



Minister for Police; Tourism;
Road Safety; Women's Interests

Our Ref: 45-07187

The Hon Michael Sutherland MLA
Speaker of the Legislative Assembly
Parliament House
PERTH WA 6000

Dear Mr Speaker

COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE – 'IN SAFE CUSTODY' – INQUIRY INTO CUSTODIAL ARRANGEMENTS IN POLICE LOCK-UPS

Pursuant to Standing Order 277(1) of the Legislative Assembly, the attached document sets out the consolidated State Government response to the Community Development and Justice Standing Committee *In Safe Custody – Inquiry into Custodial Arrangements in Police Lock-ups* report and recommendations.

This response represents the considered views of agencies with responsibility for administering and delivering safe and secure conditions in the State's lock-ups.

Yours faithfully

LIZA HARVEY MLA
MINISTER FOR POLICE; TOURISM;
ROAD SAFETY; WOMEN'S INTERESTS

Enc.

9 APR 2014

DETAILED RESPONSES TO RECOMMENDATIONS TO THE 'IN SAFE CUSTODY' REPORT

| RECOMMENDATION | SUPPORTED? | COMMENTS BY AGENCIES ¹ |
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| <p>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</p> | <p>YES</p> | <p>The Perth Watch House (PWH), with assistance from Contracts and Commercial Services Branch, is finalising a public tender to seek responses for the provision of a 24/7 qualified nurse at the PWH.</p> <p>Currently, the PWH contacts Mental Health Emergency Response Line (MHERL) for advice on suspected mental health issues. Staff from MHERL will arrange attendance at the PWH if they determine the situation warrants that level of response.</p> |
| <p>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.</p> | <p>YES</p> | <p>Incidents which bring police into contact with people experiencing mental health problems and/or mental illness present opportunities to divert people towards appropriate and effective treatment and support as opposed to potential arrest and involvement in the criminal justice system.</p> <p>Earlier access to assessment and appropriate treatment and support has demonstrated improved mental health outcomes for individuals, reduced contact with the criminal justice system and decreased use of high-cost criminal justice services.</p> <p>The Mental Health Commission's Strategic Policy <i>Mental Health 2020 Making it personal and everybody's business</i> (Action Area 6: Justice) applies a continuum approach to addressing the interface between mental illness and criminal justice. This recognises that there are a number of critical points where targeted interventions are effective, including at the pre-offending, pre-arrest and arrest stages.</p> <p>The draft Forensic Mental Health Services Plan will provide a blueprint for the future implementation of a diversion model in</p> |

¹ This table lists the level of support and summarises the responses of the WA Police, Department of Corrective Services (DCS), Department of the Attorney General (DotAG) and the Mental Health Commission (MHC).

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| | | <p>Western Australia. The plan addresses relevant population modelling and required service delivery analysis and is to be resourced in accordance with Government priorities through the budget process.</p> <p>Early diversion is among the issues recognised as a priority within the Plan.</p> |
| <p>3. That the Minister for Police initiates amendments to the Criminal Investigation Act 2006 to:</p> <ul style="list-style-type: none"> • 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 | NO | <p>The <i>Criminal Investigation Act 2006</i> (the Act) already provides a right for an arrested suspect to have a reasonable opportunity to communicate or attempt to communicate with a legal practitioner.</p> <p>WA Police has no objection to reviewing the Act's 'rights' provisions. However, any proposed change would depend on other factors including an expansion of coverage by Aboriginal Legal Service of WA (ALS). WA Police currently has procedures where the ALS is notified when an Aboriginal person is detained; however with ALS being staffed only during office hours, this notification is often not dealt with until the next working day. Changes could have the effect of causing Aboriginal people to be held in custody for longer periods.</p> |
| <ul style="list-style-type: none"> • Make evidence inadmissible in proceedings in court where a detainee's right to legal access has been deliberately suspended. | NO | <p>Issues concerning admissibility should be left to the Courts' discretion. The <i>Criminal Investigation Act 2006</i> (ss. 154 and 155) adequately address the issue of admissibility of evidence obtained improperly and the courts have general discretionary powers in this regard.</p> |
| <p>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.</p> | NO | <p>Funding for the Aboriginal Legal Service in WA is a responsibility of the Commonwealth Government. The Attorney General reports that the State Government has made, and will continue to make, representations to the Commonwealth urging it to review their funding commitments to provide more legal assistance to Aboriginal defendants in Western Australia.</p> <p>The proportion of Aboriginal clients being assisted in the predominantly State funded Legal Aid Commission, especially in</p> |

