the Perth Watchhouse by at least a qualified nurse, however cost is a limiting factor in rolling this out to other lock-ups. In the short-term, the Police Commissioner considered it unlikely that medical professionals could be

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90 Submission No. 7 from WA Police Union, 15 August 2013, p38.

91 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p4.

92 Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p3.

93 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 11 September 2013, p6.

94 Mr Andrew Robson, Appeals Team Leader, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p6.

95 Submission No. 7 from WA Police Union, 15 August 2013, p40.

96 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p7.

97 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 7 August 2013, p13.

employed to work at regional lock-ups because the necessary throughput is not there.[98] With respect to access to mental health professionals, the Police Commissioner indicated that WA Police are giving consideration to whether to employ mental health workers and have them on 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.*[99]

The Committee views it as critical that police lock-ups have ready access to professional medical assistance including mental health expertise. While it is obviously not possible for medical personnel to be present at every site, the differences around the State in terms of access to locum services outside the metropolitan region highlights the need for improved and more comprehensive coverage to mitigate risks for lock-ups, particularly those in regional and remote areas. As such the Committee regards it as a matter of high priority that the WA Police implements 24/7 medical coverage at the Perth Watchhouse and improves arrangements for on-call medical assistance (including mental health) across all lock-ups.

**Recommendation 1**

That Western Australia Police provides 24-hour, 7 day a week medical coverage at the Perth Watchhouse and improves arrangements for on-call medical assistance (including mental health) at all lock-ups.

As highlighted by the Chief Magistrate, a focus on diverting individuals with mental health problems at the arrest stage would also help to ensure they are not detained in lock-ups and instead receive the appropriate care. The Committee is aware that this issue already features in the Mental Health Commission's strategic policy which promotes the idea of "Police and mental health teams working together to divert people with mental health problems and/or mental illness from being charged at the time of incidents".[100]

In a comprehensive review of referral and discharge practices in public mental health facilities/services conducted last year, Professor Bryant Stokes highlighted the over-representation of mentally ill individuals at all levels in the criminal justice system and

98 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, pp7-8.

99 Ibid, p14.

100 Mental Health Commission, *Mental Health 2020: Making it Personal and Everybody's Business*, Government of Western Australia, 2011, p39.

identified the need for a more "cohesive approach between the police and the mental health clinician". Professor Stokes suggested that "it would be sensible to commence the process with skilled and dedicated mental health response teams north and south of the river to assist police when requested. These teams could also liaise regularly with the police and provide mental health education to both police and ambulance services".[101] A 10-year Mental Health Services Plan is currently being prepared by the State Government to address the implementation of recommendations in the Stokes Review and is due for release in 2014.[102] The Committee would encourage priority to be given to mechanisms to divert people with mental health problems and/or mental illness from arrest and transfer to lock-ups.[103]

**Recommendation 2**

That the Minister for Police and Minister for Mental Health implement mechanisms for diverting people with mental health problems and/or mental illness from arrest and transfer to lock-ups.

## 3.2 Access to legal services

The *Criminal Investigation Act 2006* outlines the rights of arrested suspects including an entitlement to a "reasonable opportunity to communicate or to attempt to communicate with a legal practitioner".[104] WA Police advises that policies and procedures have been aligned to comply with this and other legislation including the *Young Offenders Act 1994* and *Criminal Investigation (Identifying People) Act 2002*.[105]

The Lock-up Manual states that on admission to a lock-up, a detainee is permitted access to a telephone to contact a solicitor except if there are grounds to believe the detainee may hinder a current police investigation (for example by attempting to warn an accomplice). The Lock-up Manual also instructs that communications between a detainee and solicitor should be private while having due regard to security.[106]

In relation to Aboriginal people, RCIADIC *Recommendations 223 and 224* require protocols or appropriate steps to be put in place for Aboriginal Legal Services (ALS) to be notified when Aboriginal people are arrested or detained. WA Police considers the

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101 Department of Health/Mental Health Commission, *Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia*, report prepared by Professor Bryant Stokes AM, Government of Western Australia, Perth, July 2012, pp111, 126-127.

102 Hon Helen Morton MLC, Minister for Mental Health, *Legislative Council Estimates Transcript of Evidence*, 25 September 2013, p2.

103 Note that at the time of the inquiry the *Mental Health Bill 2013* was before Parliament. Police policy may require amendment once the bill has been passed.

104 Section 138(2)(c) *Criminal Investigation Act 2006* (Western Australia).

105 Submission No. 8 from Western Australia Police, 13 September 2013, p3.

106 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.5 and LP-14.8.

recommendations to have been implemented and cites the Police/ALS Detainee Advice Accord which requires, with the approval of the detainee, that whenever an Aboriginal person is charged, the police officer preferring the charge must advise the local office of the ALS.

Further, all Aboriginal persons detained and charged must be asked if they wish ALS to be notified of their details.[107] These provisions are reflected in the Lock-up Manual.[108] The Lock-up Manual also specifies that police are to facilitate the visit to any lock-up by ALS officers "during reasonable hours" and any advertising material received from the ALS to assist Aboriginal people to contact the service for assistance must be displayed in the lock-up or station.[109]

The Police Manual directs the arresting officer and supervising member to ensure the ALS is notified on arrest of an Aboriginal person in accordance with lock-up management procedures.[110] The WAPU advised that in survey responses received from more than 400 of its members, the majority (85.7%) notified ALS when an Aboriginal person was detained and charged, with the detainee's approval. In general this took the form of faxing the required forms to the ALS district office and a phone call if notification was required outside business hours.[111]

### 3.2.1 Notification of legal representatives and attendance at police lock-ups

While it is clear that policies and procedures are in place to facilitate access to legal services by detainees, the Committee has heard evidence that this does not always occur in a timely way. Issues appear to relate to the process and timeliness around initial contact being made with a legal representative, and the attendance of legal representatives at lock-ups.

In relation to notification of legal representatives, ALSWA has indicated that on the whole police will make every effort to ensure Aboriginal detainees contact ALSWA. However, practices have been observed to vary across regional lock-ups. If the local ALSWA representative is not available, some lock-up staff will make alternative enquiries whereas in other locations the detainee will not be provided with any further opportunities to access legal advice.

While ALSWA comments it is not aware of any examples of police refusing people in custody the right to access legal advice, "client complaints indicate that police officers do not always make a reasonable effort to help people speak with a lawyer". ALSWA

107 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, Letter to Committee of the 38th Parliament, 12 November 2012, p126.
108 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-2.1.
109 Ibid, LP-14.9.
110 Submission No. 8 from Western Australia Police, 13 September 2013, p3.
111 Submission No. 7 from WA Police Union, 15 August 2013, pp11-12.

cited Bunbury as an example where few phone calls were received during office hours despite significant representation of local Aboriginal people. In instances such as this ALSWA often relies on notification from family members that an Aboriginal person is in detention. ALSWA also commented that overall, the police process of sending a fax to the local ALSWA office is meaningless given that faxes are often sent after hours and the service is not resourced 24 hours a day.[112]

After-hours notification of ALSWA has been cited by the WAPU as a source of frustration for its members who say that phone calls or faxes are rarely acknowledged – a situation that did not seem to vary between regional and metropolitan centres. The WAPU highlighted a particular response from regional WA where lock-up staff were limited to faxing ALSWA due to the absence of after-hours contact numbers. Even if contact was made, the standard ALSWA advice to the detainee would be to not make any comment to police until matters could be dealt with in the morning.[113]

ALSWA has defended its position in relation to after-hours access, noting that the Federal funding it receives is insufficient to enable operation outside business hours and there is no State funding. Implementing such a service would place an unacceptable impost on its staff. Limited staffing resources meant that any staff manning a 24/7 phone line would still have to attend court the following day and handle the usual extensive and complex case-load. ALSWA also stands by its advice to clients not to participate in a recorded police interview as it is standard advice to inform the client of their right to silence.[114] Further, ALSWA will not attend lock-ups to assist clients in recorded interviews due to potential conflicts of interest should the admissibility of the interview be called into question in court. If such a case arose and an ALS lawyer had been present in the room, there was a risk they could be called as part of the prosecution case.[115]

Of greater concern to the Committee are reports that individuals detained in lock-ups may not be getting the opportunity to seek immediate access to legal services. Legal Aid WA refers to individuals occasionally indicating that they have not had the opportunity to contact a lawyer after arrest.[116]

The CLA has also suggested there are instances where rights are deliberately suspended, particularly with respect to more serious offences. In these circumstances detainees could be kept for several hours at the police station during which time police would instruct them of their rights but for so-called “operational” reasons would not

112 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, pp2, 5.
113 Submission No. 7 from WA Police Union, 15 August 2013, p12.
114 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, pp2-3.
115 Ibid, p5.
116 Submission No. 1 from Legal Aid Western Australia, 15 July 2013, p2.

permit the detainee to contact a lawyer or other third party until much later. The CLA acknowledged that police are faced with a conflict, on the one hand wanting to comply with the *Criminal Investigation Act 2006* in terms of legal access but on the other hand wanting to progress investigative inquiries and interview a person quickly with a view to extracting a confession.[117] According to CLA President Ms Linda Black:

> *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 …. 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.*[118]

The CLA considered that delays to detainee access to legal services may even be exacerbated by the use of video link technology to courts. If a detainee did not get to speak to a lawyer until just before a court appearance and there was no court appearance because of a video link-up, that opportunity was lost which meant a detainee may not be able to seek legal advice until after the first court appearance.[119] The CLA commented that there may be serious consequences arising from the suspension of a person's right to immediate legal access, including non-disclosure of medical issues if the detainee did not wish to divulge this information to the police (see section 3.1.1). The first 12 hours in detention were also a critical time when people were at their most vulnerable and a lack of legal and/or third party access increased risk factors.[120]

In relation to legal representatives accessing their clients at lock-ups, the CLA has reported that this too can have its challenges:

> *The practical reality is that it is impossible to get hold of* [the accused] *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 run around …. Being able to get hold of someone at a police station, if it is a serious offence particularly, is near impossible.*[121]

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117 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p2.
118 Ibid, pp3-4.
119 Ibid, p10.
120 Ibid, p8.
121 Ibid, pp2-3.

ALSWA has commented that while some police officers are cooperative and accommodating in relation to lawyer requests to speak to clients, there are other instances where ALS lawyers may be given the run around when they contact the station. ALSWA reinforces the CLA observation that the more serious the charge, "the greater the likelihood that something unusual might transpire".[122] Both the WA Police and WAPU have indicated they are not aware of such occurrences. If it did happen it would be unfair for any detainee in such a circumstance[123] and may be a breach of the *Criminal Investigation Act 2006*.[124]

The OICS has observed that legal representatives are not allowed to speak to clients in some lock-ups, with lawyers advised to wait until detainees are at the courthouse before speaking with them. The OICS has concerns that this restricts a detainee's right to meaningful legal representation and notes that there does not appear to be a standard practice across lock-ups regarding legal access. Rather this appeared to be at the discretion of the officer in charge of the lock-up.[125]

The Police Commissioner indicated that there could be difficulties if lawyers wished to sit with clients at the police station before they were transported to court in the morning as there could be a high through-flow of prisoners to court and limited police resources for this purpose, as well as few suitable meeting places. In some remote stations, legal representatives may not be available to attend the lock-up out of hours so access would be permitted "when it is practicable at the earliest opportunity".[126]

ALSWA notes that in some lock-ups such as Port Hedland, Karratha and Newman, they were commonly advised that there were no officers available to arrange a meeting between lawyers and detainees.[127] A similar point was made by the Chief Magistrate who suggested that lack of police resources to supervise detainee/legal representative meetings at the lock-up may be a factor. Another consequence of detainees not meeting with their lawyers until they reached the court was that it could delay court proceedings, especially if a lawyer must first receive instructions from a series of clients before the court commenced.[128] That said, the Chief Magistrate also indicated that the reality in many remote areas was that often there were not lawyers available so there was little value in detainees asking to speak to a lawyer immediately when the first

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122 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p13.

123 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 11 September 2013, p13.

124 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p11.

125 Submission No. 3 from Office of Custodial Services, 6 August 2013, p3.

126 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, pp11, 18.

127 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p4.

128 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p5.

opportunity to see the duty lawyer or ALS lawyer was when the magistrate arrived in town on circuit.[129]

**Finding 4**

That access by detainees to legal services does not always occur in a timely way which can have serious consequences if delays are significant.

### 3.2.2 Confidentiality

Another commonly cited factor limiting detainee access to legal services relates to inadequate facilities at lock-ups for meetings to take place. While lock-up design is examined in greater detail in Chapter 4, some of the confidentiality concerns are canvassed here and can be summarised as follows:

- The Chief Magistrate referred to physical problems with lock-ups, many of which were built before any real thought was given to spaces suitable for accommodating meetings between detainees and their legal representatives.[130]
- The OICS has stated that a lack of purpose-built facilities means that conversations between detainees and their lawyers sometimes occur in hallways or through the cell door in full earshot of other detainees and Police.[131]
- Legal Aid WA highlighted a lack of confidential settings for lawyers to receive instructions with the only option at some lock-ups being for discussions with detainees to occur in the lock-up cell or through the bars in the presence of other detainees, or in a room supervised by a police officer. Similar privacy concerns were raised around telephone calls. Legal Aid WA indicated that a lack of confidentiality could have serious consequences in small communities where payback feuding was possible.[132]
- The CLA commented on lawyer/client phone calls occurring on WA Police mobile phones or a phone at the police station, compromising the provision of any meaningful assistance or advice as the conversation was entirely overheard.[133]
- ALSWA in the Kimberley observed that recent improvements had been made at the Kununurra lock-up so there was now a window in the corridor through which detainees could speak to legal representatives. Previously these

129 Ibid, p11.

130 Ibid, p5.

131 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p3.

132 Mr George Turnbull, Director of Legal Aid, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, pp2-3.

133 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p3.

conversations had to occur through two layers of security mesh in the yard in the presence of other detainees.[134]

- ALSWA has suggested that every lock-up requires soundproof and private interview rooms available for use at any time so that detainees may meet privately with their legal representatives and view and exchange any necessary documentation.[135]

The Committee considers the above circumstances an erosion of legal professional privilege.

**Finding 5**

That poor lock-up design can impede detainee access to legal services due to a lack of suitable and confidential meeting spaces.

### 3.2.3 Cultural factors

Cultural factors also play a role in access to legal services by Aboriginal detainees. According to ALSWA, when faced with authority figures Aboriginal people in custody naturally acceded to requests and were unlikely to press the issue of legal access. Aboriginal people were in a particularly vulnerable situation:

> *The other obvious point is that so many Aboriginal clients who are taken into police custody are affected by alcohol or drugs, suffer from mental illness or cognitive impairment, are illiterate and/or innumerate, and are unworldly and unsophisticated. They are inherently disadvantaged in that sort of setting.*[136]

This vulnerability may be further compounded by communication difficulties (explored further in Chapter 3.3 in the context of detainee access to third parties). The result was that police may cursorily discharge their obligation under s138(2)(c) of the *Criminal Investigation Act 2006* by informing the detainee of their right to communicate with a lawyer and providing a phone and ALSWA contact details, but if contact could not be made and an Aboriginal detainee did not press the matter, they may yet proceed to a police interview without having first sought legal advice.[137]

For the Committee this highlights a particular problem with current provisions in the *Criminal Investigation Act 2006*. While the right for a detainee to access legal services is embedded in the legislation, the Act specifies only that a person should be informed of,

134 Mr Glen Dooley, Aboriginal Legal Service of WA (Kununurra), *Briefing*, 3 September 2013.

135 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p4.

136 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p3.

137 Ibid.

and afforded their rights "as soon as practicable" after arrest.[138] There is nothing to compel access to legal services with any immediacy following arrest and the threshold for notification of, and communication with, legal representatives is relatively low in order to satisfy the Act's requirements. This can delay any meaningful legal access to detainees and pose unacceptable risks to individuals who are in a vulnerable situation.

**Finding 6**

That although the *Criminal Investigation Act 2006* provides for an arrested person to be informed of and afforded the right to legal access, there is no requirement for this to occur with any immediacy following arrest which can pose unacceptable risks for individuals detained in lock-ups.

### 3.2.4 Improving detainee access to legal services

The Committee acknowledges that the RCIADIC recommendations around detainee access to legal services are reflected in police policies and that these also align with current legislative requirements under the *Criminal Investigation Act 2006*. It is clear however that there are some real and significant impediments to detainees accessing legal services in a timely way on the basis of inadequate lock-up design, cultural factors and/or procedural failings. The latter appears to be influenced by resourcing limitations, particularly in relation to ALSWA, but also the lack of any clear legislative requirement for immediate and/or mandatory notification of legal services that a person has been taken into custody.

Legal Aid WA suggests that police training needs to reinforce legal access for persons in custody, particularly if they are Aboriginal, and that detainees should receive legal advice before any criminal investigation proceeded and before being interviewed.[139]

The CLA and ALSWA support a firmer approach in the form of amending the *Criminal Investigation Act 2006* to reinforce the obligation on police to facilitate legal access early in the process.[140] ALSWA considers that the *Criminal Investigation Act 2006* should be amended to make it "mandatory for a person to speak to a lawyer prior to an interview proceeding".[141] ALSWA cites New South Wales as a good example where it is mandatory for police to ring the ALS in that State every time an Aboriginal person is arrested and taken into custody. According to ALSWA there were multiple benefits to be derived from a mandatory custody notification, including: upholding the rights of Aboriginal people, ensuring evidence obtained by police is lawfully obtained and is not

138 Section 138(3) *Criminal Investigation Act 2006* (WA).

139 Mr Andrew Robson, Appeals Team Leader, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p7.

140 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, pp4-5.

141 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p4.

excluded by judicial officers once it reaches court, providing the opportunity for Aboriginal people to benefit from a robust defence which may keep them out of custody, and ensuring police receive vital information about a detainee's medical condition that might not otherwise be forthcoming.[142]

ALSWA has emphasised that a move to mandatory custody notification would need to be appropriately resourced as in New South Wales where the ALS employed full-time legal staff to answer the telephone. The organisation in WA was limited in terms of the services it could provide after-hours with current resourcing permitting only nine of its 14 offices across the State to be staffed by lawyers. ALSWA was also at a disadvantage as it could not access Legal Aid funding, and its level of federal funding was seen to be at risk.[143] While ALSWA concedes that Aboriginal people can also choose to be represented by Legal Aid WA, it claims that in some rural and remote areas ALSWA is the only legal service provider and/or represents the majority of Aboriginal clients.[144] The case for ensuring ALSWA is appropriately funded has been summarised by ALSWA Director of Legal Services Mr Peter Collins:

> *We are passionately of the view that we ought to remain as stand-alone, completely independent legal services …. We are of the view that we are unique in that we can provide a culturally appropriate legal service which Legal Aid cannot. We are wonderfully assisted by Aboriginal court officers … who can provide cultural input, and we now employ Aboriginal lawyers as well, which provide that Aboriginal perspective into representation.*[145]

Legal Aid WA concurs that an organisation such as ALSWA, with proper funding and administration, is best placed to represent Aboriginal clients.[146] More broadly, the will appears to exist among legal practitioners to improve out of hours legal services. Legal Aid WA advised that it had received funding to provide duty lawyer assistance after hours and understands that the CLA may be moving towards listing information on its website of lawyers prepared to take after-hours calls and provide advice on a *pro bono* basis.[147]

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142 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, pp5-6.

143 As noted in Nadin, M., 'Mundine picks fight with Hockey over Aboriginal legal aid cuts', *The Australian*, 15 October 2013, p6, prior to the Federal election the Coalition announced plans to reduce Indigenous Legal Aid funding by $42m.

144 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, pp4, 11-12.

145 Ibid, p12.

146 Mr George Turnbull, Director of Legal Aid, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p4.

147 Ibid, p2.

ALSWA cites New South Wales as an example of where mandatory custody notification operates well. The *Law Enforcement (Powers and Responsibilities) Regulation 2005* in that State requires that unless the custody manager is aware that an Aboriginal detainee has already arranged for a legal practitioner to be present during questioning, they must immediately inform the detainee that a representative of the ALS will be notified of their detention and notify such a representative accordingly.[148]

The Committee is aware also that in New South Wales, legislation is much more prescriptive regarding the rights of detainees to communicate with a legal practitioner. The *Law Enforcement (Powers and Responsibilities) Act 2002* specifies that before a detained person participates in any investigative procedure, they may communicate, or attempt to communicate, with a lawyer of their choice. It is the role of the custody manager to enable the detainee to do so as soon as practicable in circumstances where, as far as possible, the communication will not be overheard. There is also a requirement for the custody manager to defer any investigative procedure for up to two hours so that the detainee may make any such communication and allow for a legal practitioner to attend the place of detention if requested to do so.[149]

Greater legislative prescription around detainee access to legal services would be one mechanism for ensuring that legal access is timely. Another might be to amend existing legislation so that any evidence obtained in circumstances where a detainee has been unreasonably denied access to legal advice is automatically inadmissible. While under existing law the court has discretion to admit or exclude evidence, the sanction to exclude has rarely been applied.[150]

The Police Commissioner agreed with the principle of incorporating a provision around inadmissibility of evidence but stated there would need to be a test of reasonableness as to whether legal access was practicable at the time. In circumstances where it could be shown that legal access was denied to a detainee in a persistent and deliberate manner, an inadmissibility provision would be warranted.[151] The Chief Magistrate also supported the principle of a sanction where it could be demonstrated that a clear denial of rights had occurred. That said, the Chief Magistrate was also cautious about an absolute rule, suggesting that there should be flexibility to exclude instances where legal access might not have occurred due to a “necessity of factors”.[152]

148 Regulation 33 *Law Enforcement (Powers and Responsibilities) Regulation 2005* (New South Wales).

149 Section 123 *Law Enforcement (Powers and Responsibilities) Act 2002* (New South Wales).

150 Ms Linda Black, President, Criminal Lawyers’ Association, *Transcript of Evidence*, 11 September 2013, p4.

151 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, pp12, 18.

152 Mr Steven Heath, Chief Magistrate, Magistrates Court of WA, *Transcript of Evidence*, 25 September 2013, p5.

In the Committee's opinion it is critical detainees in lock-ups are able to access legal services in a timely way and ideally before any investigative processes commence. The Committee believes that legislative provisions are necessary to reinforce a more timely process. Further, the *Criminal Investigation Act 2006* should be amended to require police to assist detainees to access legal services as soon as possible following arrest. This amendment should enact a sanction to exclude evidence where it can be demonstrated this right has been deliberately suspended beyond any reasonable interpretation of practicability. The Committee considers that a legislative requirement for immediate notification of, and access to, legal services is especially important for Aboriginal detainees but recognises that for this to work effectively, there would need to be adequate resourcing of ALSWA to enable ready contact, especially outside business hours.

**Finding 7**

That legislative amendment is needed to ensure that detainees in lock-ups receive timely access to legal services, and that Aboriginal detainees in particular are afforded immediate notification of, and access to, legal services.

**Finding 8**

That any form of mandatory custody notification relating to Aboriginal people needs to be supported by State Government contribution to the Aboriginal Legal Service of WA.

**Finding 9**

That a legislated sanction is needed to render evidence inadmissible in court proceedings where it can be demonstrated that a detainee's right to legal access has been deliberately suspended.

**Recommendation 3**

That the Minister for Police initiates amendments to the *Criminal Investigation Act 2006* to:

- Ensure that detainees in lock-ups receive timely access to legal services, and in particular ensure there is immediate notification of, and access to, legal services by Aboriginal detainees; and
- Make evidence inadmissible in proceedings in court where a detainee's right to legal access has been deliberately suspended.

**Recommendation 4**

That, given the unmet demand, the State Government supplements the funding that the Aboriginal Legal Service of WA currently receives from the Federal Government.

## 3.3 Access to third parties

In relation to access to third parties two main themes emerge from evidence to the Committee. These pertain to access by detainees to family members (particularly in the context of juveniles) and access to interpreters.

### 3.3.1 Access to family members and other supports

RCIADIC *Recommendation 146* states that police should "take all reasonable steps to both encourage and facilitate the visits by family and friends of persons in Police custody". WA Police considers this recommendation to have been implemented and cites utilisation of the Aboriginal Visitors Scheme (where available) in instances where police consider a detainee needs family interaction but family members are not available.[153]

The Lock-up Manual makes provisions for third party access along similar lines to legal access, namely that on admission to the lock-up a detainee will be permitted to telephone a solicitor "and some other person" except if police consider there to be reasonable grounds that the telephone call will hinder a current police investigation.[154]

Despite this, according to Legal Aid WA individuals occasionally indicated they had not had the opportunity to contact a family member or friend to advise of their whereabouts.[155] DICWC(WA) had also experienced difficulties when contacting the lock-up to seek information about the welfare of a detainee on behalf of family members, receiving only limited or no information.[156] The latter is not unusual, however, as there are specific procedures to be followed when releasing detainee information. According to the Lock-up Manual, only when a caller's identity and relationship with the detainee is confirmed, as well as a genuine need for information, may lock-up personnel confirm whether or not the person in question is currently in police custody. If the caller is verified to be the responsible person for a juvenile in custody, other information may be released – however this must be in accordance with the *Young Offenders Act 1994*.[157]

Conversely, the Committee heard that it was sometimes the case that no responsible adult could be found when a juvenile was in custody, prolonging the time spent in the lock-up.

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153 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, Letter to Committee of the 38th Parliament, 12 November 2012, p87.

154 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.5.

155 Submission No. 1 from Legal Aid WA, 15 July 2013, p2.

156 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee, *Transcript of Evidence*, 12 June 2013, p11.

157 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-1.4.

The Committee also heard evidence that visiting rules and restrictions vary widely between lock-ups. ALSWA has observed that visits are not permitted in the Geraldton lock-up, only visits to juveniles appear to be facilitated in Kalgoorlie and Perth, in South Hedland non-official visits are allowed in exceptional circumstances and in Kununurra, there is a lack of access and poor visiting facilities.[158] The OICS confirmed the paucity of visiting facilities in Kununurra with visitors having to sit in the open at the back of the lock-up and speak to detainees through a fence abutting the exercise yard.[159]

In Halls Creek the Committee heard that until recently, it was difficult for any third parties to access detainees in lock-ups apart from lawyers, and privacy remained a significant issue when conducting meetings.[160] The OICS has similarly highlighted a lack of consistent policy across lock-ups regarding access by family members and has suggested a lack of proper facilities as the likely cause as well as inadequate staff to supervise such visits.[161] These same factors were also significant in limiting access by detainees to legal services (see section 3.2).

In response to the RCIADIC that was underway at the time and issues around the particular vulnerability of Aboriginal people in custody, an Aboriginal Visitors Scheme was established first as a pilot program in Western Australia in 1988 and then expanded. The Aboriginal Visitors Scheme employs Aboriginal people to provide local support to Aboriginal prisoners and detainees in the form of culturally appropriate counselling and ensuring that Aboriginal detainees are treated fairly and humanely while in detention.[162] The scheme covers prisons, juvenile detention and police lock-ups and is now managed by the Department of Corrective Services.[163]

WA Police appear to have extensive policy provisions in place to facilitate visits by the Aboriginal Visitors Scheme to lock-ups. The Lock-up Manual requires lock-up staff to assist and facilitate the interaction between Aboriginal detainees and visitors under the scheme. Attendance of approved Aboriginal visitors may be requested at any time and visitors may visit a lock-up at “any reasonable time during the visitors rostered hours of service provided such visits are within the duty hours of police staff at the lock-up”. No notice of a visit is required provided this does not interfere unreasonably with operations. Visitors can enter all areas where detainees are located but detainees are not compelled to meet with a visitor. Visits cannot be more than two hours daily but

158 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p7.

159 Mr James Bryden, Inspections and Research Officer, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p5.

160 Mr Daryl Henry, Social and Emotional Wellbeing Team Leader, Yura Yungi Health Service Halls Creek, *Briefing*, 4 September 2013.

161 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p3.

162 Prosser, P., 'Aboriginal Visitors Scheme', paper presented at the Best Practice Interventions in Corrections for Indigenous People Conference, Adelaide SA, 13-15 October 1999, pp2-3.

163 Department of Corrective Services, *Annual Report 2012/2013*, Government of Western Australia, September 2013, p41.

this can be varied if a member in charge considers any detainee to be at particular risk.[164] The Lock-up Manual also specifies that as far as practicable a suitable area must be provided for scheme visitors to consult with detainees and the officer in charge of the lock-up must seek a full debrief on the condition of all detainees visited to ensure any medical, welfare or other concerns raised by the visitor are recorded and acted upon.[165]

The Committee did not receive evidence in relation to the effectiveness or otherwise of the Aboriginal Visitors Scheme but is aware of a worrying trend in numbers of Aboriginal visitors. According to the Department of Corrective Services, in 2011-12 almost 13,000 visits were conducted across all areas of detention (approximately 45% of which were in regional areas) compared to only 10,000 visits in 2012-13 (approximately 30% of which were in regional areas).[166] There was a corresponding decrease in visiting staff from 25 to 13 (full-time equivalents) between 2011-12 and 2012-13. The Department cites recruitment and retention issues in regional areas as the reason for the downturn, particularly the recruitment of Aboriginal staff to undertake the specific roles required.[167]

Where family or formal supports are not available, an option may be to get elders involved. National Congress of Australia's First Peoples Director Ms Tammy Solonec suggested that bringing an elder to a lock-up could work well to calm down an Aboriginal detainee, although this would need to be approached sensitively in light of Aboriginal family dynamics. Elders would also need to be selected on the basis of having the necessary skills and/or be supported in their role. Support would be important to ensure elders received the right skills to provide guidance without feeling out of their depth or having to bear the responsibility alone.[168]

The Committee is acutely aware of the importance of access by detainees to family members and other "therapeutic" supports, particularly for those who are most vulnerable. The RCIADIC report stressed the importance of visits from family members, friends or those from Aboriginal organisations to aid in easing some of the anxieties associated with being in custody and to help to highlight and resolve any issues:

> *It is very important for those in custody to be aware that family and friends know they are there. It will be the rare Aboriginal individual*

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164 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-14.10.

165 Ibid, LP-14.11 and LP-14.3.

166 This comprises visits to prisons and juvenile detention facilities as well as lock-ups. It is assumed that the majority of visits are to prisons.

167 Department of Corrective Services, *Annual Report 2012/2013*, Government of Western Australia, Perth, September 2013, pp45, 66.

168 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p7.

*who will want to hide this fact. Similarly it is very important for family and friends to see and talk to those in custody as soon as possible.*[169]

The Committee considers that family visits should be facilitated wherever possible, but also notes that the capacity to do this may be hampered by the unsuitability of lock-up facilities and lack of staff for supervision. With the exception of provisions regarding the Aboriginal Visitors Scheme, there does not appear to be a consistent WA Police policy/approach to detainee access to family and/or other third party supports.

**Finding 10**

That the absence of a consistent approach and/or policy by Western Australia Police hinders detainee access to family members and/or other third party supports.

**Recommendation 5**

That Western Australia Police develops a consistent policy regarding access to family members and/or other third party supports by detainees in lock-ups. Such a policy should be consistent with maximising access.

The Committee considers it may also be worthwhile for WA Police to strengthen informal support networks in conjunction with local Aboriginal communities with a view to using such networks when family members and/or formal supports are not available.

**Recommendation 6**

That Western Australia Police engage with local Aboriginal communities with a view to identifying and using informal networks of support such as Aboriginal elders in instances where family members and/or formal supports are not available.

### 3.3.2 Juvenile detainees

RCIADIC *Recommendations 243 and 244* are specific to juveniles and state that police should immediately advise the relevant ALS and parent or responsible person that a juvenile has been taken into custody and that no Aboriginal juvenile should be interrogated by police except in the presence of a parent, other responsible person or, in their absence, the agency/organisation charged with their care.

The WA Police considers that these principles are captured within the provisions of the *Young Offenders Act 1994*, *Criminal Investigation (Identifying People) Act 2002*, and

169 Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Underlying Issues in Western Australia*, report prepared by Commissioner P.L. Dodson, 1991, Chapter 21.1.

*Criminal Investigation Act 2006* as well as the WA Police policies and procedures which align to the legislation.[170]

The *Young Offenders Act 1994* in particular requires a responsible adult to be notified "as soon as practicable" after a young person is taken into custody and to be kept informed of their whereabouts. Before police can question a young person they must "ensure that a responsible adult has received notification of the intention to question the young person" and the responsible adult must also be notified by police of any intention to lay a charge as soon as practicable. The notice does not need to be given if the whereabouts or address of a responsible adult cannot be ascertained after "reasonable enquiry" or if it is inappropriate for this notice to be given; however, the Chief Executive Officer of the Department of Corrective Services must be advised in writing if there is a failure to give notice and a reason provided.[171]

While the existing legislative and policy framework appears to reflect the principles underpinning the RCIADIC recommendations, the Committee has heard evidence to suggest that juveniles do not always have access to family members while in lock-ups:

- Community members in Katanning and Narrogin highlighted instances where juveniles had been taken into police custody without their parents being advised and/or interviewed by police without their parents present.[172]
- ALSWA states that its staff can provide examples across the State where young people had been taken into police custody but their families were not notified until many hours later.[173]
- The OICS has received anecdotal evidence of occasions when juvenile detainees were denied access to family when in lock-ups.[174]

The Police Commissioner highlighted difficulties finding responsible adults, so much so that on occasion if a responsible adult could not be found after a number of hours and the young person could not be bailed, the individual might have to go into the care of the Department of Corrective Services. That said, the Commissioner commented that this occurred infrequently as it was usually possible for police to find a relative other than the parent to take care of the young person.[175]

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170 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, Letter to Committee of the 38th Parliament, 12 November 2012, pp154-156.

171 Sections 8 and 20 *Young Offenders Act 1994* (Western Australia).

172 Narrogin Aboriginal Community members, *Briefing*, 9 August 2013 and Katanning Aboriginal community members, *Briefing*, 11 August 2013.

173 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p8.

174 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p3.

175 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p20.

It is concerning to the Committee that there may be instances where young detainees have been denied access to family members and/or family members have not been notified of a young person's detention and/or interview. However, the Committee has not investigated this matter with sufficient depth to determine how pervasive this might be and/or whether these instances are clear breaches of the *Young Offenders Act 1994*. Notwithstanding, the Committee is of the view that it is critical that the notification procedures within the *Young Offenders Act 1994* are strictly adhered to in relation to juvenile detainees.

**Finding 11**

That it is critical that Western Australia Police adhere to the procedures in the *Young Offenders Act 1994* pertaining to notification of a responsible adult when a young person has been taken into custody and before any interview takes place.

**Finding 12**

That police may expend considerable time endeavouring to locate a responsible adult with little success. The Committee concedes that this is a situation which prolongs time in detention for young people.

Along similar lines to detainee access to legal services, the Committee is of the view that there should be a legislated provision making evidence inadmissible where it can be demonstrated the *Young Offenders Act 1994* has been breached. The Committee is aware of a provision in the New South Wales *Children (Criminal Proceedings) Act 1987* which states that "any statement, confession, admission or information made or given to a member of the Police … by a child … shall not be admitted in evidence … unless there was present at the place where, and throughout the period of time during which it was made or given: a person responsible for the child".[176]

**Finding 13**

That a legislative provision is warranted to make evidence obtained from a juvenile inadmissible in court proceedings if it is obtained when a responsible adult is not present.

**Recommendation 7**

That the Minister for Corrective Services initiates amendments to the *Young Offenders Act 1994* to make evidence inadmissible in court if this is obtained from a juvenile when a responsible adult is not present.

176 Section 13 *Children (Criminal Proceedings) Act 1987* (New South Wales).

### 3.3.3 Access to interpreters

ALSWA has emphasised that in custodial interviews Aboriginal people are often compromised by language difficulties and "gratuitous concurrence", which refers to a cultural propensity to accede readily to police requests and provide the expected responses to questions.[177]

According to a review by the AIC, the Anunga Rules, originally introduced in 1976 in the wake of the eponymous Northern Territory Supreme Court case, provide guidelines for police when interviewing Aboriginal people. These include the use of an interpreter where the Aboriginal person is not fluent in English, opportunity for interviews to occur in the presence of a "prisoner's friend" and police not asking leading questions that might take advantage of gratuitous concurrence. The AIC review identified that WA Police policy is to observe the principles of the Anunga Rules particularly in relation to Aboriginal suspects not proficient in English.[178]

ALSWA suggests there are some issues with compliance however, firstly in relation to "interview friends" and secondly in relation to the use of interpreters. According to ALSWA, interview friends are utilised by WA Police to provide support to an Aboriginal person during an interview, but "the people used as interview friends are not up to scratch, but more importantly, their role is not properly explained by police in an interview situation".[179] Similar to third party supports in general and as discussed in section 3.3.1, this situation might be assisted by police exploiting informal community support networks and approaching suitably skilled elders for this task.

In relation to interpreters, the *Criminal Investigation Act 2006* requires that if police are required to inform a person of any matter and the individual cannot understand or communicate sufficiently in spoken English, a police officer must, if practicable, use an interpreter or other qualified person or other means to inform the individual.[180] The Lock-up Manual also specifies that anyone arrested by WA Police has the "right to an interpreter if required".[181]

The Office of Multicultural Interests notes that for many Indigenous people, English is a second, third or even fourth language, particularly in regional and remote parts of Western Australia. There is nonetheless a perception among service providers that

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177 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, pp3-4.

178 Australian Government, Australian Institute of Criminology, *Police interviews with vulnerable adult suspects*, Report No. 21 by Dr L. Bartels, July 2011. Available at: www.aic.gov.au/publications/current%20series/rip/21-40/rip21.html. Accessed on 21 October 2013.

179 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p4.

180 Section 10 *Criminal Investigation Act 2006* (Western Australia).

181 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-1.3.

English fluency is greater than it actually is and the development and use of interpreting services for Aboriginal languages has lagged behind similar services for migrants as a consequence.[182]

In a report published by the Equal Opportunity Commissioner (EOC) in 2010, language barriers were frequently found to compromise service delivery to Aboriginal people with justice highlighted as a particularly critical area:

> *The Operating and Procedures Manual of the Western Australian Police directs police conducting interviews with Aboriginal and Torres Strait Islander people to comply with the principles established in Anunga. For a number of reasons, not least the availability and accessibility of suitably qualified interpreters, particularly at short notice, police personnel confirmed compliance is ad hoc at best.*[183]

Reinforcing findings in the EOC report, the Committee similarly heard evidence to suggest that interpreters are used infrequently and there is a need for interpreters in Indigenous languages:

- ALSWA could cite only one example in 15 years where a police interview had been conducted using an interpreter in the relevant Aboriginal language. More often interviews took place in English where the Aboriginal person spoke some English, regardless of fluency.[184] ALSWA highlighted the need for a government-funded Aboriginal interpreter service with suitably qualified interpreters, since the Kimberley Interpreting Service was currently alone in providing this service and did not have sufficient resources.[185]
- Legal Aid WA indicated that it was often difficult finding a suitable interpreter and called for a better system of accreditation for Indigenous interpreters. The Kimberley Interpreting Service worked well but was the only body in the State that offered this service.[186]
- Ms Solonec of the National Congress of Australia's First Peoples was complimentary about the interpreter services offered by language centres in the Kimberley and Pilbara but noted these were NGOs trying to do their best and there needed to be a national interpreter service for Indigenous languages:

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182 Office of Multicultural Interests, *The Western Australian Language Services Policy*, Government of Western Australia, 2008, p7. Available at: www.omi.wa.gov.au/resources/publications/ Languages/ language_services_2008.pdf. Accessed on 21 October 2013.

183 Equal Opportunity Commissioner, *Indigenous Interpreting Service – Is there a need?* Report prepared by Dr Leela de Mel, Government of Western Australia, 2010, p5.

184 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p3.

185 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p4.

186 Mr Andrew Robson, Appeals Team Leader, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p7.

> *I would just like to see some coordination of interpreter services here in Western Australia – just a one-stop shop where people can go and, if it is a lawyer or a policeman or anyone, know that they can ring up and they can get an Indigenous language interpreter.*[187]

The Committee recognises that Aboriginal detainees have limited access to interpreters in police lock-ups and that this is underpinned by a broader State-wide issue around awareness of when to engage an interpreter and the availability of these services.

**Finding 14**

That evidence suggests Aboriginal detainees have limited access to interpreters in police lock-ups and this relates to a broader issue around awareness and availability of Indigenous interpreter services.

The EOC report concluded that there is indeed a need for Aboriginal interpreting services to be established throughout WA to cover the core language groups, recommending a model that would build upon existing services (such as the Kimberley Interpreting Service and language centres). The EOC report also highlighted the importance of an awareness-raising strategy for service providers (in relation to communication difficulties confronting Aboriginal people) and also for Aboriginal people on the role of interpreters and their right to an interpreter when required.[188]

A call for greater investment in Aboriginal interpreting services has also been made at the Commonwealth level. In 2012 the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs recommended that "the Commonwealth Government, in partnership with states and territories, establish a national Indigenous interpreter service that is suitably resourced to service urban, regional and remote Australia".[189] In its response the Commonwealth Government referred to the development of a national framework for the effective supply and use of Indigenous language interpreters as agreed by the Commonwealth and States and Territories under the National Partnership Agreement on Remote Service Delivery. That said, the Commonwealth Government stressed that States were also responsible for ensuring the availability of interpreting services and contributing to the development of interpreting services in their jurisdictions. The proposed national framework would

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187 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, pp9-10.

188 Equal Opportunity Commissioner, *Indigenous Interpreting Service – Is there a need?* Report prepared by Dr Leela de Mel, Government of Western Australia, 2010, pp6, 27.

189 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Our Land Our Languages – Language Learning in Indigenous Communities*, The Parliament of the Commonwealth of Australia, Canberra, September 2012, p185.

assist with a coordinated and long-term approach. The framework was mooted for completion in 2013 but has not yet been released.[190]

The State Government has confirmed it is participating with other State and Territory jurisdictions in the development of the national framework.[191] The Committee supports this action and would encourage consideration to also be given to the points raised in the EOC report. The Committee understands that to date the Kimberley Interpreting Service remains the only Aboriginal language interpreting service in Western Australia.[192] The service has so far received government funding via the National Partnership Agreement (NPA) on Remote Service Delivery which is due to expire in June 2014. A review of the NPA is required in 2013-14 with respect to progress made by the signatories in achieving the agreed outcomes.[193] The Committee urges the Premier as signatory to the NPA on behalf of Western Australia to continue pursuing this important initiative.

**Recommendation 8**

That the Premier expedites consideration and resourcing of the development of a national Indigenous interpreters framework through Western Australia's participation in the Council of Australian Governments.

190 Australian Government, *Australian Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report: Out Land Our Languages – Language Learning in Indigenous Communities*, Canberra, 6 June 2013, p14.

191 Hon. Peter Collier MLC, Minister for Aboriginal Affairs, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 13 November 2012, p8327.

192 Kimberley Interpreting Service, *About KIS*, nd. Available at: www.kimberleyinterpreting.org.au/about.html. Accessed on 22 October 2013.

193 Council of Australian Governments, *National Partnership Agreement on Remote Service Delivery*, January 2009, p12 (clause 41).

# Chapter 4

# Lock-up design, staffing and administration

**This chapter evaluates the current design, staffing and administration of police lock-ups.**

> *A lot of resources do need to be put into lock-ups right across the state…. There are some really good examples and there are some very bad examples. What we are saying is that there needs to be a level of consistency. If you have good-quality facilities, it reduces the risk for detainees and police officers alike. – George Tilbury, WA Police Union*

## 4.1 Lock-up design and conditions

The age and condition of lock-ups in WA varies considerably. There are around 125 lock-ups (or watchhouses) in WA. The newest is less than a year old while the oldest is nearing 150 years,[194] with the average age believed to be approximately 45 years.[195] With the exception of facilities which have been significantly upgraded, evidence suggests that the older lock-ups fall well short of the expected standards and are "no longer fit for purpose".[196] The OICS described some of the cells as "inherently degrading … little more than cages where people are stored for a while",[197] while the Northam police station lock-up was described as "Dickensian".[198]

Some of the evidence critical of the physical conditions of lock-ups relates to structure and design, while some is linked to management issues – for example, over-crowding and collection of detainees by the custodial transport contractor. Some lock-up cells – such as those at Boddington Police Station – have been decommissioned because they are regarded as non-compliant and funding for an upgrade has not been made available. Others continue to operate in a state of disrepair, although WA Police has advised the Committee that non-compliant cells are not to be used for holding a person

194 Submission No. 7 from WA Police Union, 15 August 2013, p15.

195 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p16.

196 Submission No. 5 from Office of Inspector of Custodial Services, 6 August 2013, p3.

197 Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p6.

198 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p6.

in custody and that its Building Management Branch will be physically disabling these cells "where possible".[199]

The Committee visited six lock-ups in different parts of the State, including the recently completed Perth Watchhouse and the non-functional Boddington lock-up. Two lock-ups visited in the southern part of the State (Wheatbelt and Great Southern regions)[200] were found to be clean and functional but the layout presented security problems for the police officers. Sally ports[201] were not secure, and detainees were sometimes required to pass through operationally sensitive parts of the station during processing. Officers also had no means of keeping detainees under constant surveillance while completing other duties.

In the north of the State (Kimberley region), the Committee found the two lock-ups visited to be dirty and poorly maintained. The kitchen areas where detainees' meals are prepared were found to be filthy.

ALSWA staff in the Pilbara region reported similar conditions, with overcrowding (three or four men per cell) leading to unhygienic conditions such as "uneaten food and smelly blankets and clothes strewn across the floor".[202] ALSWA staff report that "Cell inhabitants must all share one toilet in the corner, and it is not uncommon to find flies and other insects in the cell".[203] Temperature control was also reported to be a problem with some detainees, who were more accustomed to hot conditions, complaining that the cells were too cold.

*Pro forma* reports completed by prison superintendents for lock-ups where sentenced prisoners are sometimes held also reveal deficiencies. There were no shower facilities in a number of lock-ups (for example Carnarvon, Geraldton, Moora, Esperance, Norseman) and the bedding at Kununurra lock-up was described as "badly stained with pindan dirt" and at Wyndham it "left a lot to be desired".[204] Derby lock-up, while relatively new, was found to have a "poor level of cleanliness" and Halls Creek was described as a very old facility in urgent need of work.[205]

**Finding 15**

The physical condition of police lock-ups in WA varies. Some are old, dirty and unfit for use, while many others are functional but poorly designed.

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199 Ms Tara Tonkin, Research and Legislation Officer, WA Police, Electronic Mail, 21 October 2013.

200 While one of the lock-ups was in the Wheatbelt according to the State Government economic development classification, both were in the Great Southern Region according to regional boundaries defined by WA Police.

201 A supposedly secure entryway into a secure facility. In this situation it is where detainees are transferred from the police van to the police station lock-up.

202 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p8.

203 Ibid.

204 Department of Corrective Services, Reports on lockups, 11 October 2013.

205 Ibid.

### 4.1.1 Compliance with RCIADIC recommendations

Among the recommendations the RCIADIC made in regard to lock-ups was that State, Territory and Commonwealth police ministers should formulate and adopt standard guidelines for police custodial facilities throughout Australia (*Recommendation 332*). In response, the then Australian Police Ministers' Council endorsed the Standard Guidelines for Police Custodial Facilities in Australia, which WA Police used as a model for its own set of standards. These are enshrined in the Custodial Design Guidelines (a subset of the WA Police Building Code) and the Lock-up Manual. The Custodial Design Guidelines, which are frequently revised, outline the essential features of a safe cell, including specifications regarding the size and structure of floors and walls, built-in furniture, cell alarms, CCTV and emergency equipment.[206]

Submissions from various organisations maintain that many lock-ups in WA do not comply with specific RCIADIC recommendations, nor with the Custodial Design Guidelines developed by WA Police.

One of the key RCIADIC recommendations (*Recommendation 165*) was that hanging points be eliminated in all cells. There has been a concerted effort to meet this requirement, and WA Police regards this recommendation as having been implemented.[207] However, ALSWA staff report that they have observed hanging points at the Kununurra and Halls Creek lock-ups.[208] The Committee similarly observed hanging points at the Halls Creek lock-up.

Other recommendations related to cell design which have not been complied with are outlined below.

*Recommendation 139* specifies (in part) that while CCTV should be installed in cells, this should not be at the expense of direct visual surveillance and cells should be designed to maximise this. However, more than half (51%) of WAPU members who participated in a survey administered by the union believed that the design and layout of cells (in their experience) did not meet direct visual surveillance requirements. WAPU identified safety issues not just for the detainees but for police officers when an officer did not have "complete and unhindered vision of a detainee".[209] The semi-circular layout of the cells in the Kalgoorlie lock-up[210] and the Perth Watchhouse appeared to meet the

206 Submission No. 7 from WA Police Union, 15 August 2013, p4.

207 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to the Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p102.

208 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p9.

209 Submission No. 7 from WA Police Union, 15 August 2013, p15.

210 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

recommendation that direct visual surveillance be available at all times; however, most lock-ups were forced to rely on CCTV for maintaining continuous surveillance.[211]

The WA Police records this recommendation as having been implemented and refers readers to the Lockup Management Manual (referred to elsewhere in this report as the Lock-up Manual).[212] However, the Lock-up Manual states that "a constant watch can be maintained by an officer via CCTV *or* physical presence"[213] (emphasis added) – a deviation from the RCIADIC recommendation, perhaps in recognition of the fact that out-dated lock-up design makes maintaining physical contact impossible.

*Recommendation 140* states that all cells should be equipped with an alarm or intercom system to facilitate direct communication between people in cells and police officers; however, 12% of respondents to the WAPU survey said that the cells at their current/most recent tenure did not have cell alarms, and 13% said there were no duress alarms in the cell block corridors.[214] ALSWA, which also gathered feedback from its staff for the purposes of its submission, states that only staff at one office (South Hedland) could confirm that the cells in local police lock-ups had alarms and intercom facilities.[215] This is also in breach of the WA Police Custodial Design Guidelines which, according to the WAPU, state that a safe cell must have "communication systems such as cell alarms and audio monitoring that is to be manned in some capacity 24 hours a day, a push button cell alarm to enable a detainee to call for assistance, a cell intercom".[216]

*Recommendation 149* states that Aboriginal and Torres Strait Islander detainees be permitted some degree of freedom of movement inside or outside the confines of watchhouses. This has been confirmed as implemented by WA Police, with the additional note that it is undertaken at local level with the officer-in-charge (OIC) bearing the risk, and in accordance with contemporary lock-up procedures.[217] The Lock-up Manual states that detainees may be allowed exercise where practicable – and this may depend on whether the exercise yard is compliant.[218] From evidence received, it would seem that most lock-ups do not have appropriate areas for detainees to exercise and access sunlight and fresh air.[219] Hence, the ability of police to implement this recommendation is often made impossible by the absence of suitable facilities.

211 Ibid.

212 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to the Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p75.

213 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-3.4.

214 Submission No. 7 from WA Police Union, 15 August 2013, p15.

215 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

216 Submission No. 7 from WA Police Union, 15 August 2013, p14.

217 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to the Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p92.

218 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-13.3.

219 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p8.

*Recommendation 159* states that lock-ups should have safe and effective resuscitation equipment readily available, but around a third (33%) of respondents to the WAPU survey said their custodial facility did not have this equipment.

**Finding 16**

Many of Western Australia's lock-ups do not comply with RCIADIC recommendations and/or with the WA Police Custodial Design Guidelines, lacking vital items such as alarms and resuscitation equipment.

### 4.1.2 CCTV and recording capacity

The RCIADIC recommendations mention the provision of electronic surveillance equipment to supplement (not replace, as per *Recommendation 139*) checks made in person. The Custodial Design Guidelines – reflecting a more hi-tech approach to surveillance than the RCIADIC recommendations of 22 years ago – specify that safe cells must have "CCTV that produces a clear picture on the monitor with good contrast in full colour under a variety of lighting conditions".[220] According to figures supplied by WA Police, only 44% of stations throughout the State have CCTV.[221] While almost all of the metropolitan stations (32 out of 35) have CCTV, only around a quarter (24 out of 91) regional stations have CCTV.[222]

The WAPU survey found that where CCTV was available, the quality was variable. Almost a third (31%) of respondents reported that the cell did not have CCTV that produced a clear picture on the monitor with good contrast in full colour. One officer noted that the monitor was divided into four screens and was positioned up high away from the communal work area, making it difficult to see the prisoner.[223]

The WAPU believes that providing good-quality CCTV is in the best interests of protecting both detainees and officers, and has encouraged the WA Police and the Government to work on achieving an acceptable standard of electronic surveillance for all lock-ups.[224] The Police Commissioner has also expressed his support for this position, stating in a 2010 newspaper article that "Surveillance is not only necessary for compliance purposes but also for evidence and judicial review (for example, coronial matters)".[225]

Members of the Aboriginal community to whom the Committee spoke also believed it was desirable to have as much CCTV coverage as possible – essentially in all areas of

220 Cited in Submission No. 7 from WA Police Union, 15 August 2013, p14.
221 Mr Malcolm Penn, Assistant Director, Legal and Legislative Services, Western Australia Police, Letter, 11 October 2013.
222 Ibid.
223 Submission No. 7 from WA Police Union, 15 August 2013, p16.
224 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p13.
225 Karl O'Callaghan, 'Condemned cells and neglect add up to strife', *The West Australian*, 13 December 2010, p20.

the police station where officers and detainees interact, including the cells. All parties saw it as a valuable means of proving or disproving allegations of abuse. It could also act as a deterrent to improper behaviour.

This raises the question of whether CCTV footage from inside lock-up cells is – or should be – recorded and stored for a period of time. At present, while all sites with CCTV have the capability to record video footage, they do not necessarily have the infrastructure to do so.[226] Only the Perth Watchhouse, the Kalgoorlie lock-up and the Albany lock-up are set up to record in cells.[227]

Staff at the Perth Watchhouse told the Committee that the CCTV tape is kept for 91 days and can only be accessed (by two people) using a password. The issue of privacy has been flagged as a reason not to record; according to anecdotal evidence, police often did not operate the CCTV inside the cells because of privacy concerns. However, consensus among various agencies[228] was that the benefits of recording would outweigh privacy concerns, or that there were, at least, ways around them. For example, Legal Aid WA was of the opinion that a recording of the vision without the audio would offer sufficient protection as well as privacy.

**Finding 17**

While almost half of all lock-ups have CCTV monitoring inside the cells, only three have the ability to record CCTV footage.

**Finding 18**

Recorded CCTV footage from inside all lock-up cells is valuable for its ability to offer protection to both detainees and police officers.

**Recommendation 9**

That there be a program rolled out to upgrade all CCTV systems in lock-ups; that the ability to record CCTV footage from inside cells be a requirement for all lock-ups; and that Western Australia Police formulate rules governing how recordings are accessed and duration of retention.