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| | | <p>regional areas, has increased from 11 per cent in 2008-09 to 17 per cent in 2012-13. For example in Duty Lawyer services the proportion of Aboriginal clients has increased from nine per cent to 16 per cent, in the minor assistance area from nine per cent to 21 per cent, and in advocacy services from zero per cent to 20 per cent. The State Government continues to provide these increasing services to Aboriginal clients despite the fact that the proportion of Commonwealth funding this State receives for the Legal Aid Commission has decreased steadily over the same period. This situation is likely to prove even more challenging for the State Government going forward, as the Commonwealth in its Mid-Year Economic and Fiscal Outlook has identified savings of some \$13.3 million for Aboriginal legal assistance nationally.</p> |
| <p>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.</p> | <p>YES</p> | <p>A detainee in a police lockup has the right to contact a legal representative and a family member, or friend, on their admission to the lockup. The OIC of any police lockup has the discretion to allow a person in custody to have a visitor if they determine the circumstances warrant such a visit, and in consideration of lockup security and police operational commitments.</p> <p>Because of the diversity of facilities, staffing and local police demand across the State, it is not practicable to apply the same practices across all sites. WA Police is currently undertaking a comprehensive review of the Police Manual Lockup Procedures. Following this review, standard operating procedures will be developed for each lock-up. These procedures will include local arrangements for the provision of detainee visitors.</p> |
| <p>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</p> | <p>YES</p> | <p>WA Police supports this recommendation and continues to work in partnership with Aboriginal people and elders throughout Regional Western Australia. Some of the larger Kimberley police stations such as Kununurra, Halls Creek and Broome have the Aboriginal Visitors Scheme (AVS) already in place. In addition, remote Multi-Functional</p> |

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| available. | | <p>Police Facilities (MFPPF) engage and hold elder meetings in addition to the community council meetings to work in partnership with local issues on law and order. These meetings are well accepted and feedback both ways assists the police community relations face to face.</p> <p>In addition to this, Goldfields/Esperance District supports the engagement of Aboriginal community leaders/elders to assist in reducing offending. They have also highlighted the use of the old AVS whereby local respected individuals could visit Aboriginal people in custody. They believe there is scope to expand the Scheme to include community engagement so as to divert people away from committing the type offences which result in incarceration, particularly with regard to traffic offences.</p> <p>The AVS routinely visits the Perth Watch House, and other lockups throughout the state have their own local arrangements with the AVS (where it exists). Where AVS does not exist, the OICs of lockups can seek local family or community support (as per recommendation 5) where they determine it is warranted.</p> |
| 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. | NOTED | <p>The Act provides the legislative framework for the treatment of young offenders in Western Australia (WA). The key intent of the Act is to divert young people away from the formal criminal justice process wherever possible.</p> <p>Currently, section 20 of the Act specifies that before a member of the police questions a young person who has been apprehended, the member is to ensure that a responsible adult has received notice of the intention to question the young person.</p> <p>Notice does not need to be given if a responsible adult cannot be identified after reasonable inquiry or if it is inappropriate for this notice to be given. In this case, the CEO of the Department of</p> |

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| | | <p>Corrective Services (DCS) must be advised in writing of the failure to give notice and provide a reason.</p> <p>The Act defines a responsible person as a parent, guardian, or other person having responsibility for the day to day care of the young person.</p> <p>The intent of the provision requiring the police to notify a responsible adult prior to questioning the young person is to ensure that vulnerable young people are protected from coercion and that they are supported in understanding the consequences of the situation and the information they provide to the police.</p> <p>As noted in the report, if no responsible adult can be promptly identified who is able and willing to be present during questioning, there is the potential for young people to be held in police custody for longer periods of time, which is in conflict with the intent of the Act to limit contact with the justice system and minimise the length of time spent in custody.</p> <p>This recommendation will be considered by the review of the Act which will commence in 2014.</p> |
| <p>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.</p> | <p>YES</p> | <p>Outcomes achieved through States, Territories and the Commonwealth Governments, in particular funding for the interpreting services in the central deserts, the Kimberley Interpreting Service and the National Accreditation Authority for Translators, are noted.</p> <p>In its 2013 report, <i>Australian Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report: Our Land Our Languages – Language Learning in Indigenous Communities</i>, the Commonwealth Government agreed in principle to a National Indigenous Interpreter</p> |