### 4.1.3 Facilities for private consultation

A common complaint about the design of police lock-ups is the lack of any area suitable for detainees to conduct consultations in private. This has also been discussed in Chapter 3 in reference to consulting lawyers and other visitors. In many places lawyers are only able to speak to their clients in their cells or through the bars of the cells, often while other detainees or police officers are present. While interview rooms are

226 Mr Malcolm Penn, Assistant Director, Legal and Legislative Services, Western Australia Police, Letter, 11 October 2013.

227 Ibid.

228 Corruption and Crime Commission, Legal Aid WA, Office of the Inspector of Custodial Services.

available in some locations (Busselton, Kununurra, Karratha, South Hedland and Geraldton), ALSWA reports that they are not necessarily soundproof.[229] In other places, the rooms are non-contact making it "near impossible" to hear what the person in custody is saying.

> *You have to interview the client in the cell and sit on their bed. Often they reek of all sorts of things. Also, the police officer stands outside the cell, keeping guard, so there is no confidentiality. For clients who are on bail, you sit outside on steel chairs immediately adjoining the courthouse, along with any number of other people nearby trying to take instructions, and in the middle of winter it can be two degrees. This is sort of prehistoric stuff …*[230]

ALSWA and Legal Aid WA are united in their call for secure interview rooms for people in custody. However, while Legal Aid WA suggests non-contact rooms, which would obviate the need for police officers to be present, ALSWA would prefer to see soundproof rooms (guarded by an officer) in which a conversation could be conducted at normal volume and documents could be exchanged.

Even though private interview facilities are available at the new Perth Watchhouse, the design attracted some criticism from ALSWA:

> *… while the facilities at the new Perth Watch House are private for interviews, they are uncomfortable and impractical to use as the chairs are too low and fixed to the ground, and the writing surface is too high for many people. From a sitting position, taller lawyers can generally only see the clients' foreheads unless the client is standing up. Shorter lawyers need to take instructions while standing.*[231]

**Finding 19**

Many lock-ups lack suitable facilities for detainees to meet confidentially with lawyers or visitors.

**Recommendation 10**

That the Western Australia Police, with funding from the State Government, prioritises the provision of suitable spaces for confidential consultations in all police lock-ups.

229 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p3.

230 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p6.

231 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p3.

### 4.1.4 Absence of holding rooms

Another facility absent from all lock-ups is a holding room. In fact, the WAPU claims that there are no police facilities in WA which possess a holding room which complies with Section 139(3) of the *Criminal Investigation Act 2006*. This states:

> *An arrested suspect who is detained under subsection (2) must be detained in the company of an officer and not in a lock-up or other place of confinement, unless the circumstances make it impracticable to do so.*[232]

Even the new Perth Watchhouse was constructed without a purpose-built room for holding people who have not been charged. Officers throughout the State are forced to use rooms designed for other purposes (for example interview rooms, breath analysis rooms, the OIC's office, an officer's work-station) which often prevents these rooms from being used as intended. These areas do not have audio-visual monitoring or bedding and, according to the WAPU, they contain furniture and equipment which could be used as weapons. As one WAPU member said:

> *… there is nothing to prevent an arrested suspect that is about to be interviewed from assaulting an Officer, having free run of the station and damaging property ... taking anything that could be used as a weapon and either walking out the back door or jumping the front counter.*[233]

The union recommends that if it is not possible to provide safe holding rooms in all stations and watchhouses, then section 139(3) of the Act should be reworded or removed "so that the intent of the Act aligns with the status quo of police custodial duties and provides flexibility in practice".[234] Police did not currently have the flexibility to perform other duties, such as paperwork, while being required to "babysit" a suspect.[235] The Act could be amended to enable a calm and cooperative suspect to be held in an unlocked room with CCTV surveillance (instead of in the company of an officer), and to enable aggressive suspects to be locked in holding cells.[236]

**Finding 20**

No lock-ups or police stations in Western Australia have holding rooms that are compliant with Section 139(3) of the *Criminal Investigation Act 2006*.

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232 Section 139(3) *Criminal Investigation Act 2006* (Western Australia).
233 Submission No. 7 from WA Police Union, 15 August 2013, p17.
234 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p2.
235 Ibid, p12.
236 Mr Dave Lampard, Safety Officer, WA Police Union, Telephone call, 17 October 2013.

**Recommendation 11**

That the Minister for Police reviews section 139(3) of the *Criminal Investigation Act 2006* and considers how it might be amended to better reflect current police facilities and police preferences for holding arrested suspects.

### 4.1.5 Time for an upgrade

There was widespread acknowledgement that the ageing infrastructure of many of WA's lock-ups had a bearing on the conditions experienced by people in custody, and on the ability of police to provide a decent standard of care.

The Police Commissioner is well aware of the problems posed by the age of the State's police stations, having previously commented on the "massive redesign challenges"[237] in upgrading lock-ups and the "meagre funds allocated by governments"[238] towards achieving this. He estimated that "at the current rate of replacement, it would be about 90 years before they all get replaced".[239]

The OICS agreed that it would be "cost prohibitive to rebuild all the older lock-ups in a short time frame",[240] but suggested interim measures to improve standards, such as: installing cameras, vents and windows; making spaces for interviews and visits; and introducing processes and procedures to improve standards of decency.[241]

The WAPU recommends modernising all police cells to comply with the specifications of the Custodial Design Guidelines. It notes that the guidelines are frequently revised and would like to see union members canvassed for input regarding cell design, since "they are the people who work primarily within these cells and are positioned to comment about the functionality of these cells".[242]

The DICWC(WA) also expressed a desire to be involved in the design of any new custodial facilities, noting that they were not consulted on the design of the new Perth Watchhouse. The OICS was briefed on the design and layout of the new watchhouse and some of its suggestions were acted upon.

In its submission, the WAPU calls for consistency in the development and construction (or reconstruction) of police cells "with a goal to achieving the utmost safety for both

237 Karl O'Callaghan, 'Condemned cells and neglect add up to strife', *The West Australian*, 13 December 2010, p21.

238 Ibid.

239 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p16.

240 Submission No. 5 from Office of Inspector of Custodial Services, 6 August 2013, pp3-4.

241 Ibid.

242 Submission No. 7 from WA Police Union, 15 August 2013, p40.

detainees and Officers".[243] Members were canvassed regarding items they felt were currently missing from lock-ups but should be requirements. Suggestions included:

- The ability to move a detainee by stretcher;
- More audio facilities, including communication devices, situated at an officer's work station;
- Cleaners at every station to clean the cells following incidents;
- Fixed, unmoveable beds/mattresses;
- Better design of sally port driveways to avoid conflict with vehicles entering/departing;
- Larger monitors to display CCTV from cells;
- Split screen security hatches on cell doors to enable the passage of food/water into the cells without the officer opening the door.[244]

The OICS sums up the situation with its observation that lock-ups which are no longer fit for purpose are "unable to support contractors and police personnel in providing a decent standard of care".[245] The condition of some lock-ups makes it difficult to "separate out issues of treatment from physical conditions". In other words, if the lock-up conditions were as they should be, issues of poor care or mistreatment in lock-ups would be more clearly identified as due to officer behaviour.

**Finding 21**

The fact that many lock-ups are old and consequently do not meet the current standards of custodial care means it can be difficult for officers to provide the expected standard of care. This makes it more difficult to identify the extent to which poor care is due to poor conditions or poor treatment by officers.

**Recommendation 12**

That given the high cost of fully upgrading all police lock-ups, interim measures are implemented to ensure at least the minimum standards of safety and comfort are being met.

## 4.2 Staffing issues

Lock-ups may be staffed by sworn police officers, custody officers and police auxiliary officers. At small stations (which applies to most regional police stations and a large proportion of metropolitan stations), it is more usual for police officers to perform custodial care duties alongside their other policing duties. In larger metropolitan

243 Ibid.

244 Ibid, p16.

245 Submission No. 5 from Office of Inspector of Custodial Services, 6 August 2013, p3.

centres, including Perth Watchhouse, it is common to use auxiliary officers (AOs) and custody officers employed in custodial care duties. AOs train for 12 weeks. This is less than half the time of police officers, but the training is specifically targeted at custodial duties. They have the same powers as police within the watchhouse, but not outside the watchhouse.[246]

In places where AOs are employed for custodial care, their services are said to be much appreciated by the station police officers who feel they have been freed up to undertake their other policing duties.[247] According to the WAPU, police officers would prefer to leave custodial care to AOs. The Police Commissioner supports this position, noting that "when you employ someone on the understanding that it is their job to work in the watchhouse, you get a much better product than employing a police officer to work on the streets and then directing them to work in the watchhouse".[248]

However, at present there is a shortage of AOs as well as a low retention rate.[249] The WAPU attributes this to poor work conditions, low wages and a lack of job progression. Again, this has been recognised by the Police Commissioner:

> *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.*[250]

The Committee was told anecdotally that a significant number of AOs only undertook those duties until such time as they could complete additional training to become a fully sworn police officer.

While both police management and the union are in accord on the issue of using specifically trained officers for custodial care, the current situation is that most stations do not have such officers and this duty is performed by sworn police officers. This being the case, the issue of adequate staffing when holding someone in custody was raised by the WAPU and police officers to whom the Committee spoke.

At present, according to the WAPU, there is no directive in official police documents regarding the minimum staffing requirements for custodial care duties. While some officers-in-charge will ensure two staff are rostered for this duty, others roster only one officer, which the union says compromises the safety of both the detainee and the

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246 Mr Steve Foster, Acting Inspector (Custodial Services Division); Assistant Commissioner Lawrence Panaia; Sergeant Vicki Fourie (Operations Supervisor) at Perth Watchhouse, *Briefing*, 16 August 2013.

247 Submission No. 7 from WA Police Union, 15 August 2013, p22.

248 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p17.

249 Submission No. 7 from WA Police Union, 15 August 2013, p22.

250 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p17.

officer.[251] While the officer was attending to other duties – such as completing paperwork, answering the telephone and attending the front counter – tasks related to attending the needs and rights of the person in custody, such as contacting a relative, were often left undone.

The WAPU's survey of members found that 84% of respondents had performed or been directed to perform single officer custodial care duties, with 59% directed to do so on more than 20 occasions.[252] Commonly, it was not only the case that the officer was the only one assigned to custodial care duties, but that he or she was the only officer at the station. As one officer reported to the WAPU:

> *At my current location, it is normal and daily practice for one Officer to be responsible for up to 10 detainees, whilst also manning the station by himself, conducting CAD dispatch for the region, phones, radio, counter and office duties ... Due to the lock-up design, staff have to lock themselves in with detainees when conducting cell checks, providing meals, etc [which poses an enormous safety risk].*[253]

One respondent wrote that they "prayed that no one actually attempted to kill themselves whilst they were a single Officer on duty at a station".[254]

It was common in regional locations for only a single officer to be rostered on duty overnight unless the detained person was considered high-risk – a practice the Police Commissioner finds acceptable given that another officer could be recalled to duty if necessary and paid the requisite over-time. The Police Commissioner said that in country areas, help was usually readily available from someone who lived nearby.[255] However, the WAPU's position was that the demeanour of a detainee could change rapidly, and even if an officer arrived within minutes those few minutes could be life-threatening to the officer on duty.[256]

The majority (82%) of respondents to the WAPU survey did not believe custodial duties could be adequately performed by a single officer.[257] WAPU has called for all-single officer duties to be discontinued, bringing policy into line with the single-officer patrol policy.[258] A minimum of two officers should be rostered purely for custodial care, to

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251 Submission No. 7 from WA Police Union, 15 August 2013, p33.
252 Ibid, pp17-18.
253 Ibid, p18.
254 Ibid.
255 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p3.
256 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p3.
257 Submission No. 7 from WA Police Union, 15 August 2013, p19.
258 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p2.

ensure “a diligent, expert and thorough duty of care to detainees and enable fellow Police Officers to undertake the necessary duties of a station”.[259]

The union is also calling for 50 out of the State Government’s promised 150 AOs to be stationed at Perth Watchhouse. At present, according to staff, the watchhouse endeavoured to roster a minimum of 12 staff per shift but was not always able to achieve this. The new Perth Watchhouse had the capacity to house at least 75 detainees but could only take 50 – the same number as at the old watchhouse – because of insufficient staff.[260] The Police Commissioner concedes the number of watchhouse staff is probably not correct at present, and hoped to increase the number of AOs by about 20.[261]

**Finding 22**

Single officer custodial care duties are common, particularly in regional areas, potentially endangering officers and compromising the quality of care afforded to detainees.

**Recommendation 13**

That Western Australia Police discontinue single officer custodial care duties, ensuring a minimum of two officers are rostered for custodial care duties at any time.

### 4.2.1 Outsourcing custodial care services

There are mixed views regarding the outsourcing of custodial services to an agency other than the WA Police. While the official WAPU line is that custodial services should not be outsourced, almost two-thirds (63%) of the surveyed members supported out-sourcing, citing the following reasons:

- police would be more available to attend to front-line policing duties;
- there would be more external accountability, reducing oversight of police officers;
- the Department of Corrective Services is better trained and qualified to deal with detainee issues;
- it would separate police investigating a matter from the suspect/person of interest.[262]

259 Submission No. 7 from WA Police Union, 15 August 2013, p19, p37.

260 Mr Steve Foster, Acting Inspector (Custodial Services Division); Assistant Commissioner Lawrence Panaia; Sergeant Vicki Fourie (Operations Supervisor) at Perth Watchhouse, *Briefing*, 16 August 2013.

261 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p19.

262 Submission No. 7 from WA Police Union, 15 August 2013, p22

The final point here was also made by the CCC, which believes there is an argument in favour of having an independent group of people running watchhouses and lock-ups in the metropolitan area, if not regional areas.[263] The CCC also felt that a dedicated service might make for a service in which employees sought excellence within the parameters of their own employment – rather than the situation with police, who would probably not regard being stationed in the lock-up as a "plum job".[264]

Unless an external agency was able to provide custodial care services to all lock-ups in the State, it is the Committee's view that having an agency other than WA Police provide custodial care would be inefficient and problematical. Providing the service at small and/or remote police stations would likely be uneconomical – in which case it would make more sense to utilise the police officers who are already stationed there. The Committee supports the use of police officers specially trained for custodial duties wherever possible (AOs), and advocates for a minimum of two officers on custodial duty when someone is in custodial care. Moreover, given the standards which the Committee believes are appropriate it is considered there is no alternative capable of enforcing that duty of care.

**Finding 23**

Despite some points in favour of out-sourcing custodial services, Western Australia Police is the agency best-placed to provide custodial care in police lock-ups.

### 4.2.2 Aboriginal officers and staff

There are at present 90 police officers who identify themselves as Aboriginal in the WA police force, and no auxiliary officers. WA Police employed Aboriginal Police Liaison Officers (APLOs) for some years,[265] but there are now only 14 APLOs remaining. From 2006, APLOs were encouraged by WA Police to undertake a course to become fully sworn officers.[266] Many APLOs had apparently been doing the duties of sworn officers but were not being paid at that level, so they accepted the opportunity for promotion.[267] However, others were apparently happy in their liaison role and did not want the extra responsibility, so they left the liaison officer jobs altogether. There have

263 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission *Transcript of Evidence*, 7 August 2013, p12.

264 Ibid.

265 Note that Aboriginal people were first employed in the police force as Police Aides in the Kimberley in 1975. The position title was changed to Aboriginal Police Liaison Officer in 1996. From *Episodes in Western Australia's Policing History* (full reference below).

266 Western Australia Police, *Episodes in Western Australia's Policing History*, Media and Public Affairs, WA Police, 2006. Available at: www.police.wa.gov.au/ LinkClick.aspx?link=PDFs/Episodes_WAPolicingHistory.pdf Accessed on 14 October 2013.

267 Katanning Police Station officers, *Briefing*, 10 August 2013.

also been suggestions that this kind of "mainstreaming" of the APLOs devalued the work that they had performed.[268]

ALSWA said it was a matter of regret that there were so few APLOs. So long as their role was properly recognised and supported, APLOs could do an enormous amount of good. However, there was a risk that if APLOs became immersed in police culture, there could be adverse consequences in terms of the way they related to their community.[269]

Some police stations the Committee visited claimed to have a community engagement officer or a specific officer designated as "culturally aware" who would deal with Aboriginal issues,[270] but the Aboriginal communities in those towns were not aware of any officers performing those roles.[271] It was also clear to the Committee that there was a low level of community engagement by police officers in the Kimberley towns visited, which led to juveniles being charged for minor offences or detained because a responsible adult had not been identified.

While the WA Police policy was to recruit as many Aboriginal people into the mainstream police force as possible,[272] the agency had once again introduced a community liaison role, according to the Police Commissioner.[273] WA Police was in the process of recruiting Aboriginal community officers – local Aboriginal people employed to work with their own communities to provide a more sensitive level of support. The Police Commissioner suggested to the Committee that these Aboriginal community officers may be given some powers to do custodial work in limited circumstances. At present they were being recruited for Broome and Kununurra, but according to the Police Commissioner there were plans to expand the program.[274]

> *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*

268 Vivian, G., 'Aboriginal law men slam "neglect" by police', *WA Today*, 5 March 2009, watoday.com.au.

269 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p10.

270 Katanning Police Station officers, *Briefing*, 10 August 2013; Narrogin Police Station officers, *Briefing*, 9 August 2013.

271 Katanning Aboriginal community members, *Briefing*, 10 August 2013; Narrogin Aboriginal community members, *Briefing*, 9 August 2013.

272 The Premier launched an advertising campaign on 17 November 2013 aimed at recruiting more female officers and officers from Aboriginal and multicultural backgrounds.

273 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p4.

274 Ibid.

> *couple of years, as we get more flexibility with our employment and salary arrangements.*[275]

ALSWA's Director of Legal Services said that any measure which achieved better relationships between police and the Aboriginal community had his support. The DICWC(WA) also felt that more APLOs – or similar – would help to break down barriers between police and Aboriginal people.

Legal Aid WA also felt it would be beneficial if the private custodial service contractor Serco had Aboriginal officers: "It may be that an Aboriginal person in custody would feel more comfortable about raising health or other issues with an Aboriginal staff member".[276]

**Finding 24**

Police officers do not necessarily engage effectively with the Aboriginal community, missing opportunities to apply discretion. There is gap in communication between the two groups, which has not been helped by the absorption of Aboriginal Police Liaison Officers into the mainstream police force.

**Recommendation 14**

That in areas where there is a high Aboriginal population, the State Government supports Western Australia Police in employing more Aboriginal community officers, dedicated to liaising between the police and the Aboriginal community.

### 4.2.3 Tenure

There are arguments both for and against imposing limits on tenure for police officers. At present WA Police policy dictates that officers in the metropolitan area serve a minimum of two years and a maximum of four years within a division/district/branch, with the exception of specific positions (for example specialist/technical positions) where the minimum may be one year and the maximum anything from two to seven years.[277]

In many regional locations the minimum tenure is also two years and the maximum four years, although many regional locations do not have a specified maximum tenure. There are also a number of locations which have a one-year minimum and three-year maximum (for example Wiluna, Yalgoo, Balgo, Kalumburu, Warburton) – although the

275 Ibid, pp4-5.

276 Mr George Turnbull, Director of Legal Services, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p3.

277 Ms Jane Baxter, WA Police Union, Electronic Mail attachment - *Tenure Management Policy (Police Officers)*, 14 October 2013.

OIC at these locations is required to serve a minimum of two and maximum of four years.[278]

Some regional stations, dubbed "hard to fill", struggle to attract enough officers to meet staffing requirements. Officers who are willing go to these stations are given "preferential consideration" for transfer once they complete their minimum tenure. There are currently 22 stations on this list, including Wiluna, Yalgoo, Coolgardie, Fitzroy Crossing, Halls Creek and Laverton. Two locations – Kellerberrin and Katanning – are designated "priority placement", which means that officers completing tenure there will be given priority placement over all others when applying for a transfer to a metropolitan or another regional station.[279] Officers starting postings at some other regional locations have been offered incentives to stay longer. For example, Narrogin currently has a minimum of two years and no maximum, but officers will receive a bonus if they stay for at least 3.5 years.[280]

The tenure policy is managed with regard to the agency's organisational requirements, professional development needs of officers, the need to exchange new ideas and skills, minimisation of the risk of corruption/misconduct, and the placement of re-deployees and non-operational police officers.[281] However, according to the WAPU many police officers find the policy complex and inflexible, and not necessarily in the best interests of community harmony. While minimum tenures may be necessary to attract staff to a town, it resulted in a high turn-over of staff, which made it more difficult to build community relationships.[282]

More contentious however is the policy of maximum tenure. In regional locations with a maximum tenure of four years, officers are forced to move on regardless of their wishes. Extensions to maximum tenure are at the discretion of the portfolio/directorate head and are limited to two years. Maximum tenures made it harder to attract staff with families who knew they would have to move not long after establishing themselves in new homes, schools and sporting and community groups. Aboriginal groups would also be discouraged from attempting to forge good working relationships with officers if they knew they would be moving on. A lack of continuity of police personnel makes it more difficult to develop a nuanced understanding of local issues and develop a relationship based on trust.[283]

The executive director of the CCC also identified this as an issue, whilst appreciating the challenges for WA Police:

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278 Ibid.

279 Ibid.

280 Narrogin Police Station officers, *Briefing*, 9 August 2013.

281 Ibid.

282 Ms Jane Baxter, WA Police Union, Telephone call, 14 October 2013.

283 Ibid; Narrogin Police Station officers, *Briefing*, 9 August 2013; Mr Brandon Shortland, Vice President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p8.

> *Our general experience is that it is not uncommon to see especially senior officers moving relatively quickly, which leads to turbulence in knowledge of the particular area either by region or by speciality. That can have an adverse effect on the quality of their performance. Clearly, the Commissioner of Police needs to balance on the one hand the need to move people such that you do not get people too comfortable in areas that have historically led to misconduct and corruption against the need to balance professional knowledge and passing on experience. I think it is really difficult to get it right.*[284]

**Finding 25**

The Western Australia Police policy on tenure can inhibit the development of healthy working relationships with regional Aboriginal communities.

**Recommendation 15**

That Western Australia Police considers abolishing the maximum tenure period of four years in locations where continuity of staff would assist in building trust with the Aboriginal community.

## 4.3 Administration

The administration of lock-ups is complex in that it involves cooperation between a number of agencies and departments: WA Police, which is responsible for the lock-up buildings and providing staff; Serco, the private contractor which provides custodial security and transport; the Department of Corrective Services, which inspects any lock-ups where prisoners are held overnight and manages the Serco contract; and the Department of the Attorney General (DoTAG), which manages court services.

### 4.3.1 Issues with the private contractor (Serco)

A common theme to emerge from the Committee's consultations with police in regional areas was the limitations of the Court Security and Custodial Services contract between the Department of Corrective Services and Serco Australia Pty Ltd. Comments about the inadequacy of the contract were also made by the WAPU and DoTAG.

Police reported that the contract with Serco was inflexible and at times impractical. For example, the contract states that Serco will collect prisoners from what are termed "hubs" – designated regional police stations which act as a collection point. Police are

284 Mr Michael Silverstone, Executive Director, Corruption and Crime Commission, *Transcript of Evidence*, 7 August 2013, p15.

required to transport persons in custody from other lock-ups or police stations to these agreed locations.[285]

Due to their adherence to the contract, Serco staff will not collect any detainees from police lock-ups in towns en route to a hub. An example cited by several different sources was of Serco transporting detainees between the hubs of Broome and Kununurra but not collecting detainees from the lock-up at Fitzroy Crossing, despite passing through this town. WA Police understandably saw it as a waste of time and money to use its officers to transport persons in custody hundreds of kilometres to designated hubs when they could easily be collected by Serco, if not for the terms of the contract.

Police at Narrogin Police Station, which is a designated hub, described similar issues. People in custody on remand or on warrants of commitment need to be transported from Narrogin to either Armadale or Perth Watchhouse (prior to appearing before a magistrate) or to Hakea Prison to serve out time. Narrogin police reported that when Serco was contacted, staff would say they were unable to collect the prisoner immediately, invoking the part of the contract which states that Serco has 24 hours from the time of the request to clear regional lock-ups.[286] Police maintained that they did not have the resources to look after a prisoner all day, and so it became a more efficient use of their time to transport the prisoner themselves. If Serco was unable or unwilling to collect the prisoner before the end of the nightshift, police at Narrogin had no choice but to transport the detainee to Perth, since Narrogin was not a 24-hour station and was unable to hold prisoners overnight. Narrogin police had tried various transport arrangements, including:

- Meeting Serco halfway at North Bannister (a two-hour round trip);
- Escorting the prisoner to Armadale Police Station and having Serco, Perth Watchhouse or available AOs escort the prisoner to Hakea (a three-hour round trip); or
- Escorting the prisoner to Hakea or Perth Watchhouse (a six-hour round trip).[287]

Narrogin police state that 80 prisoner escorts were conducted by the station's staff last financial year, at a cost of approximately $30,000 (out of the Narrogin Police Station budget).[288] Narrogin police could see merit in the station becoming a central 24-hour station, with the requisite number of staff to take care of detainees brought there from surrounding towns (which faced the same collection and transport issues as Narrogin), but this would require a significant upgrade to the station.

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285 Court Security and Custodial Services Contract, Contract No.DCS0402010, Government of Western Australia, June 2011.
286 Submission No. 7 from WA Police Union, 15 August 2013, p35.
287 Ibid.
288 Ibid.

Officers at other stations reported similar patchwork transport arrangements concocted to manage the unavailability of Serco. Boddington Police Station's problems were compounded by the fact that there is no functioning lock-up at all.

However the Police Commissioner did not think that expanding resources at smaller country stations was necessarily the answer:

> *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 (to transfer to Perth) is made not only on the fact that the cells are non-compliant, but that there is a critical mass of police officers at Armadale and Fremantle police stations and the Northbridge Watchhouse.*[289]

Police also complained about Serco's habit of leaving detainees at the lock-up when they had been brought to town for a court appearance. The detainee was then the responsibility of the police for the duration of the court appearance. Under the contract, Serco staff are required to provide security services to a person in custody at prescribed lock-ups (currently Albany, Carnarvon and Kalgoorlie), but not at any other police lock-ups.[290]

According to WAPU:

> *Officers at smaller stations with courts attached or nearby are finding that prisoners are being unceremoniously left at the Police station by prisoner escort staff for Officers to watch over prior to, during and after their court hearings. In doing this, Officers become tied up with watching over prisoners, often in conjunction with other detainees and on top of any other Police work that is demanded of them.*[291]

An officer at Meekatharra Police Station recalled how:

> *... six Serco staff would fly into town, deposit the prisoners in the lockup then sit down in the lunch room with their feet up refusing to*

289 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p2.

290 Court Security and Custodial Services Contract, Contract No.DCS0402010, Government of Western Australia, June 2011.

291 Submission No. 7 from WA Police Union, 15 August 2013, p34.

> *look after the prisoners. With court running and normal tasking requirements, the extra burden was outrageous ...* [292]

And at Narrogin, police said Serco staff would arrive without notification – sometimes as early as 7am, an hour before the first shift commenced – deposit the prisoner in the custody of police and "disappear". Serco staff were then unwilling to assist with the escort to court or custody.[293]

According to the WAPU, Serco employees would also sometimes refuse to take prisoners that they believed were injured. One officer reported a situation in which Serco refused to take a prisoner who had a minor injury (cut or blistered finger). Police then had to seek medical assistance at the hospital and the prisoner remained in police custody for an extra day.[294] This reluctance is understandable given the death of Aboriginal elder Mr Ward in the back of a van while in the supposed care of a private contractor, and the consequences for the staff involved. However, when the ailment is minor shifting the responsibility to police seems to be an unfair and unnecessary burden in the Committee's view.

Serco also provides security services in courts. DoTAG was generally pleased with the services provided to its courts, except for the late delivery of prisoners from Hakea Prison to the Central Law Courts and District Court. They would want to address this problem in any new contract arrangement with Serco.[295]

WAPU is also keen to amend the contract, so that:

- prisoners remain under Serco guard for the totality of their court appearance;
- police officers only ever have to escort a prisoner to a prison or watchhouse under extraordinary circumstances; and
- Serco collects prisoners from the appropriate police station in a timely fashion.[296]

WAPU said a lot of police time was wasted escorting detainees from one location to another due to inappropriate lock-up facilities or insufficient resources.[297]

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292 Ibid.

293 Ibid, p35.

294 Mr Mick Sutherland, Superintendent Kimberley Region, Mr Frank Audas, Inspector Kimberley District Office, and Mr Rod Boehm, Senior Sergeant, Western Australia Police, *Briefing*, 3 September 2013.

295 Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 18 September, p8.

296 Ibid, pp42-43.

297 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p6.

**Finding 26**

Inadequacies in the Court Security and Custodial Services contract between Serco and the Department of Corrective Services have created some illogical and inefficient custodial care and transport arrangements. This places an extra burden on police officers in regional police stations who do not necessarily have the resources to cope and also generates resentment from police officers towards Serco staff.

**Recommendation 16**

That the Minister for Corrective Services reviews the Court Security and Custodial Services contract between Serco and the Department of Corrective Services, with attention to:

- Collection of people in custody by Serco from police lock-ups that are not hubs;
- Provision of custodial care by Serco for people in custody before, during and after their court appearances;
- Variation of the requirement for Serco to collect people in custody from police lock-ups within a 24-hour period, so that detainees are collected in the early part of that period rather than the latter part.

### 4.3.2 Recording of information, supervision and standard procedures

It is essential that an accurate record of the personal details and physical and mental state of a detainee is made when taken into custody, and that the information is accessible to other officers. The CCC Commissioner has pointed out that:

> *… citizens are at their most vulnerable in terms of abuses of state authority when they are in police stations or lock-ups, because they tend not to have any friends around whereas there are usually lots of police officers around.*[298]

For this reason, proper documentation is “an absolutely vital part of the mechanism that must be put in place for there to be sufficient care given to those who come within the precincts of the lock-up”.[299]

There are a number of RCIADIC recommendations which refer to maintaining records of detainees’ physical and mental state:

298 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission *Transcript of Evidence*, 7 August 2013, p8.

299 Ibid.

*Recommendation 130(a)*, which refers to establishing protocols for the transfer of information about the physical or mental condition of an Aboriginal person between Police and Corrective Services;

*Recommendation 131,* which states that where police officers acquire information about the medical condition of a prisoner it should be recorded in a way that can be accessed by any other officer who may be responsible for the prisoner;

*Recommendation 132*, which specifies that the OIC on an outgoing shift notify the OIC of an incoming shift as to the wellbeing of a prisoner and any medical requirements, and that a checklist be devised for such hand-overs;

*Recommendation 138,* which refers to recording of all cell checks conducted; and

*Recommendation 127 (e)*, which refers to the establishment of proper systems of liaison between Aboriginal health services and police to ensure the transfer of information relevant to the health, medical needs and risk status of Aboriginal persons taken into police custody.

WA Police regards all of these recommendations as having been implemented, with procedures for recording of information set out in the Lock-up Manual. The manual specifies that:

- upon admission, details about the person in custody should be entered into the electronic Custody System, or if this is not available, into a hard-copy prisoner admission book for electronic entry at the earliest opportunity;[300]
- welfare screening to assess a detainees' needs is to be conducted and the details entered into the Custody System;[301]
- any medical attention which is sought is to be noted on the detainees' running sheet and on the Custody System, and likewise any medication that is administered;[302]
- details of cell checks are to be recorded on the running sheet and on the Custody System, noting the time and any observations;[303]
- the arrival and departure of any Aboriginal visitor is to be recorded, and any concerns raised in regard to the wellbeing of the detainee visited are to be recorded (and acted upon).[304]

300 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-4.1.
301 Ibid, LP-4.11.
302 Ibid, LP-10.1 and LP-14.2.
303 Ibid, LP-10.3.
304 Ibid, LP-14.13.

A checklist for hand-over at the completion of a shift is not specifically referred to in the manual, and nor is the transfer of information to Corrective Services or other bodies such as Aboriginal health services. Procedures for cell checks and for recording information about the detainees' wellbeing and medical needs at admission seem to be in place.

However, the electronic system for recording information (referred to as Custody) has been criticised by some police officers, who describe it as laborious and difficult to use. Officers said it was time-consuming to log in a detainee, causing delays in lock-up operations, and it was extremely difficult to correct any errors. The system did not encourage officers to record "accurate and timely information, nor is that information once recorded easily seen and read".[305] The WAPU felt that given the emphasis on "accurate and ample communication between and within all of the relevant agencies identified in the Royal Commission recommendations"[306] it was concerning that the recording system for detainee information was considered to be substandard.

The CCC Commissioner saw proper recording of information as one of the essential elements in providing a decent level of care, and emphasised the importance of the accessibility of this information.

> *… supervision (needs) to be linked into that so that everyone knows what the status of that person is; that when cell checks are made and so on, there is a proper record kept, so that all the way along the line there is a history compiled in relation to that particular person, which goes through until, of course, the point of discharge. If the person is being taken, for example, by people to another custodial place, there would be a proper accounting of the condition of the person at that time.*[307]

While giving evidence, the CCC Commissioner would not comment on whether he thought that WA's procedures for maintaining accurate records were adequate – merely, that in the course of other investigations the issue had been raised as being important.[308]

The CCC also raised the issue of supervision of police officers in its submission. In the course of its investigation into two incidents at the Broome police lock-up in March and April 2013, the CCC conducted research into key issues relating to lock-up facilities. The importance of supervision of police officers in lock-up management was one of a number of tentative findings the CCC made following an examination of policies and

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305 Submission No. 7 from WA Police Union, 15 August 2013, p32.
306 Ibid.
307 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission *Transcript of Evidence*, 7 August 2013, p8.
308 Ibid.

procedures from within Australia. It found that "supervision of police officers by their superiors has been an issue identified over the past two decades in various literature without evidence of any significant improvement being achieved".[309] Specifically:

- the role of supervisors is often unclear;
- supervision provided to staff is inconsistent;
- there is often insufficient time to supervise staff properly;
- the experience of supervisors varies;
- guidelines in relation to supervision are not used appropriately;
- supervision should be linked to accountability mechanisms such as the reporting and recording of incidents.[310]

A WA Auditor-General's report on new recruits in the WA Police also found that supervision was variable and there was a lack of training and guidelines for supervisors. It recommended the introduction of training and guidance materials for supervisors of probationary constables to support them in this role and aid in consistency.[311] While these findings are specifically in relation to supervision of probationary constables, supervision of officers generally was also raised.

Staff at ALSWA's South Hedland office have noted inconsistencies in the way the screening process is conducted. Considering officers use a standardised form with *pro forma* questions, ALSWA saw the problem as one of inadequate training and supervision.[312]

Nevertheless, the issues of supervision and standardised procedures are closely linked, with supervisors ideally playing a key role in ensuring that standardised procedures are implemented properly. Although the Lock-up Manual outlines procedures for managing detainees, the evidence anecdotally and in Committee hearings was that treatment could vary considerably, depending on the skill and attitude of the officer. The OIC was also in a position to influence the culture of the station, either positively or negatively. The Police Commissioner agreed that the way a station was managed by the supervisor was critical to good policing.[313]

Although there are standardised procedures with regard to lock-up management, some of the procedures are not particularly prescriptive and are left to the interpretation of the officer. For example, with regard to cell checks, the Lock-up Manual instructions

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309 Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p1.

310 Ibid, pp1-2.

311 Office of the Auditor General Western Australia, *New Recruits in the Western Australia Police*, Office of the Auditor General Western Australia, Perth, June 2012, pp9-10.

312 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

313 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p2.

are that "A member shall regularly visit each detainee to ensure the safety and welfare of that detainee and to determine any reasonable needs".[314] The meaning of "regularly" is not specified (apart from elsewhere in the manual which specifies that a detainee who has attempted self-harm must be checked at least every 10 minutes), and "reasonable needs" are not defined. Perth Watchhouse staff informed the Committee that they conducted cell checks every 20 minutes, while Katanning police said that they conducted checks every 15 minutes. Broome police were changing what they described as their "standardised procedures" so that checks would now be conducted every 15 minutes. However, there are no standardised procedures in relation to timing of cell checks, which can vary from station to station. The manual directs that:

> *The type of cell check that is appropriate for each detainee will depend on the past history of the detainee, if known, and the information available and assessment made, at the time of admission. All information is to be recorded on the detainee running sheet and Custody.*[315]

This emphasises the importance of accurate admission and screening procedures, as reiterated by the WAPU: "(This) is why it is really important for every detainee that comes into custody to actually do a full assessment so that the officers who were there at the time have an understanding and appreciation of the circumstances of this individual."[316]

Where there is too much in-built flexibility in standardised procedures, they cease to be standardised. The discretion police must exercise in regard to granting detainees access to lawyers (as discussed in Chapter 3) or third parties may also be a burden they would prefer not to bear. This is the view of the CLA:

> *… 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*

314 Western Australia Police, *Lock-up Manual*, 14 June 2013, LP-10.1.

315 Ibid, LP-10.3.

316 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p11.

> *effective than saying, "We need to educate our police generally in how to recognise these various issues that exist.*[317]

There are also situations in which police officers may find it difficult to follow a standardised procedure because of lack of facilities or resources. This was the case with the officers from Boddington Police Station who kept detainees in the Varley pod of a police van while completing paperwork because the station does not have any lock-up facilities. However, according to the Police Commissioner the proper procedure would have been for the officers to take the person to the Armadale lock-up where the paperwork should have been completed.[318]

**Finding 27**

Standardised procedures for lock-up management exist within Western Australia Police but are not always adhered to. This might be due to inadequate supervision, the non-specific wording of procedure guidelines, and inappropriate lock-up facilities.

### 4.3.3 Alternatives to transport: use of video links and Perth Magistrates Court

Agencies agree that using an audio-visual link (AV) to conduct bail hearings is more efficient than transporting detainees long distances to towns with suitable lock-ups and court facilities. According to DoTAG, a judiciary standing order has made AV the default option, rather than transport.[319] About 60 per cent of matters involving people in custody in Perth were now dealt with by audio-visual link – a turnaround from several years ago when 60 per cent would have been dealt with in court.[320]

In regional areas also, magistrates are increasingly using video links to conduct bail hearings. However, resources to do so are not as readily available. In the southern part of the State (South-West and Great Southern) only seven court locations have an AV link (in some cases only the most basic set-up). In the Kimberley, 11 court locations have AV capacity, although in a couple of these locations (e.g. Kalumburu and Looma) Telstra has not been able to provide an ISDN service (Integrated Services for Digital Network), meaning video-conferencing is not possible. In the Pilbara, six court locations have AV facilities and in the Goldfields there are nine locations with facilities. There are also four courts in the Midlands region, four in the Mid-West Region and two in the Gascoyne which have AV capability.[321]

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317 Ms Linda Black, President, Criminal Lawyers' Association, *Transcript of Evidence*, 11 September 2013, p9.

318 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p21.

319 Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 18 September, p8.

320 Ibid, p3.

321 Department of the Attorney General, *AV Facilities in WA Courts*, Courts Technology Group, DoTAG.

The Chief Magistrate said that for places where AV was not available, alternatives such as Skype had been investigated but found not to be viable at present. He said the Department of Corrective Services had used applications similar to Skype for some purposes and the Magistrates Court was keen to see whether it could adopt that "because if we can use a laptop in a remote location to Skype in some footage, that overcomes part of the problem".[322]

Regional magistrates were sometimes frustrated by uncertainty about when a detainee would arrive and how long they may stay in a lock-up until they could be transported out.

> *For that reason, we use video as much as we can to video into the prisons to avoid people being transported, but it is a concern that if we sentence someone in Halls Creek there will be a considerable period, no matter how efficient, before someone can be transported. There is clearly a need in regional areas for there to be adequate lock-ups simply because the possibility of having a transport network in regional and remote areas is not practical. There will always be people who are sentenced or remanded in custody, so there will always be a need for proper facilities for people to be held in until they can be transported.*[323]

DoTAG said that it could be an option for locations without AV – such as Boddington – to have an urgent matter dealt with by phone. Whilst magistrates preferred to be able to see the person they were dealing with, they would deal with it by phone if they had no other option.

Installing middle-of-the-range (Type B) AV facilities in locations where there was currently no AV would cost around $160,000, according to DoTAG.[324]

At present the new Magistrates Court within the Perth Police Complex in Northbridge operates only on Saturday mornings – as it did when the Perth Watchhouse was located at East Perth. The new watchhouse court is equipped with AV facilities which would enable magistrates to deal not only with arrests at the Perth Watchhouse but with all metropolitan and some regional arrests. While it was the intention of the Chief Magistrate to staff the court on weekdays as well as Saturday mornings, he now finds he is unable to because there is no capacity to provide security at the court on days

322 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p2.

323 Ibid, p4.

324 Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 18 September, p3.

other than Saturday.[325] Security is currently provided by Serco, but funding was not made available to provide Serco officers on weekdays.[326] The Department of Corrective Services, which manages the Serco contract, has informed the Committee that "funding approval is required prior to any contract variation to extend the service provision" and that this approval was being sought.[327] DoTAG, which administers the courts, requires seven weeks' notice that there are security arrangements in the complex before authorising its use.[328]

The Chief Magistrate said operating the court during the week would save on time and resources since detainees would not need to be transported from the Perth Watchhouse back to the metropolitan centres where the arrests had been made. The AV facilities also provided the capacity to support regional courts when their magistrates were busy.

> *Sometimes it is impossible to catch the magistrate because he is in the air or in a remote location. Our intention was that the Northbridge court would be the place where we can provide backup. We were ready to go prior to the official opening and then, all of a sudden, it was discovered that there was no money to pay for it.*[329]

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325 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, pp3-4.

326 This leads to the nonsensical situation of Serco transporting prisoners a short distance from the Perth Watchhouse to the Magistrates Court.

327 Ms Heather Harker, Department of Corrective Services, Letter, 11 October 2013.

328 Mr Ray Warnes, Executive Director, Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 18 September, p8.

329 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p4.

# Chapter 5

# Oversight mechanisms

**This chapter examines whether oversight mechanisms, procedures and disciplinary measures for personnel involved in custodial processes are adequate.**

> *We believe that extending the jurisdiction of the inspectorate (Inspector of Custodial Services) to police lock-ups is of critical importance because who else is doing that? Who is monitoring the practices and so on, apart from the police department itself? Having an independent statutory body doing that with extended powers would be very important, in our view, and would save lives.* – *Marc Newhouse, Deaths in Custody Watch Committee (WA)*

Oversight can be grouped into two main streams: oversight as it relates to standards within police lock-ups; and the oversight of personnel tasked with custodial processes.

## 5.1 Oversight of police lock-ups

### 5.1.1 Agency oversight of standards

The Office of the Inspector of Custodial Services (OICS) is an independent statutory authority which oversees standards and operational practices in all public and private sector prisons, juvenile detention centres, court custody centres, contracted prisoner transport and support services, and *prescribed* lock-ups in the state.[330] The OICS must inspect these designated areas and report to Parliament at least once every three years[331] although this does not preclude inspections at any other time. While lock-ups come under the Inspector's jurisdiction, legislation currently excludes those operated by the Commissioner of Police[332] so in practical terms the OICS only has limited jurisdiction in this regard.

The prescribed lock-ups which currently fall within the jurisdiction of OICS are at Carnarvon, Kalgoorlie and Albany. OICS may also inspect lock-ups at Geraldton and South Hedland as these currently double as court custody centres. The poorly defined nature of OICS jurisdiction with respect to lock-ups is exemplified by the situation in Kununurra, where until recently OICS had jurisdiction for the lock-up because it was a

330 Office of the Inspector of Custodial Services, *About Us*, May 2009. Available at: www.oics.wa.gov.au/go/about-us. Accessed on 2 October 2013.

331 Section 19 *Inspector of Custodial Services Act 2003* (Western Australia).

332 Prescribed lock-ups are managed by a contractor appointed for this purpose under the State's *Court Security and Custodial Services Contract* and therefore exclude lock-ups managed by WA Police.

court custody centre. However this no longer applies because the Kununurra Court redevelopment includes a custody centre.[333] Adding to the confusion, the OICS may also inspect other lock-ups with the permission of the police:

> *OICS is the only independent agency that has a legislatively based right to access any police lock-ups in Western Australia for the purpose of inspecting standards of decency, infrastructure, services and processes … that legal right is restricted to specific lock-ups by a combination of statutes, but has been permitted outside the terms of the legislation by the Commissioner of Police upon request of the Inspector.*[334]

Over the past 13 years this has translated to the OICS having "limited scope to enter, observe and assess certain aspects of the custodial arrangements in police lock-ups in Western Australia" with access being limited to nine separate lock-ups over the years. The OICS last undertook a detailed inspection of five lock-ups in November 2012 and is due to report on this matter in late 2013. As a consequence of the OICS having limited jurisdiction in relation to lock-ups, the Office had not developed any specific inspection standards for lock-ups, being guided instead by general standards of decency and the standards expected of contractors providing services within court custody centres.[335]

Constraints also existed around what OICS could do with the information it gathered in relation to its inspections of lock-ups, with legislative and resource limitations impeding the Office's ability to make direct recommendations to the police, for example, or to follow up over time. Instead the OICS identified what outcomes needed to be achieved and engaged with the agency on better ways to achieve it.[336]

Inspection of police lock-ups may also be undertaken by prison superintendents in accordance with Department of Corrective Services Policy Directive 4 *Placement of Prisoners in Lockups*. As the *Prisons Act 1981* and *Prisons Regulations 1982* make provision for prisoners to be detained in police lock-ups for reasons including during transit between prisons or pending removal to a prison, there is a requirement for the responsible superintendent to inspect lock-ups being used for prisoner placement once every financial year. The ensuing report must be provided to the General Manager Public Prisons and include advice as to whether the lock-up continues to be suitable for

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333 Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p3.

334 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, pp1,6.

335 Ibid, p1.

336 Ms Natalie Gibson, Director Operations, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p7.

prisoner placement. The policy also requires a copy of the report to be forwarded to the Regional Superintendent of Police and to the lock-up keeper.[337, 338]

The Department of Corrective Services inspection practice comprises completion of a single-page tick-box assessment to determine suitability of the lock-up, and covers matters including security, cleanliness of the cell, meals, access to medical assistance and third party visits.[339]

The OICS has commented that the inspections fail to address issues of procedure, management of persons in custody or decent treatment. Comments from some superintendents indicated they believed the process to be tokenistic. On requesting copies of lock-up reports in the past, the OICS found deficiencies in the process, including but not limited to: incomplete forms or inspections that had not been undertaken; superintendents unaware of their inspection obligations; and resulting reports not being actioned or forwarded to the WA Police. At the time, the Department of Corrective Services undertook to OICS to improve these processes.[340]

The Committee is encouraged by the most recent lock-up inspection reports provided on request by the Department of Corrective Services, which show that inspections of most lock-ups had taken place within the past 12 months.[341] That said, the single-page assessment is clearly not comprehensive and the level of detail varies with some superintendents providing extensive additional comments (although this is the exception rather than the rule).

The inherent weaknesses in the current system of lock-up inspections have been summarised by the OICS:

> *… overall, these visits do not constitute an adequate oversight process: they apply only to selected sites, are limited in scope, and are undertaken by another government agency not an independent oversight body.*[342]

The Committee shares these concerns as it is evident that current mechanisms do not provide a comprehensive system of oversight for police lock-ups. While some oversight

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337 Department of Corrective Services, *Policy Directive 4 Placement of Prisoners in Lockups*, September 2013, p4. Available at: www.correctiveservices.wa.gov.au/prisons/adult-custodial-rules/policy-directives.aspx. Accessed on 2 October 2013.

338 It should be noted that Department of Corrective Services *Police Directive 4* defines the lock-up keeper as the Police Officer or other person in charge of a police lock-up.

339 Department of Corrective Services, *Police Directive 4: Report on lockups*, September 2013. Available at: www.correctiveservices.wa.gov.au/prisons/adult-custodial-rules/policy-directives.aspx. Accessed on 2 October 2013.

340 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p6.

341 Hon. Joe Francis MLA, Minister for Corrective Services, Letter, 11 October 2013.

342 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p6.

exists, the jurisdiction and scope of lock-up inspections remain poorly defined and increase the risk that issues are not detected or promptly addressed.

**Finding 28**

That Western Australia currently lacks a comprehensive system of oversight in relation to police lock-ups.

### 5.1.2 Oversight by non-government organisations

The Committee acknowledges that an important oversight role is also played by non-government organisations such as the DICWC(WA). The DICWC(WA) was established in 1993 by a "coalition of concerned parties"[343] including lawyers, unions, Aboriginal organisations, NGOs, church organisations and family members of those who had died in custody. While it initially received Federal Government funding, this eventually ceased and it became a not-for-profit group:

> *My understanding is that similar watch committees were established in each state and territory following the royal commission, and the watch committee of WA is the last one remaining in that form. When we lost funding we decided that it was necessary to continue, and we are glad we did, but obviously the focus of the organisation had to change because of the lack of resources. From that point of view, we have really become more of an organisation that identifies key issues and runs campaigns around those.*[344]

The main aim of the DICWC(WA) is to "monitor and ensure the effective implementation of the 339 Recommendations of the Royal Commission into Aboriginal Deaths in Custody in Western Australia".[345] Included in its list of objectives, the DICWC(WA) sets out to monitor the bodies responsible for implementing recommendations and ensure these responsibilities are fulfilled, including through the formulation of recommendations to appropriate bodies relating to the implementation of the RCIADIC recommendations and promoting their adoption.[346]

Apart from government and non-government bodies, other less formal means of oversight can also be achieved through mechanisms such as "custody visitor schemes". The CCC highlighted a number of these schemes in operation across the UK and the Netherlands where community members are tasked with undertaking unannounced

343 Deaths in Custody Watch Committee WA, *About DICWC(WA) Inc.*, 2013. Available at: www.deathsincustody.org.au/aim-and-objectives. Accessed on 22 October 2013.

344 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA) Inc, *Transcript of Evidence*, 12 June 2013, pp1-2.

345 Deaths in Custody Watch Committee WA, *Aim and Objectives*, 2013. Available at: www.deathsincustody.org.au/aim-and-objectives. Accessed on 22 October 2013.

346 Ibid.

visits to police lock-ups. The benefits are that, if complemented by custodial training, such schemes can bring about an improvement to facilities and increase staff engagement with basic standards.[347]

Community based visiting schemes such as these also reflect the principles of OPCAT insomuch as they comprise regular visits by an independent body to places of detention to ensure that cruel or inhuman treatment does not occur. To some extent the Aboriginal Visitors Scheme operates along similar lines, however its focus is on the welfare and conditions of detention for Aboriginal detainees only.

Less formal oversight by non-government bodies such as DICWC(WA) will doubtless continue although scope will be dictated by what resources are available. Nonetheless the Committee considers that bodies such as DICWC(WA) are important for complementing other more formal agency-based mechanisms and should be encouraged.

**Finding 29**

That oversight by Non-Government Organisations like the Deaths in Custody Watch Committee (WA) fulfil an important complementary role to more formal agency-based mechanisms in ensuring the adequacy of custodial processes.

### 5.1.3 Independent oversight of police lock-ups

There appears to be significant support for independent oversight of police lock-ups and for the OICS to assume this role, since it would be a logical extension of its current remit. Such a move would ensure that lock-ups receive greater scrutiny and it may also help to achieve consistent standards across the State:

- ALSWA considers it to be the only mechanism with the potential to drive real change as it would ensure RCIADIC recommendations were fully implemented and OICS would be able to independently monitor the treatment of, and conditions for, people held in police custody.[348]
- The WAPU supports the OICS having oversight of lock-ups as it would ensure consistent standards across the State. In turn this would facilitate good quality facilities which would reduce risks for detainees and police officers.[349]
- Ms Solonec (National Congress of Australia's First Peoples) considers lock-ups to have been somewhat ignored. Extending the OICS jurisdiction would ensure greater scrutiny of lock-ups and would be a welcome change.[350]

347 Submission No. 3 from Corruption and Crime Commission, 19 July 2013, p24.
348 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, pp2, 12.
349 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 11 September 2013, pp4, 12.

- Legal Aid WA considers OICS would be effective at identifying any systemic issues relating to the detention of people after arrest, and OICS would also be in a better position to address any cross-over issues between the WA Police and Serco.[351]

Secondly, there was support for oversight of lock-ups by the OICS on the grounds of independence from police:[352, 353]

- The Chief Magistrate indicated that it would be logical for OICS to inspect and make recommendations about conditions in lock-ups as there would be a public record of inspections and, as an independent body its recommendations may assist police in obtaining necessary funding to rectify issues.[354]
- The Police Commissioner also saw merit in having an independent authority overseeing lock-ups and did not object to OICS taking on this role. There would be benefits in securing funding or changes to police facilities since the recommendations would be coming from an independent body rather than the Police Commissioner.[355]

The OICS considers there to be a strong case for extending its jurisdiction under the *Inspector of Custodial Services Act 2003* to include all police lock-ups:

> *In terms of the value of inspections … police lock-ups [are] a unique risk environment … you see people coming in, clearly still under the influence of substances, and clearly mentally and physically unwell. This is the environment in which the police have to operate on a day-to-day basis. Substances, illness and distress are all part of that life. The facilities, of course, especially in regional areas, are often less than ideal particularly for handling people in those sorts of circumstances. In principle, I believe there is a very strong argument for independent access to and inspections of all places of detention … and I think the current system is rather strange in what is and what is not covered.*[356]

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350 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p3.

351 Mr George Turnbull, Director of Legal Aid, Legal Aid Western Australia, *Transcript of Evidence*, 14 August 2013, p4.

352 Submission No. 9 from Mr Bruce Campbell, 22 July 2013, p5.

353 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee WA, *Transcript of Evidence*, 12 June 2013, p5.

354 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p10.

355 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p10.

356 Professor Neil Morgan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p2.

If the OICS is to assume oversight for all police lock-ups in the State, it will need to develop appropriate standards for this task. As individuals detained in lock-ups are generally held for short periods of time, standards would necessarily differ from those currently used by the OICS for inspecting prisons. According to the OICS, new standards would not be in the form of a checklist but would identify areas of focus so that police for example could be advised what areas were being looked into. Additional standards may be developed in relation to Aboriginal detainees because of particular issues linked to "diversity and complexity and … interacting socioeconomic factors that the police have to confront on a daily basis".[357]

The OICS makes the point that it sees its remit as being limited to promoting and inspecting against standards in lock-ups and not as an investigative body with responsibility for the discipline of officers. The OICS sees its role as one of examining processes and systems with a proactive and preventive focus rather than being reactive and investigative when something goes wrong.[358] Given the roles of the WA Police and the CCC as investigative bodies, the Inspector would enter into appropriate memorandum of understanding arrangements with both agencies.[359]

A further point is made regarding appropriate resourcing. The OICS emphasises that any expansion to its functions would need to be accompanied by increased resourcing to cope with numerous and diverse facilities over a wide geographical area, requiring a full time team of inspectors dedicated to the task. The frequency of inspections would also impact on the resources required.[360]

The Committee considers there is a definite need for uniform oversight of police lock-ups and that this function would sit most logically with the OICS, an independent statutory authority that already has oversight responsibility for custodial facilities including selected police lock-ups. Consistent with existing OICS functions such a remit would provide independent oversight into systemic issues. The Committee also believes that providing OICS with this responsibility would satisfy any future obligations WA may need to comply with under the OPCAT (discussed further in Chapter 7). Complaints and disciplinary measures for personnel involved in custodial processes is a matter explored separately below.

OICS oversight of police lock-ups would help to ensure that custodial arrangements reflect the principles underpinning the RCIADIC recommendations. The Committee recognises that should OICS jurisdiction be expanded to oversee standards in all police lock-ups across the State it will need to be adequately resourced to carry out this role.

357 Ibid, p5.
358 Ibid, p2.
359 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, pp6-7.
360 Ibid, p6.

**Finding 30**

That standards in police lock-ups warrant uniform oversight by an independent body.

**Finding 31**

That the Office of the Inspector of Custodial Services would be the appropriate body to assume responsibility for the development, promotion and inspection against standards relating to all police lock-ups in Western Australia.

**Recommendation 17**

That the Minister for Corrective Services initiates amendments to the *Inspector of Custodial Services Act 2003* to enable the Inspector of Custodial Services to assume oversight responsibility for all police lock-ups in Western Australia and that consideration is given to appropriate resourcing of the Office of the Inspector of Custodial Services to undertake this function.

## 5.2 Disciplinary measures for personnel involved in custodial processes

Police personnel with custodial responsibility at lock-ups (both sworn and auxiliary officers)[361] are employed by the Commissioner of Police under the *Public Sector Management Act 1994* and are bound by a Code of Conduct. The Code of Conduct requires all police employees to report any unprofessional conduct relating to police personnel or others which includes: any criminal action; corruption; unlawful conduct; dishonest and unethical conduct; breaches of discipline; and conflicts of interest. Such conduct must be reported via one or more avenues including but not limited to: an immediate supervisor/OIC; Police Internal Affairs Unit; the CCC. Police personnel are also guided in their duties by numerous manuals, policies and operating procedures, and negligent non-compliance with these may be dealt with as a breach of discipline.[362]

Persons aggrieved with treatment received while in detention have the option of lodging complaints with independent oversight bodies such as the Ombudsman (where this pertains to administrative issues) or the CCC (in relation to misconduct). Complaints may also be lodged with the Police Complaints Administration Centre, with its investigations subject to independent review or audit by the CCC.[363]

ALSWA indicated that the standard complaint process for police lock-ups seemed to involve an initial complaint being lodged with the police station followed by escalation if necessary through formal channels. ALSWA claimed its clients were often not aware

361 Refer to glossary at Appendix 3.
362 Submission No. 8 from Western Australia Police, 13 September 2013, pp6-7.
363 Ibid, p6.

of how to pursue complaints and suggested that an improved communications strategy relating to the WA Police complaints process might be needed.[364]

The Committee is aware from its own observations that "Your Rights in Custody" signs displayed in police lock-ups refer to an individual's right to complain about mistreatment to the CCC.[365] The Committee noted there are a range of minor matters or grievances which could be resolved at station level if the lines of communication were open. That said, procedures for making a complaint did not appear obvious.

**Finding 32**

The avenues by which members of the public can complain about minor matters relating to their time in custody are not generally known.

Once a complaint or allegation has been made concerning personnel in a police lock-up, an investigation may be carried out by WA Police and/or the CCC. In relation to police investigations, while some matters may be investigated at district level, the WA Police Internal Affairs Unit (IAU) will get involved in more serious matters. According to the Police Commissioner:

> *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 … 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.*[366]

The CCC differentiates WA Police investigations, which tend to focus primarily on the criminal conduct of individuals, from its own. CCC investigations not only looked into the conduct of individuals but also tried to identify flaws in organisational systems, policies, procedures and practices in order to recommend improvements.[367]

The oversight responsibilities of the CCC are detailed in the *Corruption and Crime Commission Act 2003* (CCC Act). The CCC has a role in prevention/education to improve the integrity of the public sector, and in dealing with allegations of misconduct[368] by public officers. Allegations may be received by the CCC in the form of individual complaints, through its own identification or through mandatory notifications under the CCC Act from the heads of public authorities, or the Police Commissioner in the

364 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p12.

365 As per requirements of Western Australia Police, *Lockup Manual*, 14 June 2013, LP-1.3 Appendix 1A – 'Your Rights in Custody' Signs.

366 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p4.

367 Supplementary Submission from Corruption and Crime Commission, 28 August 2013, p7.

368 As defined in Section 4 *Corruption and Crime Commission Act 2003* (Western Australia).

context of a "reviewable police action".[369] The latter is defined under section 21A of the CCC Act and requires the Police Commissioner to notify the CCC of any action taken by an officer or employee of the police that is, among other things, unlawful, unjust, oppressive or improperly discriminatory including allegations of ill-treatment or excessive use of force by police officers.[370]

The obligation on the Commissioner of Police to notify the CCC is therefore greater than on other heads of public sector agencies and results in more allegations concerning police to be received by the CCC compared to other public authorities.[371]

In assessing allegations of misconduct the CCC may investigate matters itself; investigate matters in conjunction with other bodies such as the WA Police and/or other public authorities; refer the matter to an independent agency such as the Ombudsman; refer the matter to public authorities for their investigation; or take no further action.[372] Where allegations are referred back to public authorities for their investigation, the CCC may monitor the agency's progress in accordance with s40 of the CCC Act and review how appropriately the authority has dealt with misconduct under s41 of the CCC Act.[373]

The criteria used by the CCC in determining whether to conduct its own investigations are largely outlined in s34 of the CCC Act which states the CCC must have regard to the seniority of the public officer to whom the allegation relates, whether serious misconduct has or might have occurred and whether there is a need for an independent investigation rather than an investigation by a public authority.[374] Section 34 of the CCC Act does not however limit the matters which the CCC may consider in making its determination and, ultimately, the criteria that are used by the CCC to select what to investigate remain unclear.

According to the CCC, most investigations into misconduct by police personnel would be carried out by the IAU in relation to more serious matters, and the CCC would investigate a small number of matters:

> *If there is a need for an independent investigation, plainly the more serious the allegation – we are speaking entirely theoretically – the number of police officers involved, whether there might be some reasonable suspicion of some kind of a cover up, or whether something was allowed to go through are perhaps the sorts of things that would*

369 Supplementary Submission from Corruption and Crime Commission, 28 August 2013, p4.
370 Submission No. 8 from Western Australia Police, 13 September 2013, pp6-7.
371 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 7 August 2013, p3.
372 Ibid, pp4-5.
373 Ibid, pp5-6.
374 Ibid, p3.

> *excite our interest. We have strategic priorities of course. We are a small organisation and we do not have the resources available to us that the police force does.*[375]

The WA Police view is that they are better equipped to deal with investigations and there is no need for the CCC to get involved except in extreme circumstances. Indeed the Police Commissioner suggested that the time taken for the CCC to investigate a matter such as the Broome lock-up incident impacted negatively on officer morale and WA Police investigators could have resolved the matter much more efficiently.[376]

**Finding 33**

It is not clear what criteria the Corruption and Crime Commission uses to select the cases it chooses to investigate. There are also concerns about the time it takes to investigate matters and the impact that delay has on station morale.

It is a matter of public record that the CCC fully investigates a small proportion of allegations against police that are referred to it. In 2011 the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) of the WA Parliament reported that of 381 complaints relating to excessive use of force by police received by the CCC in the period July 2009 to March 2011, the CCC conducted its own investigation on just one occasion.[377] A subsequent report by the JSCCCC referred to seven investigations undertaken by the CCC out of 81 allegations of excessive force by police in the seven-month period to June 2012.[378] The JSCCCC did note that the CCC has afforded greater priority to consideration of allegations of police misconduct (reflected in an increase in the number of own-investigations pertaining to WA Police) since the appointment of Commissioner Roger Macknay in November 2011.[379] However it remains the case that the CCC still only conducts a limited number of investigations.

Of the allegations against police that are referred to the CCC, matters relating to lock-ups are an even smaller proportion. Data provided to the Committee by the CCC indicated that out of 91 allegations received by the CCC in relation to police lock-ups in the past 12 months, the CCC had investigated three allegations.[380] Data provided by the

375 Ibid, p4.

376 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p3.

377 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive Use of Force by Police*, Report 18, Parliament of Western Australia, 8 September 2011, p*x*.

378 Joint Standing Committee on the Corruption and Crime Commission, *Guarding the Guardians*, Report 29, Parliament of Western Australia, 16 August 2012, p4.

379 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct*, Report 32, Parliament of Western Australia, 15 November 2012, pp*iii*-*iv*.

380 Supplementary submission from Corruption and Crime Commission, 28 August 2013, p11.

WA Police demonstrate that a comparatively higher number of internal investigations (including investigations by IAU) relating to cells, lock-ups and watchhouse environments were carried out by WA Police than own-investigations conducted by the CCC in the same time period.[381]

**Finding 34**

The Corruption and Crime Commission does not investigate the vast majority of allegations of serious police misconduct in lock-ups. Most investigations are undertaken by Western Australia Police internal affairs.

In light of investigations conducted by the CCC over the past 18 months with respect to use of force there is a recognition that lock-ups present unique challenges.[382] Evidence to the Committee suggests the CCC intends to refocus its attention on allegations against police. The CCC has recently conducted public examinations around two alleged incidents at Broome lock-up. The agency's interest extends into the broader issues of "supervision, accountability and procedure" which are areas the CCC intends to continue focusing on.[383] The CCC has highlighted the adequacy of police supervision as being a particularly significant motivating factor for investigation as well as any reluctance on the part of other police officers to intervene or report the conduct of colleagues.[384]

There are some calls for greater independent oversight of complaints made against police or custodial officers because "police investigating the police" does not inspire public confidence.[385, 386] Responding to these concerns, both the WA Police and the CCC have reaffirmed confidence in the current system of oversight.

According to the Police Commissioner:

> *I think that* [WA Police] *have a responsibility to investigate things that go wrong … 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*

381 Mr Malcolm Penn, Assistant Director Legal and Legislative Services, Western Australia Police, Letter, 11 October 2013.

382 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 7 August 2013, p8.

383 Ibid, p6.

384 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence given to the Joint Standing Committee on the Corruption and Crime Commission*, 23 October 2013, p2.

385 Submission No. 9 from Mr Bruce Campbell, 22 July 2013, p5.

386 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee WA, *Transcript of Evidence*, 12 June 2013, p6.

*public some confidence that there is independent oversight of the job.*[387]

The Corruption and Crime Commissioner, Mr Roger Macknay, supported this view and expressed similar confidence in the IAU's impartiality and ability to conduct investigations into important matters:

*The IAU … is a very, very well-run organisation in my experience. The people there are people of high calibre; they are independent; the policies and procedures which they operate under are sophisticated and well thought out; and it must not be thought that to give something to the IAU is to let the police give a tick to something.*[388]

The Committee accepts that the IAU has an expeditious and well established regime for investigating allegations. However these can be viewed by the public as lacking independence. Greater transparency regarding the outcomes of police internal investigations of allegations would certainly assist in fostering public confidence. The Committee is aware that the WA Police Annual Report mentions complaints pertaining to compliance with the Code of Ethics and Agency Code of Conduct.[389] However, only cursory mention is made to the number of complaints lodged, the number of breaches found and number of complaints still under review.

There is scope to expand on the public reporting of internal police investigations to provide greater transparency without identifying complainants or officers, especially where serious allegations have been made. Potential mechanisms include: ensuring that the WA Police Annual Report includes a more comprehensive breakdown of types of complaints received, action taken and how matters have been resolved; and/or periodic reports to Parliament in this regard by the Minister for Police subject to consideration of *sub judice* rules.

**Finding 35**

While Western Australia Police internal affairs has an expeditious and well established regime for investigating allegations, this can be viewed by the public as lacking independence.

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387 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, pp3-4.

388 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 7 August 2013, p10.

389 Western Australia Police, *Annual Report 2013 – Making every contact count*, Government of Western Australia, September 2013, p130.

**Recommendation 18**

That there is greater public reporting of the outcome of police internal investigations through the Western Australia Police Annual Report and/or through the tabling of periodic reports in Parliament by the Minister for Police subject to consideration of *sub judice* rules.

The CCC sees its functions of receiving and assessing notifications, reviewing matters and investigating where warranted as being the crux of its role as an oversight body. The CCC stresses that, in keeping with the intent of Parliament and the Kennedy Royal Commission Report which led to the creation of the CCC, the objective is to have an agency well equipped to investigate allegations of misconduct itself rather than having this imposed on it by an external agency:

> *… the thrust of the Kennedy Royal Commission report recommendation was that WA Police should, as far as possible, be responsible for their own investigation of misconduct for the control of their own organisation and that applies to not just the WA Police but also every other public body and agency within the state.*[390]

Nevertheless the CCC also considers that it has a responsibility to step in and investigate matters to further particular strategic purposes where it can bring the additional rigour and objectivity of an outside agency to the task. For instance, in relation to the CCC's current strategic focus on police lock-ups:

> *There are … a number of matters where our enhanced powers give us very considerable advantage over police, particularly in relation to the use of compulsory examinations. In a lock-up matter, for example, where the only witnesses are likely to be police, auxiliary or custody officers, it would be very difficult for police to do more than conduct interviews of those officers, whereas we have the ability to bring those officers to the commission and to examine them on oath. Obviously, that can be a more effective way of ascertaining the truth than simply conducting interviews.*[391]

The CCC has found its ongoing focus on lock-ups to be justified. According to the Corruption and Crime Commissioner, "with great respect to police, if the matter had been left with police, then some of the things that we are seeing would not have been

390 Ibid, p2.

391 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence given to the Joint Standing Committee on the Corruption and Crime Commission*, 23 October 2013, p7.

revealed".[392] It will however remain the case that a mere handful of these matters will be fully investigated every year.

The WAPU considers existing oversight mechanisms, procedures and disciplinary measures for police officers involved in custodial processes to be satisfactory given "there is a chain of command through which accountability escalates and … an external agency retains overarching oversight of the actions of WA Police".[393] The WAPU sees advantages in the WA Police being given first opportunity to conduct an investigation, given the greater understanding of police practices, procedures and decision-making in dynamic situations that would be fairly unique.[394]

While current oversight mechanisms are seen to be satisfactory, the WAPU does suggest that disciplinary procedures within WA Police could be improved through the application of more facilitative debriefs following incidents of importance in police lock-ups. In keeping with RCIADIC *Recommendation 124*, the union suggests that the process of re-examining instructions issued by senior officers and procedures followed could be further improved to reduce the risk of incidents happening again.[395]

The Committee is satisfied that existing WA Police disciplinary measures are adequate for personnel involved in custodial processes. RCIADIC *Recommendation 226* highlighted the need for complaints against police to be made to, investigated by (or on behalf of) and adjudicated by a body or bodies totally independent of police. WA Police previously advised that this recommendation had been implemented as policies and procedures enabled an open and equitable process for investigating complaints against police managed by the Police Complaints Centre with independent oversight afforded by the CCC, and that the Ombudsman may also independently investigate complaints.[396] The Committee has identified scope to further enhance the transparency of this process through greater public reporting of police internal investigations, especially where serious complaints have been made (see page 87).

The Committee considers that current oversight mechanisms ensure that any allegations of misconduct will be suitably investigated by the WA Police and/or the CCC through its own process of investigation and monitoring/review of agency investigations. While *Recommendation 226* has been overtaken somewhat by the subsequent findings and recommendations of the Kennedy Royal Commission (2002-04), it is nevertheless the case that current oversight mechanisms are not fully

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392 Ibid.

393 Submission No. 2 from WA Police Union, 15 August 2013, p29.

394 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 11 September 2013, p4.

395 Submission No. 2 from WA Police Union, 15 August 2013, pp30, 42.

396 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p131.

independent of police because the vast majority of allegations are dealt with by Police IAU.

While the CCC has indicated its intention to investigate more allegations relating to lock-ups, to date it has fully investigated very few. However if oversight of lock-ups by OICS is implemented and police embrace and implement other recommendations in this report, it may lead to an environment which deters serious misconduct in lock-ups and reduces the volume of complaints.

**Finding 36**

Current investigative processes between Western Australia Police and the Corruption and Crime Commission should be retained, with implementation of additional oversight by the Inspector of Custodial Services to better address systemic causes of misconduct.

# Chapter 6

# Training of custodial officers on cultural issues

**This chapter examines evidence of cultural awareness and the current training regime for custodial officers in relation to cultural issues.**

> *So it is not just about being aware; it is about being competent. It is not just about knowing the underlying reasons why Aboriginal people are in the situation they are; you have also got to be able to be competent in the way that you manage them and the way you relate to them. – Tammy Solonec, National Congress of Australia's First Peoples*

Tension in the relationship between people being held in custody and the people who are holding them is to be expected. But is this tension magnified when the people being held are Aboriginal? Are Aboriginal people in custody worse off than non-Aboriginal people in custody – and if they are, is this because of a lack of Aboriginal cultural competence on the part of the police?

As noted in Chapter 1, Aboriginal people are taken into custody at a much higher rate (proportional to population) than non-Aboriginal people.[397] WA Police, as an agency, recognises this situation in its *Strategic Policy on Police and Aboriginal People (Policy Statement and Rationale)*, and notes that as a result of this, "a disproportionate level of services" needs to be provided.[398] The policy statement sets out the agency's commitment to ensuring that Aboriginal people receive a "comprehensive and consistent policing service".[399] It acknowledges that "several aspects of the service provided to Aboriginal people have been less than satisfactory"[400] and that:

> *… the relationship with Aboriginal people has suffered from historical legacies that include the police role in enforcing laws, carrying out government policy and the resulting difficulty in building trust between Police and Aboriginal people.*[401]

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397 Lyneham, M. and Chan, A., *Deaths in Custody in Australia to 30 June 2011*, Australian Institute of Criminology, Canberra, 2013, p*vi*.

398 Western Australia Police, *Strategic Policy on Police and Aboriginal People,* p2. Available at: www.police.wa.gov.au/LinkClick.aspx?link=PDFs%2fServiceDelivery_Aboriginal_People.pdf&tabid=995. Accessed on 22 October 2013.

399 Ibid.

400 Ibid.

401 Ibid.

In summary, the document acknowledges the issues of policing in Aboriginal communities, the causes of the problems and the broad measures (and some specific measures) required to improve the situation. It states that "An understanding of the diversity of Aboriginal people is essential for all government employees, including police officers",[402] and declares the agency's support for the development of cultural sensitivity training involving local Aboriginal community members.

> *Whilst recognising the impact of the past on current attitudes, the Police Service aims to overcome longstanding distrust through the creation of a new relationship with Aboriginal people. This relationship cannot be based on the commitment that the Police Service makes in this document alone – it must be supported by actions in dealing fairly and openly with Aboriginal people. It must also be based in the provision of a consistent service where intentions are communicated clearly to individuals and the community.*[403]

But what is happening in practice? Are the commendable aspirations in the statement above being supported by actions, or is the strategic policy, as others have suggested, "an elaborate set of principles, with no detail provided about procedures for evaluation (or implementation)"?[404] Is there a need for more cultural competency training, and are frontline officers in isolated communities adequately supported in this regard?

## 6.1 Evidence of the extent of cultural awareness

Accounts of the relationship between police officers and the Aboriginal community differ considerably depending on who is being asked and where they happen to be. ALSWA says its staff consistently work with police officers throughout the State who treat Aboriginal detainees respectfully and appropriately,[405] adding weight to the WAPU vice-president's assertion that officers "go to great lengths to ensure that there is harmony in communities".[406] However, awareness of the culture and practices of Aboriginal people varies markedly between individual police officers, according to ALSWA. For example, police officers working in Nullagine and Jigalong were perceived to have a good relationship with the Aboriginal community and respect for Aboriginal culture and practices; "Unfortunately, however, the same level of respect is not always evident in the larger Pilbara towns of Newman, Roebourne, Karratha and Port

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402 Ibid.

403 Ibid.

404 Allison, F. and Cunneen, C., 'The role of Indigenous justice agreements in improving legal and social outcomes for Indigenous people', *Sydney Law Review*, vol. 32, 2010, p658.

405 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

406 Mr Brandon Shortland, Vice President, WA Police Union, *Transcript of Evidence*, 13 September 2013, pp9-10.

Hedland".[407] The relationship between police and Aboriginal communities should not be so fragile that it is dependent on whether or not competent leadership is exercised at station level.

After meeting with representatives of both groups, it became obvious to the Committee that in general the Aboriginal community's perception of its relationship with the police is much more negative than how police officers perceive it. Police officers in Narrogin said that they treated Indigenous and non-Indigenous people consistently.[408] However, Narrogin Aboriginal community members felt that they were targeted unfairly and not listened to in the same way as non-Aboriginal people in the community.[409] "If blackfella rings up, can't hear them. If whitefella rings up, they are there."[410]

Similarly, while Katanning Police Station officers said that they had a "very good rapport"[411] with the Aboriginal community, local Aboriginal representatives complained of being harassed.[412]

Despite some positive experiences being reported to the Committee, victimisation, over-policing, suggestions of systemic racism and a general lack of cultural understanding were common themes to emerge from the submissions, hearings and meetings with Aboriginal communities.

### 6.1.1 Victimisation and over-policing

ALSWA's Director of Legal Services is in no doubt that Aboriginal people in WA are over-policed, calling it "a disgrace".[413] Aboriginal people were routinely charged with trivial offences, and the same people were targeted repeatedly.

> *I went to Roebourne in 2011 and spoke to some kids in the community there – Aboriginal kids do not lie about these things; they just do not make it up – and they said that they would often be stopped eight times a day by the police if they were in a public space and name checks done to check whether there were warrants for their arrest. What sort of attitude is that going to engender towards police? Where I grew up, I do not reckon I was ever stopped once by a police officer*

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407 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p11.
408 Narrogin Police Station officers, *Briefing*, 9 August 2013.
409 Narrogin Aboriginal community members, *Briefing*, 9 August 2013.
410 Ibid.
411 Katanning Police Station officers, *Briefing*, 10 August 2013.
412 Katanning Aboriginal community members, *Briefing*, 10 August 2013.
413 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p14.

> *because I am white and middle class. But these kids are hounded to death over what I describe as rubbish offending.*[414]

ALSWA cited several other (widely reported) examples of Aboriginal people who ended up in custody for minor offences, such as a 16-year-old Onslow boy who spent more than 10 days in custody for attempting to steal a $2.30 ice-cream, and a boy from Northam who was charged with receiving a stolen Freddo Frog. The number of Aboriginal people who ended up in police lock-ups for using bad language at police was described as "mystifying".

> *These people swear at the police, in 2013, in circumstances where we all know that you can come across swearing at the drop of a hat ... These people use the usual expletive towards police and they get charged with disorderly behaviour, and sometimes they are locked up and end up in the watchhouse. Sometimes they do not come to court and a warrant is issued for their arrest and they end up locked up. The number of offences that these people are facing is absolutely staggering, and it is hard not to think that if similar language was used by non-Aboriginal people, it would all go through to the keeper.*[415]

ALSWA's Kununurra representative described similar situations in Kimberley towns, particularly Halls Creek, where Aboriginal people were regularly locked up for minor offences such as trespassing.[416] He believed police could exercise more discretion in charging people for minor offences but that the culture and attitude of police prevented this.

Aboriginal community members in Katanning also spoke of harassment. A local business owner complained of being pulled over by police regularly while driving, and another man – who said that he was a "marked person" – said he received a yellow sticker on five different cars in a three-year period.[417] This experience aligned with that of a Narrogin community representative: "If you make a complaint you could end up with stickers on your car, that's the way it happens".[418]

DICWC(WA) often heard from Aboriginal people who were fearful of being arrested and going to a lock-up for no good reason. One recent call was from a man worried about his brother who was living on the street: "He was concerned that night that there was a particular police officer who seemed to be targeting the brother. He was

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414 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p14.
415 Ibid, p9.
416 Mr Glen Dooley, Aboriginal Legal Service of WA (Kununurra), *Briefing*, 3 September 2013.
417 Katanning Aboriginal community members, *Briefing*, 10 August 2013.
418 Narrogin Aboriginal community members, *Briefing*, 9 August 2013.

concerned that his brother might get arrested and was concerned also about his wellbeing if he were arrested".[419]

### 6.1.2 Racism

While the Police Commissioner agreed that the "bad attitude" of an OIC could filter down to the rest of the staff and infect the culture at a station, he said it would not matter whether the people being dealt with were Aboriginal or non-Aboriginal or any other culture – an officer with a bad attitude would have a negative impact regardless.[420] This comment seems to deny the possibility that racism exists – that Aboriginal people are treated more poorly than non-Aboriginal people purely because they are Aboriginal. Contrary to this, a number of witnesses spoke of a generalised racism in parts of the police force.

ALSWA's Kununurra representative said that racism in the police force was characterised by a poor attitude toward Aboriginal people in general, but specifically towards those who ended up in custody.[421] Incidents such as one described by staff from ALSWA's South Hedland office, in which a juvenile client was awoken "when he was kicked in the head by a police officer",[422] do little to counter this impression.

ALSWA clients had also reported the way strip searches were conducted to be distressing and humiliating. A submission from DICWC(WA) told of how Aboriginal women in Kalgoorlie were frequently stripped because the police claimed that it "calmed them down".[423] The CCC previously identified concerns about lack of oversight in some lock-ups where people can be forcibly strip searched.[424] The Committee is aware that the CCC currently has a strategic interest in police use of force allegations relating to lock-ups and is being more proactive in this regard having recently announced it will obtain video footage (including watchhouse CCTV footage) to assist in identifying use of force incidents for investigation.[425]

According to ALSWA, all of its criminal lawyers and court officers could cite examples of police interacting with people in custody in a manner which was discourteous, inappropriate or inhumane, and clients had occasionally complained of racist or

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419 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p5.

420 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.

421 Mr Glen Dooley, Aboriginal Legal Service of WA (Kununurra), *Briefing*, 3 September 2013.

422 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

423 Submission No. 6 from Deaths in Custody Watch Committee (WA), 1 August 2013, p5.

424 Corruption and Crime Commission, "Strip cell oversight causes disquiet", *News from the Corruption and Crime Commission*, Issue 20: September 2013. Available at: www.ccc.wa.gov.au/Publications/Newsletter/Pages/default.aspx Accessed on 29 October 2013.

425 Mr Roger Macknay, Corruption and Crime Commissioner, Corruption and Crime Commission, *Transcript of Evidence to Joint Standing Committee on the Corruption and Crime Commission*, 23 October 2013, p2.

offensive language by lock-up staff.[426] ALSWA maintains that there are pockets of people in the police service, as in the wider community, who are racist.[427] The racism in the wider community was part of an historic, institutionalised or systemic racism which had been allowed to develop over many years.[428, 429, 430] While the actions of police may not appear to be directly racist, there is a systemic racism by dint of regulations they are required to enforce which have a disproportionately negative impact on Aboriginal people.

National Congress of Australia's First Peoples Director Ms Solonec cites the laws governing the granting of bail[431] as an example:

> *… you cannot get bail unless you have got good accommodation to go to. That disproportionately affects Aboriginal people, particularly our kids, who do not have secure accommodation, so they get locked up for longer. Lots and lots of laws have a disproportionate impact on Aboriginal people … every mandatory sentencing law has a disproportionate impact on Aboriginal people. It does not allow circumstances to be considered. All the tough-on-crime sorts of laws generally disproportionately impact Aboriginal people.*[432]

Another example, raised by ALSWA, is the *Prohibited Behaviour Orders Act 2010*. This allows courts to make orders effectively banning people from public spaces where the court is satisfied that an offender, within three years of being convicted of an offence involving anti-social behaviour, has been convicted of another offence involving anti-social behaviour and is likely to commit more unless constrained. Particular activities and behaviours may also be banned for up to two years if it is considered that doing so will reduce the likelihood of the person re-offending. A Prohibited Behaviour Orders breach attracts a penalty of a fine and/or imprisonment, and "in this way the legislation criminalises otherwise lawful behaviour".[433] ALSWA's Director of Legal Services described the legislation as "the most insidious" he had encountered in his legal career

426 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, pp10-11.

427 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p8.

428 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

429 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p6.

430 Ms Natasha Moore, board member, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p8.

431 As per *Bail Act 1982* (Western Australia).

432 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

433 Moore, R, 'Prohibited Behaviour Orders, two years on', *Alternative Law Journal*, vol. 37, no.4, 2012. Accessed on 18 October 2013 from www.altlj.org/news-and-views/downunderallover/duao-vol-37-4/474-prohibited-behaviour-orders-two-years-on.

and regarded it as a form of ethnic cleansing.[434] In the past 12 months, ALSWA had acted for more than 50 Aboriginal people who were the subject of these applications.[435]

> *… these orders are directed against homeless, alcoholic Aboriginal people who invariably either have mental health issues or cognitive impairment consequent upon their substance abuse, and it is an attempt to rid them from the streets because they affect the amenity of places like Northbridge, in my view. I know they are strong words, but that is what is happening.*[436]

Ms Solonec believes there is "deep prejudice held by the judiciary and by police"[437] in Western Australia. Both she and the DICWC(WA) maintain that the racism evident in forms of punishment will not end until historic and systemic forms of racism are addressed.[438, 439]

### 6.1.3 Lack of cultural understanding

Amongst officers who do not have outwardly racist attitudes, some may inadvertently act in ways that are racially insensitive or inappropriate, purely from a lack of understanding of the differences between Aboriginal and non-Aboriginal culture. For example, police may not be aware when they issued mandatory curfews that it was common for a young Aboriginal person to have several addresses at which they resided.[440] Young people moving from one place to another after the curfew – perhaps to be in a safer place – may find themselves being taken into custody for being in breach of the curfew. There was often no account taken of the traumas young people might be dealing with on a daily basis, and often no attempt made by officers to try to understand a situation.[441]

Officers also made the mistake of thinking of Aboriginal people as a homogeneous group, with no understanding of differences according to geographic location. Narrogin community members said that police may have dealt with Aboriginal people elsewhere

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434 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p9.

435 Ibid.

436 Ibid.

437 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p2.

438 Ibid.

439 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p6.

440 Mr Daryl Henry, Social and Emotional Wellbeing Team Leader, Yura Yungi Health Service; Ms Cobina Crawford, Manager Youth and Community Development, Shire of Halls Creek; Mr Jake Hay, Youth Services Coordinator, Shire of Halls Creek; and Mr Bernie Lafferty, Senior Youth Justice Officer, Corrective Services, *Briefing*, 4 September 2013.

441 Ibid.

where there were problems and "their mind is already made up about us".[442] However, they said they were not like the Aboriginal people "up North" so police should "treat us different, respect us".[443]

As noted by DICWC(WA):

> *… if you see one part of the population in the state and that is your experience … a culture really gets settled in that 'Aboriginals are people like this and this is how you have to deal with them.' There are clearly elements of that still going on.*[444]

Legal Aid WA said that it would be useful if custodial officers understood aspects of Aboriginal culture such as those determining the closeness allowed between two people: "Depending on the relationship, sometimes people should not be sitting next to each other, or sometimes even in the same room, or in the same general vicinity. Insisting people sit in the same courtroom or the waiting room can be disrespectful".[445] Ignorance of such protocols could create unnecessary tension, and may affect the degree of cooperation with the legal process.[446]

The Police Commissioner agreed with the Committee's suggestion that overseas recruits to the police force – who accounted for almost 10 per cent of officers – would have limited knowledge of Aboriginal issues, but he said that this would be no different to a lot of younger people coming into the police force from the metropolitan area who had had no contact with Aboriginal people and were "probably not in any better situation".[447] However, the WAPU vice president said that some officers from overseas possessed the personality skills and traits that had seen them thrive in regional and remote communities.[448] Nevertheless, WA Police had become more progressive in the way overseas officers were recruited with a "try before you buy" initiative which allowed officers to visit a community first, rather than being sent there with very limited knowledge and being expected to thrive.[449]

This sort of initiative seems to emphasise the importance WA Police place on the suitability of an individual to the task, also reflected in a comment made by the Police

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442 Narrogin Aboriginal community members, *Briefing*, 9 August 2013.
443 Ibid.
444 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p8.
445 Submission No. 1 from Legal Aid Western Australia, 15 July 2013, p3.
446 The Sellenger Centre, *Literature Review of Best Practice in Police Lock-up and Watch House Facilities*, Edith Cowan University on behalf of Corruption and Crime Commission, May 2013, p20.
447 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.
448 Mr Brandon Shortland, Vice President, WA Police Union, *Transcript of Evidence*, 13 September 2013, p10.
449 Ibid.

Commissioner in regard to placement of unsuitable supervisors in the Kimberley in the past. The Police Commissioner said past failures were usually about the individuals' "attitude and their own cultural approach to the world" than about training.[450]

Selecting an individual who is seen to have the right attitude and approach for dealing with Aboriginal offenders for a supervisory role seems sensible, but in the Committee's view it does not negate the need for training. Someone with a good attitude to Aboriginal people may still be unaware of cultural norms, which could impact on their success in dealing with Aboriginal offenders.

**Finding 37**

Lack of cultural competence leads to misunderstanding and escalation of incidents, contributing to the high rate of Aboriginal incarceration.

## 6.2 What training is available?

The WA Police asserts that the screening process is designed to ensure that recruits who display behaviours which indicate discrimination or cultural bias are rejected.[451] On this basis, any recruit with inherently racist attitudes should not pass the course – assuming the methods for detection are robust.

WA Police recruits spend 26 weeks in training at the WA Police Academy. As part of this, they receive 10 hours and 50 minutes of cultural diversity training, spread across two days. At the end of the training, participants are expected to be able to "describe culturally diverse communities and how best to engage with them in a policing environment".[452] This training deals with a range of topics, not just Aboriginal issues.

After some introductory material about the importance of learning about diversity and how people should be treated differently to accommodate their cultural beliefs, there is a two-hour session devoted specifically to Aboriginal culture. A senior trainer delivers the program in partnership with the Aboriginal and Community Diversity Training Unit.[453] This consists of a hand-out on the history of Aboriginals in WA, some information about tribal and kinship systems and family structures in WA, an explanation of some words used commonly by Aboriginal people, discussion of the Aboriginal Visitors Scheme, and a group assignment on an aspect of Aboriginal culture which trainees are given 30 minutes to research, culminating in a 10-minute presentation to the rest of the class. The possible presentation topics range from "Aboriginals in sport" and "Aboriginal art and flag" – which could conceivably be

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450 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.

451 Submission No. 8 from Western Australia Police, 13 September 2013, p6.

452 Western Australia Police, *Diploma of Public Safety (Policing) FTU Applied Procedures Diversity Lesson Plan*, 1 March 2013, p2.

453 Submission No. 8 from Western Australia Police, 13 September 2013, p5.

researched in a superficial way in half an hour – to "History of Aboriginal legal rights in Australia" and "Aboriginal police relations in Western Australia",[454] subjects so broad and complex that half an hour of research could not possibly do them justice.

The introduction to the session is a three-minute video clip about Australian Indigenous culture, taken from the documentary *Discovery Atlas: Australia Revealed* – produced by Discovery Channel and narrated by an American.[455] While this is only a small part of the session, it is disappointing that an effort has not been made to use local sources.

The Committee also notes that field trips are organised for three places of worship out of a possible seven – Sikh temple, Hindu temple, two mosques, Vietnamese Buddhist temple, Chinese Buddhist temple and Jewish synagogue. There are no Aboriginal places of significance among these.[456]

As noted by Ms Solonec, role-playing should be an important part of police training.[457] Recruits should be given the opportunity to rehearse likely scenarios involving Aboriginal people, moving the focus from desk-based learning and on to practical skills.

While the WA Police describes the diversity training offered to recruits as "comprehensive",[458] it is the Committee's view that most recruits would require more than two hours of instruction about Aboriginal culture to effectively deal with the situations they may encounter.

There also seems to be a lack of formalised follow-up cultural training throughout an officer's working life. According to the WAPU survey, three-quarters of officers surveyed indicated that, in their capacity as officers performing custodial care duties, they had never been encouraged to participate in any training or awareness programs designed to promote cross-cultural understanding.[459] The WAPU notes that diversity training is only offered at recruit level, yet all officers are required to refresh their equal opportunity training every three years as part of Critical Skills Training.[460] WAPU president Mr George Tilbury said cultural diversity training did not occur "very often" – generally only when an incident occurred or a person asked for additional training to be provided to them.[461]

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454 Western Australia Police, *Diploma of Public Safety (Policing) FTU Applied Procedures Diversity Lesson Plan*, 1 March 2013, p7.

455 See link www.youtube.com/watch?v=jg1TEzn7Fyk

456 Western Australia Police, *Diploma of Public Safety (Policing) FTU Applied Procedures Diversity Lesson Plan*, 1 March 2013, pp7-8.

457 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

458 Submission No. 8 from Western Australia Police, 13 September 2013, p5.

459 Submission No. 7 from WA Police Union, 15 August 2013, p28.

460 Ibid.

461 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 11 September 2013, p5.

According to WA Police, each time officers are transferred to a new location, they undergo orientation as is "applicable to the new area".[462] The Committee has been told that in regard to locations with a significant Aboriginal population, the OIC provides an overview of local cultural issues as part of the induction program.[463, 464] However, it seems that this is far from standardised. The WAPU says cultural diversity induction programs are inconsistent, varying from station to station,[465] which was consistent with the Committee's own observations.

In addition to officer-to-officer induction, it is WA Police policy and procedure for an OIC to ensure that a new sworn officer receives "a period of instruction on issues of concern to the local Aboriginal community by a member of that community".[466] The OIC or some other designated officer is responsible for identifying a suitable person from within the Aboriginal community to deliver the instruction.[467] However, this policy does not seem to be enacted consistently.

The staff induction program used by Narrogin Police Station consisted of a checklist with items under headings such as administration, standards, lock-up procedures and risk management, but at no point was there any specific mention of local cultural familiarisation or consultation with an Aboriginal community member.[468] While station officers had met with the Aboriginal community in the past to try to map out family relationships in the town, there was no documentation which could be passed on to new officers.[469] The consensus was that after six months officers had an appreciation of the family relationships within the town and local cultural issues by drawing on the knowledge of other officers, and through regular contact with the Aboriginal community.[470]

At Kimberley stations, however, more effort was made to include cultural competency as a formal part of the induction. The induction package for Broome officers highlights cultural issues as one of the "workplace issues and challenges".[471] New officers are provided with material designed to help police officers relate to Aboriginal people, and they are to discuss this with their team sergeant.[472] The material, which has been copied from another (larger and unreferenced) document, outlines the sorts of misunderstandings that can cause conflict between officers and Aboriginal people. For

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462 Submission No. 8 from Western Australia Police, 13 September 2013, p5.
463 Narrogin Police Station officers, *Briefing*, 9 August 2013.
464 Mr Brandon Shortland, Vice President, WA Police Union, *Transcript of Evidence*, 11 September 2013, p9.
465 Ibid.
466 Submission No. 8 from Western Australia Police, 13 September 2013, p5.
467 Ibid.
468 Narrogin Police Station, 'Narrogin Police Station Staff Induction Program'.
469 Narrogin Police Station officers, *Briefing*, 9 August 2013.
470 Ibid.
471 Broome Police Station, 'Induction', p1.
472 Ibid, pp14-18.

example, it explains how Aboriginal people perceive time, how they communicate within their families and with others, what sort of diet they should follow and even offers suggestions as to why there may be a lot of rubbish on the ground. This information is reflective of Aboriginal communities generally, and not just those specifically in and around Broome. It is not clear whether officers are provided with information which specifically reflects the local situation.

At Bidyadanga, an Aboriginal community 180km from Broome, a more localised guide has been provided by the police sergeant.[473] It lists the five language groups, explains how the community council operates, provides a map showing the alcohol-free zone, describes the alcohol and drug issues particular to the community, and explains the status of the relationship with police. There is also a list detailing communication styles and gestures which might not be readily interpreted by a non-Aboriginal. Similarly, the Kununurra cultural awareness induction package lists the communities in and around Kununurra, provides a table to assist officers in understanding the rules for communication within families (essentially, which members are allowed to speak to/look at/be in the same room as other members), and some of the types of gestures common in the community.[474] The Committee commends these local efforts, spearheaded by the initiative of the local superintendent, but believes these should be the norm, not the exception.

**Finding 38**

Aboriginal cultural competency training for police recruits is insufficient. Similarly, ongoing training and standardised cultural induction programs for sworn officers are severely lacking.

### 6.2.1 Training for others working in custodial settings

Detainees in lock-ups are generally in the care of police officers; however, there are some situations in which prisoners are held at lock-ups (so-called prescribed lock-ups) and are the responsibility of Serco officers (for example in Albany on days when the court is sitting, or when prisoners being moved from one regional prison to another require a stop-over at Carnarvon). According to its contract with the Department of Corrective Services, Serco, as part of its duty of care, is required to “Make provision for the needs of persons in their charge from diverse cultural backgrounds with particular regard for Aboriginal people”.[475] Serco is also required to “Ensure that cultural awareness training includes location/area specific knowledge and such training is

473 John Allanson, B/Sergeant, Bidyadanga Multi Functional Police Facility, ‘Bidyadanga Cultural Awareness 2013’.

474 Kununurra Police Station, ‘Cultural Awareness Induction Package’.

475 Court Security and Custodial Services Contract, Contract No.DCS0402010, Government of Western Australia, June 2011, p174.

undertaken by an officer prior to the commencement of duties at any location".[476] Given the minimal interaction of its officers with detainees in lock-ups, Serco managers were not asked to appear before the Committee, and the extent to which this training has been carried out has not been assessed.

The Chief Magistrate said that magistrates dealing with Aboriginal offenders relied heavily on Aboriginal field officers to provide "gentle education" about what was happening in the community.[477] While some training was provided to magistrates, the diversity of traditional customs within the many different Aboriginal communities made it difficult to know what to provide. Exposure to different situations was a good teacher: "It tends to be a growth thing. When (a magistrate) goes to an area, they have a very limited understanding, but over time they will learn from what they are told in court".[478]

## 6.3 What else is needed?

While many groups advocate cultural competency training, and more of it, others say that no amount of training would help if an officer's negative attitude to Aboriginal people was ingrained.[479, 480] Conversely, someone who had never undergone cultural competency training could develop good relationships with Aboriginal people. The Inspector of Custodial Services, Professor Neil Morgan, was of this view,[481] and the Police Commissioner also made reference to this in the sense that it was often an individual's attitude that determined how successful they were at managing people.[482]

The formation of attitudes is complex and it would be simplistic to suggest that training – particularly of the limited kind currently provided by WA Police – could always successfully change someone's attitude, particularly if ingrained. But this is not necessarily the aim of cultural competency training. At the most basic level officers need to understand their legal obligations to treat people fairly (for example in terms of the Equal Opportunity Act, the Racial Discrimination Act and the Criminal Code) and the nature of professional expectations placed upon them (for example public sector directives generally and the WA Police Code of Conduct). The Police Academy training covers this.

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476 Ibid, p189.

477 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p11.

478 Ibid.

479 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.

480 Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p10.

481 Ibid.

482 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.

There are also disciplinary mechanisms in place for officers who breach the expected standards or fall foul of the law. This is to be expected. But just as concerning as these more extreme behaviours, perhaps motivated by racist views, are those caused by ignorance and apathy. This is not necessarily a deliberate kind of racism, easily identified and admonished, but a more subtle brand (as discussed earlier in this chapter) which perpetrators may not even realise is occurring. In the Committee's view, this is where the value of cultural competency training might be best realised: not in trying to change the attitudes of trenchant racists (who should not be in the force anyway, if the recruitment screening process is working) but in educating those who are unaware that their actions are culturally insensitive.

Given that Aboriginal people comprise only 3.8% of the WA population,[483] most West Australians have not had any significant personal experiences with Aboriginal people. Formal education is also generally limited to what has been taught in primary and high school (which is generally fairly rudimentary and easily forgotten). It is not surprising that ignorance exists. But those who become police officers will find themselves coming into contact with Aboriginal people more often than many other Australians. At the very least, they need practical guidance on the best ways to communicate with Aboriginal people (the meaning of certain words and gestures, for example). As the Inspector of Custodial Services notes: "…there are specific issues around … the language and communication differences that everybody should be skilled up in before they go and work there".[484]

But ideally, according to Ms Solonec, police officers need these practical skills as well as a theoretical understanding:

> *They need to know the history of Aboriginal people and why we are in the situation we are. But they also need the practical skills, and it needs to be tested and ongoing … As we understand it, police training is often of a paramilitary fashion, and that often does not consider underlying reasons why some certain groups are more disadvantaged in society.*[485]

The DICWC(WA) chair was of the same view: "… there is some good training, but really the starting point is to unpack racism in all its forms and then move on from that. I think that is probably the step that is missing."[486] The Western Australian Aboriginal

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483 Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2011*, cat. No. 3238.0.55.001. ABS, Canberra. Updated 30 August 2013.

484 Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p10.

485 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

486 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p9.

Advisory Council also supports compulsory training in Aboriginal cultural awareness and ethical decision making, believing it will lead to "a better understanding of issues affecting Aboriginal people and compliance requirements".[487]

Ms Solonec said that the best training focussed on "cultural competency" rather than just cultural awareness.[488] This involved understanding the underlying reasons for Aboriginal people being in the situation they are in, as well as becoming competent in managing and relating to them. Ideally, Aboriginal people should be delivering the training. "… it is not just about being aware; it is about being competent ... I think that any sort of training has to be followed up with practical skills – role playing and those sorts of things".[489]

Many submissions and witnesses queried whether the amount of initial training and follow-up training offered to police was enough. The WAPU identified an empathetic and respectful approach to cultural differences as facilitating "a smoother custody process" and regarded regular training as essential in fostering this approach.[490] "To ensure that all of these skills are maintained, it is imperative that this training is thoroughly refreshed throughout an officer's career".[491] However, considering that 75 per cent of union members surveyed said they had not been offered such training, WAPU wonders: "Are there enough programs run by WA Police that advance cross-cultural awareness and are officers being encouraged to utilise this training?"[492]

Ms Solonec also stresses that cultural competency training should be an ongoing part of the curriculum: "One little course of a couple of hours once is not going to make them more culturally competent".[493]

As one member of the Narrogin Aboriginal community commented: "What's the point of training if they just ignore it?"[494] If training is regular it is more difficult to ignore. One submission from an interested and concerned member of the public suggested that serving officers undergo cultural awareness training every three months and that the initial period of training (for recruits) be increased to 40 hours.[495] This is equivalent to one week out of a 26-week course, which does not seem unreasonable.

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487 Submission No. 4 from Mr Michael Hayden, Chairperson, Western Australian Aboriginal Advisory Council, 31 July 2013, p2.

488 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

489 Ibid.

490 Submission No. 7 from WA Police Union, 15 August 2013, p41.

491 Ibid.

492 Ibid.

493 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p6.

494 Narrogin Aboriginal community members, *Briefing*, 9 August 2013.

495 Submission No. 9 from Bruce Campbell, 22 July 2013, p4.

While the cultural induction packages offered to new officers in regional areas are definitely a step in the right direction, the requirement to involve Aboriginal people in the delivery does not seem to be adhered to. This is disappointing, since the best people to impart knowledge are those with first-hand experience. In the words of Atticus Finch, "You never really understand a person until you consider things from his point of view .... Until you climb into his skin and walk around in it" (from *To Kill a Mockingbird*, 1962).

The Police Commissioner, however, believes that the cultural competency and induction training is sufficient.

> *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 counter argument 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.*[496]

Despite the Police Commissioner's assertion that the agency is keeping pace with cultural training needs, almost every other witness or submission suggested that further training was required.

**Recommendation 19**

That Western Australia Police expands the diversity training module for recruits which deals with Aboriginal culture, and ensures that Aboriginal people are involved in its delivery. Recruits should be able to demonstrate cultural competency – that is, a well-developed understanding of Aboriginal issues and the skills to deal effectively with Aboriginal communities.

**Recommendation 20**

That Western Australia Police ensures: (1) that sworn police officers receive ongoing cultural competency training; and (2) that it is standard procedure for officers transferred to a location with a significant Aboriginal population to receive a comprehensive induction program, tailored to reflect the issues and challenges of the location, and involving members of the local Aboriginal community.

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496 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p5.

# Chapter 7

# Overall compliance with recommendations

**This chapter examines whether current arrangements fully comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Optional Protocol to the Convention Against Torture.**

> *There are many police stations at which the lock-ups 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. – Karl O'Callaghan, Police Commissioner*

This inquiry has demonstrated that in general the key principles underpinning RCIADIC recommendations relevant to police lock-ups have been embedded into legislation and/or police policies and procedures. That said, this report has highlighted a number of areas for improvement as summarised in section 7.1. The inquiry has also identified a number of miscellaneous issues which relate to RCIADIC recommendations but have not otherwise been captured by the broader terms of reference. These issues are summarised below at section 7.2. Finally section 7.3 briefly examines compliance with the Optional Protocol to the Convention Against Torture (OPCAT).

## 7.1 Implementation of RCIADIC recommendations – a summary

### 7.1.1 Access to medical and legal services and other third parties

In relation to detainee access to medical services (Chapter 3), RCIADIC *Recommendations 125 and 126* emphasised the importance of a screening form and risk assessment respectively at the point a person is taken into custody. *Recommendation 127* specified that a regular medical or nursing presence should be introduced in all principal capital city watchhouses and in other major centres where there are substantial numbers detained. In other locations there should be medical practitioners or trained nurses readily available. *Recommendation 161* required that police officers should be instructed to immediately seek medical attention if any doubt arises regarding a detainee's condition.

Chapter 3 (section 3.1) demonstrated that while these recommendations have been implemented through incorporation into WA Police policies and practices, the steps taken in relation to *Recommendation 127* in particular have not adequately ensured that detainees can always access timely or appropriate medical services including mental health services. This has prompted the Committee to recommend that access to medical services should be reinforced through a 24/7 medical presence at the Perth

Watchhouse and improved arrangements for on-call medical assistance (including mental health) at all lock-ups across the State.

With respect to detainee access to legal services, *Recommendations 223 and 224* highlighted the need for protocols setting out procedures and rules for the notification of the ALS when Aboriginal people are arrested or detained, and for appropriate steps to be taken to make it mandatory for the ALS to be notified upon the arrest or detention of an Aboriginal person. Chapter 3 (section 3.2) demonstrated that while WA Police policies make provision for the notification of ALSWA, this does not always occur in a timely way. The Committee identified benefits associated with a mandatory custody notification scheme for Aboriginal people although this would need to be appropriately resourced. More broadly the Committee recommended that the *Criminal Investigation Act 2006* be amended to ensure that detainees receive timely access to legal services including immediate notification of, and access to, legal services by Aboriginal detainees and also that an inadmissibility provision be introduced where a detainee's right to legal access has been deliberately suspended.

Chapter 3 (section 3.3) examined detainee access to third parties including family members and interpreters. *Recommendation 146* specified that police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody. The Committee found that in many instances, inadequate lock-up design and/or an inconsistent approach by the police means this does not occur and suggested that police develop a consistent policy in this regard.

*Recommendations 242, 243 and 244* focus on juvenile detainees. The recommendations state respectively that any juveniles being detained overnight in a lock-up should have access to a parent or visitor, that police should immediately advise the ALS and the parent/responsible person when a juvenile is taken into custody, and that no police interrogation of a juvenile should occur except in the presence of a parent/responsible person. Although these principles are reflected in the *Young Offenders Act 1994* the Committee heard concerning evidence to suggest there may be instances where family members have not been notified of a young person's detention and/or interview. The Committee has therefore recommended a legislative amendment to make evidence inadmissible in court proceedings if this is obtained from a juvenile when a responsible adult is not present.

### 7.1.2 Lock-up design, staffing and administration

The RCIADIC made a series of recommendations in relation to the design, staffing and administration of lock-ups and these were discussed in Chapter 4. Recommendations concerning safe cell design are reflected in the Custodial Design Guidelines developed by WA Police in line with national guidelines (as per *Recommendation 332*). However, many WA lock-ups were found not to comply with the Custodial Design Guidelines

and/or the RCIADIC recommendations. While a concerted effort has been made to eliminate hanging points in all police lock-up cells (*Recommendation 165*), there are reports of some places that are still non-compliant.[497]

*Recommendation 139* specifies (in part) that CCTV monitoring of cells should not be at the expense of direct visual surveillance and cells should be designed to maximise this, but the WAPU reports that very few lock-up designs comply with this.[498]

*Recommendation 140* states that all cells should be equipped with an alarm or intercom system to facilitate direct communication between people in cells and police officers, but the WAPU and ALSWA report that there are still cells which do not have alarms and intercom fitted.[499, 500]

According to *Recommendation 149,* Aboriginal and Torres Strait Islander detainees should be permitted some degree of freedom of movement inside or outside the confines of watchhouses. While this was adopted by WA Police and is specified in the Lock-up Manual, the poor design and condition of many lock-ups means the exercise yard is often unsuitable or unsafe, so the recommendation is difficult to implement.[501]

In terms of equipment at lock-ups, the WAPU reports that a third of officers claim there is no safe and effective resuscitation equipment readily available at their lock-up, failing to comply with *Recommendation 159*.

*Recommendations 229, 230, 231 and 233* deal with the employment of Aboriginal people in the police service – in essence, that they should be actively recruited, that police services experiment to find the most suitable model (police aide, liaison officer etcetera), and consideration of whether Aboriginal officers should work in communities other than those from which they were recruited. WA Police has implemented these recommendations on an ongoing basis, and, in keeping with *Recommendation 231*, the model has changed over the years. WA Police now actively recruits Aboriginal police officers rather than Aboriginal Police Liaison Officers, and is now recruiting local Aboriginal people as Community Liaison Officers to work within their own communities.

Recommendations relevant to lock-up administration relate to record-keeping and transfer of information, generally to ensure adequate monitoring of the physical and mental state of detainees (*Recommendations 127(e), 130(a), 131, 132 and 138*). WA Police regards all of these recommendations as having been implemented, with procedures for recording of information set out in the Lock-up Manual. However, there

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497 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p9.
498 Submission No. 7 from WA Police Union, 15 August 2013, p15.
499 Ibid, pp14-15.
500 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.
501 Ibid, p8.

were concerns that standardised procedures were not always adhered to, possibly due to inadequate supervision, the non-specific wording of procedure guidelines, and inappropriate lock-up facilities.

### 7.1.3 Oversight mechanisms, procedures and disciplinary measures

With respect to disciplinary measures for personnel involved in custodial processes, *Recommendation 124* required police to establish procedures for the conduct of debriefing sessions following incidents of importance such as deaths or medical emergencies with a view to reducing risks in the future. WA Police considers this recommendation to have been fully implemented as it is a requirement under policy LP-3.5 of the Lock-up Manual.[502] The WAPU however has suggested there is scope for improvement and that a policy developed jointly between the WA Police and WAPU could further assist in setting out the appropriate procedures for debriefing in a non-inflammatory, facilitative way following an incident of importance at a lock-up.[503]

In relation to oversight mechanisms, *Recommendation 226* emphasised that complaints against police should be made to, investigated by and adjudicated upon by a body or bodies independent of the police service. In Chapter 5 (section 5.2) the Committee acknowledged that this recommendation has been superseded somewhat by the recommendations of the Kennedy Royal Commission, the main thrust of which was for agencies to assume responsibility, as far as possible, for investigating misconduct within their own organisations. The Committee believes that current investigative processes between WA Police (including IAU) and the CCC (through own investigations and/or monitoring/review of police investigations) should be retained, with the implementation of additional oversight of the OICS to better address systemic causes of misconduct.

### 7.1.4 Training of custodial officers on cultural issues

Chapter 6 dealt with the provision of cultural competency training for police officers, and examined the degree to which such training was necessary. The RCIADIC made a handful of recommendations in relation to training and in regard to the relationship between Aboriginal people and the police.

*Recommendation 60* stated that violent or rough treatment or verbal abuse of Aboriginal people and the use of racist language by police officers be considered a serious breach of discipline. WA Police regards this as having been fully implemented, with a Code of Conduct for police (established in 2008) guiding police behaviour, as well as State legislation (*Equal Opportunity Amendment Bill 2006*) which makes racially offensive behaviour unlawful. The implementation of disciplinary action, however, is

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502 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, Letter to Committee of the 38th Parliament, 12 November 2012, p51.

503 Submission No. 7 from WA Police Union, 15 August 2013, p42.

dependent upon the behaviour being reported. Given that members of the Aboriginal community continue to report instances of racist behaviour,[504, 505] the threat of disciplinary action does not seem to be entirely effective in eliminating racist behaviour.

*Recommendation 86* urged police to examine and monitor the use of offensive language charges, and suggested that the use of offensive language in interventions initiated by police should not normally result in arrest or charge. WA Police recorded this recommendation as having been implemented, citing the *Criminal Investigation Act 2006* directive that police use their powers of arrest only as a last resort. However, according to ALSWA, Aboriginal people are often arrested for swearing.[506] Aboriginal people also complained of harassment and over-policing.[507]

*Recommendation 215* addressed harassment, recommending that police services negotiate with Aboriginal organisations within communities when police conduct is perceived as harassment or discrimination. WA Police regards this as having been implemented, citing in its 2000 review various strategies and bodies set up to enhance police-Aboriginal relations and encourage community input to policing. However, the 2012 updated review does not list any specific initiatives or groups and it would seem that many of those listed in the 2000 review have fallen away.

In regard to over-policing, *Recommendation 88* states that police services should consider, in collaboration with Aboriginal organisations, whether there is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town. WA Police classifies this implementation as ongoing, citing various national strategies and whole-of-government approaches designed to reduce victimisation and offending. While these initiatives may be having a gradual impact on reducing some of the underlying issues within communities (such as violence and alcohol abuse), the WA Police response does not specifically address the issue of officers inappropriately targeting Aboriginal people.

WA Police has implemented *Recommendation 177*, which recommends screening procedures to prevent officers with racist views from being recruited into or continuing in the police force.

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504 Mr Glen Dooley, Aboriginal Legal Service of WA (Kununurra), *Briefing*, 3 September 2013.

505 Submission No. 2 from Aboriginal Legal Service of WA, 19 July 2013, p10.

506 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p9.

507 Mr Glen Dooley, Aboriginal Legal Service of WA (Kununurra), *Briefing*, 3 September 2013; Katanning Aboriginal community members, *Briefing*, 10 August 2013; Narrogin Aboriginal community members, *Briefing*, 9 August 2013.

*Recommendation 228* is the main recommendation which deals with cultural competency training. It recommends that police training courses include the social and historical factors which have contributed to the disadvantaged position of many Aboriginal people and which help to explain the nature of current Aboriginal and non-Aboriginal relations. It also suggests coverage of the history of Aboriginal-police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation. WA Police regards this recommendation as implemented, but as outlined in Chapter 6 (section 6.2) the training offered to police recruits is limited and does not cover these suggested topics in any great depth.

*Recommendations 96 and 97* refer to training for judicial officers and any people whose work brings them into contact with Aboriginal people within the court system. In addition to training similar to that outlined for police, informal discussions with members of the Aboriginal community are suggested as an informal way of improving cross-cultural understanding. The Chief Magistrate has indicated that this occurs.[508]

### 7.1.5 Overall compliance with the RCIADIC

There are mixed views regarding how successfully Western Australia has complied with the RCIADIC recommendations. It is the view of the WA Police that the RCIADIC recommendations have been "implemented, considered and assessed in some capacity to improve service delivery" and where there has been a departure from the intent, this has only occurred following sound consideration and may have been influenced by changes of policy by government or legislative advances.[509] The WAPU concurs that the RCIADIC has had significant influence in relation to lock-ups by shaping the WA Police Building Code and the Police Lock-up Management Procedures in particular.[510]

In contrast, ALSWA considers that WA Police has failed to implement all of the relevant RCIADIC recommendations as demonstrated by ongoing problems with custodial arrangements.[511] The DICWC(WA) similarly considers recommendations to have been implemented in an ad hoc manner and that the crux of the RCIADIC recommendations is yet to be realised:

> *The overall message though was that what we really need to do as a nation and as a state is to address the root causes of offending behaviour and to significantly decrease the number of Aboriginal people in contact with the criminal justice system and the prison system. We believe that has clearly not been done and the spirit of the*

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508 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p11.

509 Submission No. 8 from Western Australia Police, 13 September 2013, p1.

510 Submission No. 7 from WA Police Union, 15 August 2013, p3.

511 Submission No. 2 from Aboriginal Legal Service of WA, July 2013, p1.

> *commission in that regard has not happened to the extent that it needs to.*[512]

This notion is canvassed further below in section 7.2.

The Committee believes that many of the RCIADIC recommendations have been adopted into legislation, policy and procedures and this has seen marked improvements in custodial arrangements in police lock-ups since the Royal Commission report. However this inquiry has nonetheless highlighted gaps in translating policy into practice and scope to further improve arrangements and reinforce compliance. Overall it is not possible to claim that arrangements as they currently stand fully comply with the recommendations of the RCIADIC, partly as a consequence of limited funding.

**Finding 39**

That adoption of RCIADIC recommendations has seen improvements in custodial arrangements in police lock-ups in Western Australia. However many lock-ups still do not fully comply with the recommendations partly because of limited funding.

## 7.2 Other issues raised in the Inquiry

### 7.2.1 Training (other)

Other than training on cultural issues, which the Committee examined in Chapter 6, the RCIADIC also recommended that police should receive training at recruit and in-service levels to enable the identification of persons in distress or at risk of injury through illness, injury or self-harm. Further, that police officers or auxiliary staff tasked solely or substantially with custodial responsibilities should receive a more intensive and specialised training than other officers (*Recommendation 133*).

*Recommendation 160* highlighted the need for basic training at recruit level in resuscitative measures, with annual refresher courses in first aid to be provided to police officers with care responsibilities for people in custody.

The WAPU has highlighted deficiencies in the police training regime which fall short of the RCIADIC recommendations. For instance, while Life Support Training is offered to police officers every two years, its first aid focus is entirely responsive and does not assist with identification of "causal factors or symptoms pertaining to acute medical risks or conditions".[513]

Training to identify "at risk" individuals is limited insomuch as new recruits receive general guidelines about evaluating risk factors for detainees but it constitutes only a

512 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA) Inc., *Transcript of Evidence*, 12 June 2013, p3.

513 Submission No. 7 from WA Police Union, 15 August 2013, p26.

small proportion of the overall program and there is no mandatory in-service refresher training. According to the WAPU, "there is an assumption that most of the skills required to identify an 'at-risk' person will be learned on the job, specifically during an Officer's probationary period". The WAPU also emphasises that although the RCIADIC recommended that officers with custodial responsibilities should receive more intensive and specialised training, neither AOs or police officers receive any further dedicated in-service training in relation to identifying persons at risk, with the possible exception of professional development courses which officers must undertake to advance through the ranks.[514]

*Recommendation 163* stated that police officers should receive regular training in restraint techniques, although training should discourage the use of physical restraint except as a method of last resort. The WAPU has acknowledged that given their custodial responsibilities, AOs do receive more specialised training with respect to restraint techniques. However as AOs are not employed at every station, in most cases custodial responsibilities still fall to police officers who have not received such specialised training. The WAPU also highlights that the training that is provided to police officers in restraint techniques does not deal sufficiently with cell extractions, which is another major concern for officers in custodial settings. Union members have also highlighted deficiencies in the training medium in that it is theory based and does not apply any practical element.[515]

In order to provide an appropriate duty of care and ensure the safety of detainees and police personnel, the WAPU has emphasised the importance of training to identify "at risk" detainees and for this training to be refreshed throughout an officer's career. The union has suggested that WA Police should review its training modules to ensure that officers receive training appropriate to undertaking custodial duties in relation to: the identification of detainees "at risk" or in distress; use of resuscitative equipment and identification of major medical concerns beyond positional asphyxia and excited delirium; appropriate restraint techniques; cell extraction; diversity awareness programs; and how to deal with detainees under the influence of alcohol and other drugs.[516]

The latter point was also raised by Legal Aid WA. The agency identified it would be helpful for personnel with custodial responsibilities to receive specific training on communicating with detainees who are stressed, under the influence of drugs or

514 Ibid.
515 Ibid, pp26, 31.
516 Ibid, pp41-42.

alcohol and/or have psychiatric illness as it might assist in de-escalating these potentially volatile situations.[517]

It is evident to the Committee that in order to comply fully with the RCIADIC recommendations, the training delivered to police lock-up personnel around the identification of "at risk" individuals, resuscitation measures and restraint techniques would need to be made more rigorous and more regular. Specifically, a more comprehensive training package would be necessary to meet the demands and duty of care requirements associated with custodial duties and there should be opportunity for this training to be regularly refreshed.

**Finding 40**

That in order to fully comply with relevant RCIADIC recommendations, the training delivered to police lock-up personnel around the identification of "at risk" individuals, resuscitation measures and restraint techniques needs to be more rigorous and more regular.

**Recommendation 21**

That Western Australia Police should review the content and delivery of training to personnel with custodial responsibilities to ensure there is a comprehensive program to meet the demands and duty of care requirements relevant to lock-ups and ensure opportunities also exist for in-service refresher training.

### 7.2.2 Alternatives to police custody and prison sentences

It is inevitable that an inquiry about the treatment of Aboriginal people in lock-ups will generate discussion about whether those people should be there in the first place. As DICWC(WA) rightly points out, a central aim of the RCIADIC was to reduce the number of Aboriginal people coming into contact with the criminal justice system.[518] *Recommendations 79 to 91* (Diversion from Police Custody) and *Recommendations 92 to 121* (Imprisonment as a Last Resort) address this concern, with *Recommendation 87* spelling this out most clearly, stating that "all Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders". The content of *Recommendation 239* is similar, except that it applies specifically to juveniles.

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517 Mr George Turnbull, Director of Legal Aid, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p3.

518 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee, *Transcript of Evidence*, 12 June 2013, p6.

WA Police states that it has adopted this principle, with police arrest powers governed by the *Criminal Investigation Act 2006* which requires officers to use their powers of arrest only as a last resort and to consider alternative means of prosecution.[519] While there are alternatives to taking a person into custody in WA, the evidence presented to the Committee suggests that the options are somewhat reduced in regional areas due to a lack of services.

With regard to the arrest of intoxicated people, *Recommendation 80* calls for the offence of drunkenness to be abolished and for adequately funded programs to be established to maintain non-custodial facilities for the care and treatment of intoxicated people. According to *Recommendation 81*, it should be a statutory duty for police to use these alternatives, rather than detaining intoxicated persons in police cells. While drunkenness is no longer an offence,[520] Legal Aid WA says that not enough is being done to ensure that intoxicated people avoid detention:

> *… this would require obviously an increase in infrastructure to support prevention and diversion, such as drying-out shelters to get intoxicated people to a safe place. There are some significant gaps across the state.*[521]

Drunk people detained under the *Protective Custody Act*[522] were not under arrest and should not be detained in the lock-up, but in a drying-out (or sobering-up) shelter.[523]

According to the Drug and Alcohol Office, there are 10 sobering-up shelters in WA, including in Broome, Derby, Kalgoorlie, Kununurra, Port Hedland, Roebourne, Wyndham and Geraldton.[524] This means many regional towns are without a service of this kind. In its review of the RCIADIC recommendations in 2000 WA Police noted that the government needed to increase funding for sobering-up facilities if the recommendations pertaining to reducing the number of Aboriginal people detained for alcohol offences were to be fully realised. In its 2012 review, the agency noted that there were now 10 such facilities.

In compliance with *Recommendation 81*, WA Police noted that it was now police procedure and policy to detain a drunk person in a lock-up only if it was for the safety

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519 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, letter to the Community Development and Justice Standing Committee of the 38th Parliament, 12 November 2012, p32.

520 Ibid, p22.

521 Mr George Turnbull, Director of Legal Services, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p2.

522 *Protective Custody Act, 2002* (WA).

523 Mr George Turnbull, Director of Legal Services, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, pp6-7.

524 Government of Western Australia, Drug and Alcohol Office, *Sobering Up Centres*, 7 March 2013. Available at: www.dao.health.wa.gov.au/Gettinghelp/ServiceDirectory/SoberingUpCentres.aspx. Accessed on 28 October 2013.

and welfare of the detainee, and only if no other person or facility was available to care for the detainee.

Bail hostels are also an alternative to police lock-up detention for juveniles. Bail hostels provide a non-custodial option for juveniles who would otherwise receive bail but do not have suitable accommodation or supervision. The hostels are houses within the community which are staffed by a responsible adult who can take care of a juvenile awaiting a court appearance. The Department of Corrective Services operates bail hostels through its Youth Bail Options Program in Geraldton, Kalgoorlie, Kununurra, Broome and Hedland.[525]

The bail hostels have been welcomed as a positive initiative by people working in the criminal justice system[526,527] – however, a repeated criticism is that there are too few hostels and too few places within them. The Chief Magistrate said magistrates had been very pleased to have the hostel facilities which had "saved them a lot of concerns".[528] However, the hostels were located in the larger regional areas that were already better resourced. "We still have the problem in the more remote communities."[529]

This frustration was echoed by ALSWA:

> *The criticism is this: capacity. These hostels are way too small, and there are all sorts of ridiculous restrictions placed on who can go into the hostel, which means that not enough can be bailed to the hostel, and they end up down here in Perth, which is a real issue.*[530]

And by Legal Aid WA:

> *In the West Kimberley, for example, juveniles end up in custody in police lock-ups because there is only one bail hostel, which is based in Broome and which is capable of taking only three juveniles, who, incidentally, must be of the same sex.*[531]

525 Department of Corrective Services, *Annual Report 2012-2013,* Perth, 24 September 2013, pp77-78.

526 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p13.

527 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p5.

528 Ibid.

529 Ibid.

530 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p13.

531 Mr George Turnbull, Director of Legal Services, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p4.

Kimberley police officers who briefed the Committee believed they had limited discretion available in dealing with minor offences.[532] For example, they recognised that Foetal Alcohol Spectrum Disorder (FASD) was a significant issue in the region. However, because FASD often resembled other anti-social behaviour it was difficult for officers to identify whether an offender was affected by FASD. They acknowledged that a custodial response was probably inappropriate, but felt they had few, if any, other options. They felt they needed more training in ways to handle such "offenders".

Community and social services workers in Halls Creek said that police should use their capacity to issue cautions or refer young offenders to the Juvenile Justice Team, which would trigger a series of support mechanisms. Arresting juveniles tended to set them on a trajectory they may not recover from.[533]

*Recommendation 148* recommended the prioritisation of resources for positive initiatives to reduce the number of Aboriginal people in custody. It urged that immediate attention be given to programs diverting people from custody – such as alternative accommodation for intoxicated people, to bail procedures and to the use of a summons or caution rather than arrest. It stated that these initiatives would "reduce the call on outmoded cells". Twenty-two years later, some of these diversionary measures are in place, but the evidence presented suggests that they are far from sufficient.

**Finding 41**

That cost-effective alternatives to taking a person into custody such as bail hostels and sobering up centres do exist in Western Australia however options continue to be limited in regional areas due to a lack of services.

## Warrants of commitment

People serving out time on warrants of commitment also spend time in police lock-ups because of a lack of alternatives. Warrants of commitment for imprisonment are served on people who have not paid fines and who have no other way to pay off the debt. That is, they have no assets that can be seized and sold, such as a vehicle, and there is no opportunity to convert the fine to a work and development order (that is, pay it out by undertaking community work). This may be because there is no suitable community work available or because the person is physically or mentally incapable of

532 Kununurra Police Station officers, *Briefing*, 3 September 2013

533 Mr Daryl Henry, Social and Emotional Wellbeing Team Leader, Yura Yungi Health Service; Ms Cobina Crawford, Manager Youth and Community Development, Shire of Halls Creek; Mr Jake Hay, Youth Services Coordinator, Shire of Halls Creek; and Mr Bernie Lafferty, Senior Youth Justice Officer, Corrective Services, *Briefing*, 4 September 2013.

undertaking the work.[534,535] Aboriginal people in regional areas are particularly adversely affected by this, since they are often fined for minor offences such as disorderly behaviour but have no way to pay and few or no options for community work.[536]

Someone who is served with a warrant of commitment has two options: to pay the fine (or have someone else pay it), or to go to prison for the amount of time required to cut out the fine. A person who chooses the latter option will be held by police at the lock-up where they can spend a maximum of three days, after which, if there is still time remaining to serve, they will be transferred to a prison.

In regional areas, this can mean the detainee is transported hundreds of kilometres (sometimes by air) to the nearest prison. After serving time, the offender is generally given a bus ticket to return home. However, people without the means to pay a fine are unlikely to have the means to support themselves on the long trip home. This can lead to the offender committing a crime which then returns them to the criminal justice system.[537] (A similar situation can arise for people who have been taken by police to another town to appear before a magistrate, sometimes hundreds of kilometres away, who then have to find their own way back home.)

The practice of serving out a warrant of commitment in a lock-up and prison has disadvantages all round. Police do not necessarily want to keep the person at the lock-up because it is resource intensive, but the cost of transporting the detainee to prison is very high, and can cause undue hardship for the prisoner. An OICS inspections and research officer told the Committee about a situation in which a fine defaulter was transported from Halls Creek lock-up to Broome prison to serve out the reminder of a six-day prison term at an estimated cost of $7000, when the fine was for $1600. He was then given a bus ticket back to Halls Creek.[538]

> *They* [the Department of Corrective Services] *do facilitate movement back, but if I can go back a little bit in history. In the old days when we were using vehicles all the time* [as opposed to air travel] *… they were given bus tickets back but they never had the means to support themselves for the two or three days it would take to get back. They*

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534 Department of the Attorney General, *Court Fines*, 21 August 2013. Available at: www.courts.dotag.wa.gov.au/C/court_fines.aspx. Accessed on 29 October 2013.

535 Department of the Attorney General, *Fines Enforcement Registry – Request to Convert Court Fine – Imprisonment.* Available at: www.courts.dotag.wa.gov.au/_files/ Convert_court_fines_Imprisonment.pdf. Accessed on 29 October 2013.

536 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p6.

537 Mr James Bryden, Inspections and Research Officer, Office of the Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p10.

538 Ibid.

> *would sit on a bus, watch everyone else get off the bus, eat food and everything else, and come back on the bus, so a lot of them would get off at the first or second stop to go to their families to get a feed and then they would make their own way back. In some cases they were then re-arrested and the cycle began again. But, yes, if you get my drift, they get them back to where they came from but not necessarily in a manner that would prevent them coming back in again.*[539]

The Inspector of Custodial Services regarded this as an excellent illustration of what was wrong with the system.

> *The police should not have to look after him for six days in a fairly decrepit lockup … Adding to the apparently $7000, plus bus fare, you also have the cost of the imprisonment, the cost of reception into prison and looking after him in prison for a short period of time.*[540]

WA Police agreed that there was a high cost attached to warrants of commitment.[541]

The Committee has grave doubts about the cost effectiveness of enforcing warrants of commitment in remote parts of WA where transport costs are high. However, the Department of Corrective Services was unable to provide detailed figures relating to costs. The Corrective Services Commissioner said that he was in the process of reviewing the Department's cost structures "with a view to being able to provide more detailed cost breakdowns and improving transparency".[542] The Committee agrees that the Department's cost structures need to be more transparent.

The Chief Magistrate said alternatives to cutting out fines in prison would be preferable. He thought one of the only feasible options was community work – although that would be a problem in some areas "because there are no work projects available, and then you have the issue of people who will not take up that option".[543] Another alternative would be to suggest that the fine defaulter enter into a time-to-pay arrangement, which – even if rejected previously – might be attractive at the point when the only other option was prison.[544] WA Police also supported this, but said that

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539 Ibid.

540 Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 14 August 2013, p10.

541 Mr Lawrence Panaia, Acting Assistant Commissioner (Judicial Services), Western Australia Police, *Transcript of Evidence*, 12 September 2013, p10.

542 Mr James McMahon, Commissioner, Department of Corrective Services, Letter, 19 November 2013.

543 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p6.

544 Ibid.

at the moment, the only options once a person has been issued with a warrant of commitment were payment or imprisonment.[545]

As the Chief Magistrate noted:

> *What we do not want to do is doubly punish the marginalised who have low incomes and who tend to accumulate a lot of fines because they commit fine-only offences. Their lifestyle does not really enable them to complete a community-based order. They are not going to be able to report for work, and so they do accumulate a lot of fines, but they will continue to do it because there is no other penalty on a lot of occasions.*[546]

The RCIADIC recommendations do not mention warrants of commitment in the context of diversion from policy custody; however, the lack of alternative options to serving out the warrant in a police lock-up and prison is not in keeping with *Recommendation 109* – that State and Territory Governments examine the range of non-custodial sentencing options available and ensure that an appropriate range is available.

**Finding 42**

That the practice of serving out warrants of commitment in police lock-ups and prisons is costly.

**Finding 43**

That there is no capacity for people served with warrants of commitment to undertake an alternative form of payment, such as community work, once a warrant has been issued.

### Sentencing alternatives: what options do the courts have?

Whilst the focus of this inquiry is not the court and prison system, they are relevant to the extent that many people end up in lock-ups because they become part of a cycle of offending. A non-custodial sentence could help to break the cycle, but obtaining one is contingent upon alternatives being available.

The Chief Magistrate said that a lack of alternatives to prison in terms of sentencing options was a common source of frustration for magistrates in WA,

> *… particularly from the country places where alcohol is the common thread to a lot of offending; family violence issues; the lack of*

545 Mr Lawrence Panaia, Acting Assistant Commissioner (Judicial Services), Western Australia Police, *Transcript of Evidence*, 12 September 2013, p10.

546 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, pp6-7.

> *residential placements; and any kind of counselling in some of our areas…. their complaints are about the lack of resources to try to make a change to the offending patterns.*[547]

The Chief Magistrate said while special courts such as the Perth-based Drug Court[548] had been successful in reducing offending, the ability to provide programs in regional areas was at a low. "I think in the 20 years I have been a magistrate, the frustration level from my magistrates is at the highest I have heard in terms of we need programs and we are not getting them".[549]

ALSWA echoed this concern, telling the Committee that the magistrate for the Pilbara region had complained that rehabilitation services for people placed on court orders – such as a community-based order or intensive supervision order – were largely non-existent.[550]

> *If we want to keep people out of jail and we are genuine about it, we have to provide the resources to be able to facilitate that. The bottom line from an ALS perspective is that Aboriginal people inevitably miss out, especially Aboriginal people in remote areas, because they are not provided with the psychological services and with the opportunity to do community work, or with substance abuse programs, residential programs and the myriad services that can be provided to try to turn people's lives around. They miss out all the time on that. So these people end up in jail.*[551]

The Director of Legal Aid WA, Mr George Turnbull, agreed that there needed to be sentencing options other than imprisonment, and that they needed to be workable.[552] He said approved community work was very limited in the Kimberley, apart from in Broome and Derby. There were also some practical hurdles. For example, clients in remote communities who had reporting obligations while on community-based orders often had practical difficulties in complying with telephone reporting, due to a lack of

547 Ibid, p8.

548 The Drug Court operates out of the Perth Magistrates Court and accepts referrals from other courts around the State. The Children's Court Drug Court operates out of the Perth Children's Court. Drug Courts aim to break the cycle of drug related problems and offending by facilitating treatment programs as part of the court process. Information from Department of the Attorney General, *Drug Court*, 24 June 2013. Available at: www.courts.dotag.wa.gov.au/D/drug_court.aspx?uid=5227-1163-1055-5774. Accessed on 30 October 2013.

549 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p8.

550 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p6.

551 Ibid.

552 Mr George Turnbull, Director, Legal Aid WA, *Transcript of Evidence*, 14 August 2013, p4.

mobile telephone coverage and vandalised public telephones. Missing two occasions of reporting would result in a breach, which created problems for them.[553]

Legal Aid WA said the availability of pre-sentence programs could significantly improve a client's position.[554] A pre-sentence opportunity program (POP) is an early intervention program to assist drug users who are attending court and are likely to receive a fine or community-based order. At the magistrate's discretion, offenders can be referred to the program and have their case remanded for approximately eight weeks while they undergo treatment for their drug use.[555] The Chief Magistrate said POPs had been very successful, but programs were not available in all locations.

> *That option disappears. If there is the ability to do community work at your location, great, I can offer you that instead of a fine; but if there are no programs you are going to be stuck with a fine and have to try to struggle with that and hope you do not get arrested to go and serve the time. So there are gaps in what we would like to offer and the gaps vary in each location, but there is a general rule that the more remote the location, the bigger the gaps.*[556]

From this evidence it appears that there is still some way to go before reaching full compliance with *Recommendation 109* – that there are a range of non-custodial sentencing options available; and *Recommendation 112* – that there is adequate provision of personnel and infrastructure to ensure that non-custodial sentencing options made available by legislation are capable of implementation in practice. The recommendation states that "it is particularly important that such support be provided in rural and remote areas of significant Aboriginal population".

**Finding 44**

That there is still some way to go to ensure the availability of a range of non-custodial sentencing options.

## Aboriginal diversion programs and justice reinvestment

*Recommendation 62* urged governments to recognise that the scale and depth of the problems affecting Aboriginal juveniles were so great that strategies were urgently needed to reduce the rate at which Aboriginal juveniles were involved in the welfare and criminal justice systems. The Royal Commission wanted to see a reduction in the

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553 Ibid.

554 Ibid.

555 Government of Western Australia, Drug and Alcohol Office, *Pre-sentence Opportunity Program (POP)*, 7 March 2013. Available at: www.dao.health.wa.gov.au/Informationandresources/WADiversionProgram/PresentenceOpportunityProgramPOP.aspx Accessed on 29 October 2013.

556 Mr Steven Heath, Chief Magistrate, Magistrates Court of Western Australia, *Transcript of Evidence*, 25 September 2013, p11.

rate at which Aboriginal juveniles are separated from their families and communities, whether through State care, detention or imprisonment.

The DICWC(WA) does not believe the spirit of this recommendation has been realised.

> *The overall message … was that what we really need to do as a nation and as a state is to address the root causes of offending behaviour and to significantly decrease the number of Aboriginal people in contact with the criminal justice system and the prison system. We believe that that has clearly not been done.*[557]

As the previous sections of this chapter indicate, some diversionary programs for offenders do exist, but there are not enough because of a lack of funding and resources. Justice reinvestment goes a step further by redirecting money spent on prisons to community-based initiatives which aim to address the underlying causes of crime. While it is a relatively recent development in criminal justice it is becoming more prominent internationally and is gaining traction in Australia.[558]

DICWC(WA) and the National Congress of Australia's First Peoples are keen supporters of the justice reinvestment model, and say it should be seriously considered in WA.

> *… the state could take justice reinvestment and implement it. We know how to do it… But the key thing around the justice reinvestment component is that it must involve Aboriginal self-determination and those communities where there is a high number of offenders originating need to be involved in the solutions, and they have got the solutions. It just needs a concerted effort by state and territory governments to move the situation and turn it around. It can be done.*[559]

National Congress of Australia's First Peoples Director Ms Solonec says a lot of Aboriginal people, particularly children, could be diverted from the justice system, but there has been very limited work in prevention and diversion in Western Australia.

> *… we have been advocating for justice reinvestment as an evidence-based way of dealing with the justice system which does focus the*

557 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p3.

558 University of New South Wales, *Australian Justice Reinvestment Project*. Available at: http://justicereinvestment.unsw.edu.au/ Accessed on 1 November 2013.

559 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA), *Transcript of Evidence*, 12 June 2013, p10.

> *attention on prevention and diversion rather than the attention from the end.*[560]

The Police Commissioner also supports the notion of justice reinvestment in principle, commenting that, to appease the public, police were often the beneficiaries of more resources when in fact allocation of resources should be more balanced.

> *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.*[561]

As Ms Solonec points out, "a system that is focused on punishment does not necessarily make the community safer; it just costs more money".

**Finding 45**

That justice reinvestment as a means of prevention and diversion is a mechanism worth exploring for reducing offending behaviour and reducing the number of people in custody.

### 7.2.3 Access to welfare and youth services

RCIADIC *Recommendations 234 to 245* focused on "breaking the cycle" for Aboriginal youth and in particular stressed that detention should be a last resort. The recommendations highlighted the roles of family and community groups in providing advice about the interests and welfare of Aboriginal juveniles. Also, the importance of adequate funding: to ALS to ensure adequate legal representation of Aboriginal juveniles; to Aboriginal community-controlled health services; and for the employment and training of Aboriginal people at all levels of the juvenile welfare and justice systems. *Recommendation 236* in particular encouraged governments to recognise that local community-based and devised Aboriginal youth programs have the greatest prospect of success and should be recognised through adequate funding.

*Recommendation 259* stated that Aboriginal community-controlled health services should be resourced to provide a range of services beyond just medical care, including

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560 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p9.

561 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p13.

health promotion, disease prevention and the improvement of social welfare services for Aboriginal people.

*Recommendations 272 to 288* recognised the importance of strategies for coping with alcohol and other drugs and emphasised the provision of alcohol and other drug prevention, intervention and treatment programs.

The Committee heard evidence relating to the broad umbrella of welfare and youth services with a common theme being the importance of such services for keeping people out of detention; however availability of services is patchy. The Chief Magistrate highlighted that where these programs exist they have been very successful but in more remote locations these alternatives simply are not available.[562]

ALSWA similarly emphasised the lack of suitable services and how Aboriginal people inevitably miss out, particularly in remote areas.[563] The DICWC(WA) indicated that counselling services, especially those delivered within an Aboriginal cultural framework are not adequate or consistently offered.[564]

ALSWA stressed the importance of education and youth programs particularly for keeping Aboriginal young people out of the criminal justice system. Engaging young people through sport is cited as a specific means of benefiting individuals and spilling over into the community in a positive way.[565]

Comments the Committee received during investigative travel to the Kimberley and the South West of the state also confirmed there is a paucity of youth services:

- In the Kimberley, police mentioned funding difficulties for Police and Community Youth Centres (PCYCs) and that local government authorities were struggling to fund youth services. There was little available in the way of after-hours youth services.[566]
- Youth workers in Halls Creek highlighted continuity of funding for local government programs as being an issue and mentioned the lack of after-hours services, although the Shire of Halls Creek was trying to establish an "after dark outreach" program to address this. There were good examples of community-based programs such as the Healing Taskforce in Halls Creek which relies on male and female local

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562 Mr Steven Heath, Chief Magistrate, Magistrates Court of WA, *Transcript of Evidence*, 25 September 2013, p11.

563 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p6.

564 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA) Inc, *Transcript of Evidence*, 12 June 2013, p12.

565 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p11.

566 Mr Mick Sutherland, Superintendent Kimberley Region, Western Australia Police, Mr Frank Audas, Inspector Kimberley District Office, Western Australia Police, and Mr Rod Boehm, Senior Sergeant, Western Australia Police, *Briefing*, 3 September 2013.

volunteers to help deal with trauma in local communities. This program receives no government funding.[567]

- In Narrogin, members of the local Aboriginal community spoke about the lack of activities for young people in town and mentioned that there is no PCYC. The local government authority made some effort to work collaboratively with the community and there was a single police officer trying to engage with youth – however he was just "one bloke on his own".[568]
- In Katanning, members of the local Aboriginal community similarly mentioned the lack of youth groups and suggested an amusement centre might be beneficial for the local young people.[569]

It appears to the Committee that there is still some way to go in order to fully comply with RCIADIC recommendations around breaking the cycle of Aboriginal youth offending and improving the health and wellbeing of Aboriginal communities. It is beyond the scope of this inquiry to make recommendations in this regard; however, on the basis of the various inquiries and studies that have occurred since the RCIADIC, the underlying issues of Aboriginal disadvantage and frustrated access to services are part of a much broader concern that requires a holistic, coordinated and determined approach to remedy.

**Finding 46**

RCIADIC recommendations around breaking the cycle of Aboriginal youth offending and improving the health and wellbeing of Aboriginal communities are not well advanced. Regional Youth Justice Services such as those operating in Midwest/Gascoyne, Goldfields, Pilbara and Kimberley need to be extended to other regions such as the Wheatbelt and Great Southern.

### 7.2.4 Maintaining the momentum of the RCIADIC

Multiple RCIADIC recommendations highlighted the need for ongoing monitoring including (as detailed in Chapter 2) monitoring of the implementation of recommendations. ALSWA drew attention to the last WA review of recommendations in 2001 and suggested there has been a gradual waning in the influence of the RCIADIC over time:

> *… simply from the effluxion of time and things of that nature … whatever impetus flowed from the royal commission in terms of making changes to the justice system … in relation to the way the*

567 Mr Daryl Henry, Social and Emotional Wellbeing Team Leader, Yura Yungi Health Service, Ms Cobina Crawford, Manager Youth and Community Development, Shire of Halls Creek, Mr Jake Hay, Youth Services Coordinator, Shire of Halls Creek, and Mr Bernie Lafferty, Senior Youth Justice Officer, Department of Corrective Services, *Briefing*, 4 September 2013.

568 Members of the Narrogin Aboriginal community, *Briefing*, 9 August 2013.

569 Members of the Katanning Aboriginal community, *Briefing*, 11 August 2013.

> *justice system impacts upon Aboriginal people, it has really fallen away such that … I doubt very much whether any government decision would involve a consideration of whether or not that particular decision complies or does not comply with any particular recommendation of the royal commission.*[570]

The absence of a regular mechanism for reporting compliance with the RCIADIC elevates the importance of other more regular reporting mechanisms aimed at uncovering flaws in lock-up arrangements and preventing any further deaths in custody, particularly investigations by the Coroner. The RCIADIC recognised the importance of the Coroner and required: all deaths in custody to be the subject of coronial inquiry (*Recommendation 11*); that the inquiry investigate not only the cause and circumstances of the death but also the quality of care, treatment and supervision of the deceased (*Recommendation 12*); and that the Coroner makes findings and any such recommendations as deemed appropriate with a view to preventing further custodial deaths (*Recommendation 13*).

Evidence to the Committee reinforced the value of coronial findings and recommendations. The Police Commissioner supports the idea of a central repository of coronial recommendations as this would be useful from a policy perspective. While this information is already available, at the moment it would require an extensive search through historical reports which are not available electronically.[571] ALSWA is of the view that WA coronial findings should be easily accessible on the Coroner's website and suggested that there should be a nationally coordinated coronial information service to facilitate access so that "we do not reinvent the wheel interminably or repeat the mistakes of the past".[572]

The Committee is encouraged that DoTAG has since made coronial findings from 2013 available on the Coroner's Court website.[573] It will now be practice for redacted findings (due to privacy considerations) to be listed on the website within seven days of the finding being handed down by the Coroner. Full findings can still be accessed via application to the court.[574]

In relation to a searchable database however, DoTAG advised that this would be difficult to achieve. Due to limitations associated with the Coroner's case management

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570 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2012, pp2, 9.

571 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 17 September 2013, p20.

572 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p8.

573 Coroner's Court of Western Australia, *2013 Findings*, 2013. Available at: www.coronerscourt.wa.gov.au/I/inquest_findings.aspx Accessed on 4 November 2013.

574 Mr Gary Cooper, Principal Registrar, Department of the Attorney General, *Transcript of Evidence*, 18 September 2013, p5.

system, it would be problematic extracting and stratifying information in a way that would allow it to be searched by topic.[575]

Comments were also made to the Committee in support of mandatory actioning of coronial recommendations. ALSWA highlighted that "very useful, insightful and helpful recommendations are made and are never actioned by government departments; they just gather dust". As such ALSWA considers that government departments should be required to inform Parliament of what actions have been taken in relation to coronial recommendations within a specified time-frame, as is the case in the Northern Territory.[576] The DICWC(WA) similarly indicated that the Coroner currently makes recommendations but there was no mandatory requirement for departments to report back on progress when ideally this should be required within a certain time frame.[577]

In 2012, the final report of the Law Reform Commission's Review of Coronial Practice in Western Australia recommended that within three months of receiving a recommendation, any public entity subject to a coronial recommendation should be required to provide a written response to the Coroner regarding actions taken or proposed. The Coroner would then be required to publish the response on the internet and provide a copy to any person with an interest in the subject of the recommendations.[578]

Following the release of the Law Reform Commission report, DoTAG was tasked with assessing the report and recommendations and presenting a detailed response to the State Government.[579] The Committee understands that this process is still in train although some recommendations are already being implemented, such as improvements to the Coroner's Court website to include copies of coronial findings and recommendations (see above).

**Finding 47**

That coronial findings and recommendations continue to be an important mechanism for identifying deficiencies in lock-up arrangements and preventing further deaths in custody.

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575 Mr Ray Warnes, Executive Director Court and Tribunal Services, Department of the Attorney General, *Transcript of Evidence*, 18 September 2013, p5.

576 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA, *Transcript of Evidence*, 18 September 2013, p8.

577 Mr Marc Newhouse, Chair, Deaths in Custody Watch Committee (WA) Inc., *Transcript of Evidence*, 12 June 2013, pp11-12.

578 Law Reform Commission of Western Australia, *Review of Coronial Practice in Western Australia – Final Report*, Government of Western Australia, Perth, January 2012, p107.

579 Hon. Christian Porter MLA, Attorney General, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 February 2012, pp283-284.

**Finding 48**

That separate inquests quite often produce similar recommendations but there is no system in place for consolidating them.

**Finding 49**

That Western Australia does not currently have a web-based searchable database of coronial findings and recommendations or a mandatory requirement for public entities to respond to coronial recommendations.

**Recommendation 22**

That the Attorney General maintains a list of coronial recommendations showing the status of their implementation and publishes and tables this information in Parliament annually.

## 7.3 OPCAT compliance

### 7.3.1 Current situation

The Optional Protocol to the Convention Against Torture (OPCAT) is an international agreement adopted by the United Nations in 2002 to help States meet their obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), via a system of regular visits by international and national bodies to places where people are deprived of their liberty.

Essentially, parties to the CAT, which Australia ratified in 1989, are obliged to:

- prevent torture;
- prevent other acts of cruel, inhuman or degrading treatment or punishment;
- ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are fully included in the training of all people involved in the arrest, custody, interrogation, detention or imprisonment of any individual; and
- regularly review interrogation rules, instructions, methods and practices to prevent torture.[580, 581]

The implementation of the CAT is monitored by the Committee Against Torture (a body of 10 independent experts) through regular reports by state parties, inquiries, and investigation of complaints. The committee may issue recommendations and reports to states after investigating a complaint, but the recommendations are not binding.

580 As summarised on the Australian Human Rights Commission website. Available at: www.humanrights.gov.au/optional-protocol-convention-against-torture-opcat

581 United Nations, *Treaty Series*, Vol. 1465. New York, 1996, pp114-122.

The OPCAT was developed because it was felt that further measures were necessary to achieve the purposes of the CAT.[582] State parties to the OPCAT agree to international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture (SPT). The SPT is granted unrestricted access to relevant information and to all places of detention and can request private interviews. State parties must examine the recommendations of the SPT and discuss possible implementation measures.[583]

At the domestic level, state parties are also required to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention. This would include prisons, juvenile detention centres, local and offshore immigration detention facilities and other places where people are deprived of their liberty.[584] The NPM can be an existing body or a new body created specifically for this purpose. According to Part IV (Articles 17 – 23) of the Protocol, the NPM must have:

- a mandate to undertake regular preventive visits;
- independence (functional independence, independence of personnel);
- expertise (required capabilities and professional knowledge);
- necessary resources;
- access (to all places of detention; to all relevant information; the rights to conduct private interviews);
- appropriate privileges and immunities (no sanctions for communicating with the NPM; confidential information shall be privileged);
- dialogue with competent authorities regarding recommendations; and
- power to submit proposals and observations concerning existing or proposed legislation.[585]

Unlike the SPT, NPMs are not necessarily confidential and Article 23 of the OPCAT requires states to publish and disseminate the annual reports of the NPM.

The OPCAT can be ratified by any state that has ratified or acceded to the CAT. Australia signed the OPCAT in May 2009 but has not yet ratified the agreement.

In June 2011, the Australian Government accepted recommendations from the United Nations Human Rights Council’s Universal Periodic Review of Australia’s human rights

582 United Nations, *Treaty Series*, Vol. 2375. New York, 2010, p262.
583 Ibid, pp263-268.
584 Ibid, pp268-270.
585 As summarised on the Australian Human Rights Commission website. Available at: www.humanrights.gov.au/optional-protocol-convention-against-torture-opcat.

performance, which urged Australia to ratify the OPCAT.[586] In April 2012, the Standing Council on Law and Justice (formerly the Standing Committee of Attorneys-General) agreed to work towards ratifying OPCAT and in particular on the preparation of jurisdictional legislation to enable the SPT to visit Australia.[587] The treaty was referred to the Joint Standing Committee on Treaties (JSCOT) for consideration and on 21 June 2012, JSCOT tabled its report recommending that binding treaty action be taken.[588]

The Commonwealth has developed model legislation with the States and Territories for introduction in all Australian parliaments, which provides the framework for visits by the SPT to all places of detention within Australia's jurisdiction and control.[589] The Australian Capital Territory became the first State or Territory to introduce the Bill (*Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Bill 2013*) in April 2013. It is uncertain when the matter will be considered by the WA Parliament.

The Australian Government has indicated that it will likely apply to postpone its obligations to establish an NPM, once the treaty is ratified.[590] The Federal Attorney General's Department expects it will require the three-year postponement to enable the significant planning and consultation required to develop a rigorous and robust NPM.[591]

### 7.3.2 Outlook

The Committee received a number of comments relating to the OPCAT, bearing in mind that it is yet to be ratified:

- The National Congress of Australia's First Peoples strongly supported the ratification of the OPCAT and encouraged the WA Government to pass the relevant jurisdictional legislation.[592]

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586 Simon Corbell, Attorney General, Australian Capital Territory Legislative Assembly, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013 Explanatory Statement.* Available at: www.austlii.edu.au/au/legis/act/bill_es/mopodpttcatb2013898/mopodpttcatb2013898.html. Accessed on 31 October 2013.

587 Standing Council on Law and Justice, *Communique April 2012.* Available at: www.sclj.gov.au/agdbasev7wr/sclj/documents/pdf/sclj_communique_april_2012.pdf. Accessed on 31 October 2013.

588 Joint Standing Committee on Treaties, *Report 125: Treaties tabled on 7 and 28 February 2012*, Commonwealth of Australia, Canberra, June 2012.

589 The legislative scheme needs to be established prior to ratification due to a policy which dictates that action to bring a treaty into force will not be taken until all necessary implementing legislation has been passed.

590 Article 24 of OPCAT permits a three-year delay in implementation of treaty obligations following ratification.

591 Mr Andrew Symonds, Human Rights Policy Branch, Attorney General's Department, Electronic Mail, 12 June 2013.

592 Ms Tammy Solonec, Director, National Congress of Australia's First Peoples, *Transcript of Evidence*, 19 June 2013, p5.

- WA Police indicated that the practical implementation of the OPCAT would depend on the model of NPM that is adopted.[593]
- The OICS stated that police lock-ups would undoubtedly be covered by OPCAT definitions and that the current inspection regime for police lock-ups did not meet OPCAT requirements. According to the OICS each State and Territory should ideally have its own coordinating NPM with powers similar to the OICS. It saw the OICS model of inspections as resembling an "OPCAT-plus" model. This was because the current remit of the OICS in relation to prisons and detention centres enabled it to examine a range of efficiencies and opportunities for improvement which exceeded the comparatively limited terms of OPCAT, which focussed only on "cruel, inhuman or degrading punishment or treatment".[594]

The Committee notes that RCIADIC *Recommendation 333* stated that there was no evidence of a breach of the Convention Against Torture, however it was recommended that the Commonwealth Government should take all steps necessary to become a party to the OPCAT.

In Chapter 5 (section 5.1) the Committee found that police lock-ups warrant uniform oversight by an independent body and that the OICS is the most appropriate body to assume responsibility for this function. Until the OPCAT is ratified, jurisdictional legislation is drafted and the form of the NPM is known, it is uncertain exactly what the implications will be for police lock-ups. The Committee is confident however that the recommended mechanism of oversight by the OICS will facilitate Western Australia's future compliance under the OPCAT, given this will meet the requirements listed under Part IV of the Protocol.

**Finding 50**

That until the OPCAT is ratified it is uncertain exactly what implications there will be with respect to police lock-ups however oversight by the Office of the Inspector of Custodial Services will likely facilitate Western Australia's future compliance with the OPCAT.

MS M.M. QUIRK, MLA
CHAIR

593 Submission No. 8 from Western Australia Police, 13 September 2013, p1.
594 Submission No. 5 from Office of the Inspector of Custodial Services, 6 August 2013, p2.

# Appendices

# Appendix One

## Committee's functions and powers

The functions of the Committee are to review and report to the Assembly on: -

a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;

b) annual reports of government departments laid on the Table of the House;

c) the adequacy of legislation and regulations within its jurisdiction; and

d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

# Appendix Two

## Inquiry Terms of Reference

1. Whether current arrangements fully comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Optional Protocol to the Convention Against Torture;
2. Access by detainees to medical and legal services and other third parties;
3. Lock-up design, staffing and administration;
4. Training of custodial officers on cultural issues;
5. Whether oversight mechanisms, procedures and disciplinary measures for personnel involved in custodial processes are adequate.

# Appendix Three

## Acronyms and Glossary of terms

| | |
|---|---|
| AIC | Australian Institute of Criminology |
| AJAC | Aboriginal Justice Advisory Committee |
| ALS | Aboriginal Legal Services |
| ALSWA | Aboriginal Legal Service of WA |
| AO | Auxiliary Officer |
| APLO | Aboriginal Police Liaison Officer |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| CAT | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CCC | Corruption and Crime Commission |
| CLA | Criminal Lawyers Association |
| DICWC(WA) | Deaths in Custody Watch Committee of WA |
| DoTAG | Department of the Attorney General |
| EOC | Equal Opportunity Commissioner |
| FASD | Foetal Alcohol Spectrum Disorder |
| IAU | Internal Affairs Unit (WA Police) |
| JSCCCC | Joint Standing Committee on the Corruption and Crime Commission |
| JSCOT | Joint Standing Committee on Treaties |
| NDICP | National Deaths in Custody Program |
| NGO | Non-government organisation |
| NPA | National Partnership Agreement on Remote Service Delivery |
| NPM | National Preventive Mechanism |

| | |
|---|---|
| OIC | Officer-in-charge |
| OICS | Office of the Inspector of Custodial Services |
| OPCAT | Optional Protocol to the Convention Against Torture |
| PCYC | Police and Community Youth Centre |
| RCIADIC | Royal Commission into Aboriginal Deaths in Custody |
| SPT | United Nations Subcommittee on the Prevention of Torture |

## Glossary

| | |
|---|---|
| Auxiliary Officer | Western Australia Police Auxiliary Officers provide operational support to police with custodial duties such as fingerprinting and photographing of detainees and all tasks relating to the duty of care and risk management of detainees in police custody.[595] Auxiliary Officers complete a 12-week training course at the WA Police Academy, however are not members of the Police Force (see s38(2) *Police Act 1892*). |
| Detainee | According to the WA Police Lock-up Manual LP-13.4.1 this refers to any person, sentenced or unsentenced, who is detained in a police lock-up facility. |
| Prescribed lock-up | Prescribed lock-ups are managed by a contractor appointed for this purpose under the state's *Court Security and Custodial Services Contract* and exclude lock-ups managed by Western Australia Police. |
| Sworn Officer | Sworn police consist of ranks ranging from Commissioner to Cadet and have the powers of a constable under the *Police Act 1892*.[596] |

595 Western Australia Police, *Police Auxiliary Officer Fact Sheet*, 2013. Available at: www.stepforward.wa.gov.au/entry-pathways/auxiliary.html. Accessed on 11 November 2013.

596 Western Australia Police, *Police terminology and acronyms*, nd. Available at: www.police.wa.gov.au/WAPoliceNews/MediaGuides/Policeterminologyandacronyms/tabid/1496/Default.aspx#Rank. Accessed on 11 November 2013.

# Appendix Four

## Submissions received

| Submission Number | Name | Position | Organisation |
|---|---|---|---|
| 1 | Mr George Turnbull | Director of Legal Aid | Legal Aid Western Australia |
| 2 | Mr Peter Collins | Director of Legal Services | Aboriginal Legal Service of WA |
| 3 | Mr Roger Macknay | Corruption and Crime Commissioner | Corruption and Crime Commission |
| 4 | Mr Michael Hayden | Chairperson | Western Australian Aboriginal Advisory Council |
| 5 | Professor Neil Morgan | Inspector of Custodial Services | Office of the Inspector of Custodial Services |
| 6 | Mr Marc Newhouse | Chair | Deaths in Custody Watch Committee WA |
| 7 | Mr George Tilbury | President | WA Police Union |
| 8 | Mr Chris Dawson | Acting Commissioner of Police | Western Australia Police |
| 9 | Mr Bruce Campbell | Member of the public | N/A |

# Appendix Five

## Hearings

| Date | Name | Position | Organisation |
|---|---|---|---|
| 12 June 2013 | Mr Marc Newhouse | Chair | Deaths in Custody Watch Committee WA |
| | Ms Natasha Moore | Board member | |
| 19 June 2013 | Ms Tammy Solonec | Director | National Congress of Australia's First Peoples |
| 7 August 2013 | Mr Roger Macknay | Corruption and Crime Commissioner | Corruption and Crime Commission |
| | Mr Michael Silverstone | Executive Director | |
| | Ms Bethany Duplock | Corruption Prevention Officer | |
| 14 August 2013 | Professor Neil Morgan | Inspector of Custodial Services | Office of the Inspector of Custodial Services |
| | Ms Natalie Gibson | Director, Operations | |
| | Mr James Bryden | Inspections and Research Officer | |
| | Mr George Turnbull | Director of Legal Aid | Legal Aid Western Australia |
| | Mr Lex Payne | Director of Regions | |
| | Mr Andrew Robson | Appeals Team Leader | |
| 11 September 2013 | Ms Linda Black | President | Criminal Lawyers' Association |
| | Mr George Tilbury | President | WA Police Union |
| | Mr Brandon Shortland | Vice President | |
| | Ms Jane Baxter | Research Officer | |
| 17 September 2013 | Dr Karl O'Callaghan | Commissioner of Police | Western Australia Police |
| | Mr Lawrence Panaia | Acting Assistant Commissioner, Judicial Services | |
| | Mr Malcolm Penn | Assistant Director, Legal and Legislative Services | |
| 18 September 2013 | Mr Peter Collins | Director of Legal Services | Aboriginal Legal Service of WA |

Appendix Five

| Date | Name | Position | Organisation |
| --- | --- | --- | --- |
| | Mr Ray Warnes | Executive Director, Court and Tribunal Services | Department of the Attorney General |
| | Mr Gary Cooper | Principal Registrar | |
| | Mr Andrew Marshall | Manager, Research and Analysis | |
| 25 September 2013 | Mr Steven Heath | Chief Magistrate | Magistrates Court of Western Australia |

# Appendix Six

## Updates on the implementation of RCIADIC recommendations (2012)

In 2012 the Community Development and Justice Standing Committee of the 38th Parliament wrote to relevant departments and agencies requesting that they provide an update on implementation of recommendations pertinent to their department/agency. The Committee received responses from three WA government departments and from the WA Police.

*Department of Indigenous Affairs* (formerly Aboriginal Affairs Department, now Department of Aboriginal Affairs): The Department provided comments on 22 recommendations it had been assigned responsibility to achieve as well as a status category. All 22 recommendations were classified as having been implemented.

*Department for Child Protection:* The Department provided comments on 24 recommendations and indicated whether they had been implemented. It noted in a covering letter that it no longer had responsibility for the youth justice portfolio, which limited its ability to respond fully to recommendations relevant to youth justice. All recommendations were classified as having been implemented.

*Department of Corrective Services:* The Department did not specify how many recommendations it was responsible for implementing, but provided information on the three recommendations it was responsible for which had *not* been implemented, and one which had been partially implemented. (Note that in the 2000 WA Government implementation report,[597] the Ministry of Justice provided responses to all recommendations relevant to corrective services.)

Of the three which had not been implemented, the first, *Recommendation 171*, pertained to allowing Aboriginal prisoners to attend funeral services and burials. The Department's response was that it had "previously implemented policies that effectively responded" to this recommendation.[598]

*Recommendation 118* was that home detention be provided as a sentencing option and a means of early release. The Department explained that home detention had been introduced in 1991 as an early release scheme, but abolished in 2003 due to low use.

597 Aboriginal Affairs Department, *Government of Western Australia 2000 Implementation Report*, *Royal Commission into Aboriginal Deaths in Custody*, Government of Western Australia, Perth, June 2001.

598 Mr Ian Johnson, Department of Corrective Services, Letter, 25 October 2012, p1.

*Recommendation 329* asked Ministers responsible for corrections to draft legislation which would give consideration to prisoners' rights contained in Division 4 of the Victorian Corrections Act 1986. The Department said there were no plans to introduce a set of distinct prisoners' rights in legislation in WA, but that many of the rights contained in the Victorian Act are protected through other WA legislative provisions and policy.

*Recommendation 165*, that equipment and facilities at corrective institutions – including hanging points – be scrutinised and any potential for causing harm be eliminated or reduced, was listed as partially implemented.

*Western Australia Police:* WA Police used the implementation report of 2000 as the basis for its response. Its 2012 update takes account of the fact that government policy or legislative changes may have meant that the original intent of some RCIADIC recommendations had changed. In the view of the WA Police, the RCIADIC recommendations "have been implemented, considered and assessed in some capacity to improve service delivery".[599] WA Police identified 92 relevant recommendations. Around two-thirds were categorised in the 2000 report as having been implemented. It is assumed that this status is retained in 2012, although it is not always clear from the 2012 response if this is the case.

599 Dr Karl O'Callaghan, Western Australia Police, Letter, 12 November 2012.