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| 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. | YES | Service in partnership with States and Territories. ² There is currently a programme in place with WA Police to ensure that a minimum standard of safety and comfort is being met in the approved lockup facilities throughout Regional WA and this includes CCTV systems (monitoring only). There is an annual allocation in the WA Police budget for this work to be carried out. |
| 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. | YES | The new Perth Watch House has 4 non-contact interview rooms designed for the specific purpose of providing confidential legal consultations for detainees. There are a further 2 non-contact interview rooms provided adjacent to the Northbridge Magistrates' Court for use by watch house detainees and legal representatives. As new detention and court facilities are built throughout the state, these types of facilities are being provided. With older detention facilities, any provision of suitable spaces for confidential consultations will usually involve providing additional buildings / extensions. |
| 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. | YES | Section 139(3) of the <i>Criminal Investigation Act 2006</i> is currently under review with the objective to amend to better reflect current police facilities and police resources for holding arrested suspects. |
| 12. That given the high cost of fully upgrading all police lock-ups, interim measures are | YES | There is currently a programme in place with WA Police to ensure |

² Australian Government, *Australian Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report: Out and Our Languages – Language Learning in Indigenous Communities*, Canberra, 6 June 2013, p14.

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| <p>implemented to ensure at least the minimum standards of safety and comfort are being met.</p> | | <p>that a minimum standard of safety and comfort are being met in the approved lockup facilities throughout Regional WA.</p> |
| <p>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.</p> <p>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.</p> | <p>NO</p> <p>YES</p> | <p>The appropriate staffing of custodial facilities is a matter for local officers in charge who are best positioned to manage the risks involved in providing custodial care.</p> <p>WA Police support this recommendation and continual work is being done in Regional Western Australia in regards to this recommendation. The first iteration of Community Relations Officers (CROs) are now in place in the Kimberley District.</p> <p>The following points are provided as additional comment:</p> <p><u>Kimberley Model</u></p> <ul style="list-style-type: none"> • A position description has been developed for the Community Relations Officer role. • 5 officers have been appointed (2 for Kununurra and 3 for Broome). <p><u>Goldfields/Esperance (GE) Model</u></p> <ul style="list-style-type: none"> • Aboriginal Community Relations Officers (CROs) are supported in areas where there is a high Aboriginal population. With the phasing out of APLOs, the CRO model needs to be a very defined and specific non-policing function. In the GE District, APLOs are based in Laverton. These officers are used to engage the local community and be the communication conduit between the community and the Police. Occasionally, the APLOs are required to complete frontline operational duties, and to some degree the dual roles have created confusion in communities. Further, the preparedness and keenness of APLOs to undertake operational policing duties saw the APLO |

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| <p>15. That Western Australia Police considers abolishing the maximum tenure period of four years in location where continuity of staff would assist in building trust with the Aboriginal community.</p> | NO | <p>role change into different things in different Districts.</p> <p>There is no evidence that four years in location, as single criteria, is a key element in building trust with the Aboriginal community. Indeed, the ability to move officers through locations can bring exchange of new ideas and new methods of engagement with Aboriginal communities. The movement of officers has also been identified in assisting to minimise the risk of corruption and/or serious misconduct.</p> <p>Obviously, individual officers do have their own specific impact on the communities in which they work, and it is not agreed that simply staying in one location for a long time builds trust. The Assistant Commissioner (Regional WA) has the ability to approve tenure extensions for all Police Officers in Regional WA past 4 years, and if there is a specific need or benefit to the community then tenure may or may not be extended. The flexibility to move staff is an important HR capability required to manage staff in smaller RWA communities.</p> |

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| <p>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:</p> <ul style="list-style-type: none"> • 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. | YES | <p>The provision of court security and custody at regional circuit courts is currently managed by WA Police. This continues the arrangements made under the 2000 Memorandum of Understanding (MOU) between the then Ministry of Justice and WAPOL.</p> <p>The MOU expired in 2011 and both agencies are in discussion to identify needs, arrangements and responsibilities for court security and custodial services in regional centres.</p> <p>An internal review of the Court Security and Custodial Services contract is currently being undertaken by the Department of Finance. It will identify opportunities to improve the form, operation and management of the contract. As part of this process it will examine the issues raised in Recommendation 16.</p> |
| <p>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.</p> | NOTED | <p>The Inspector of Custodial Services has been given access to police lock-ups when requested as part of announced inspections.</p> <p>WA Police and DCS will continue to examine how the arrangement can be progressed.</p> |
| <p>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 <i>judice</i> rules.</p> | YES | <p>WA Police is considering placing additional data on its Internet site in relation to significant investigations, rather than placing the data in the Annual Report.</p> <p>This would allow transparency without causing the annual report to become a more cumbersome document.</p> |
| <p>19. That Western Australia Police expands the</p> | YES | <p>This is subject to an existing initiative. The WA Police Academy has</p> |

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| <p>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.</p> | | <p>expanded the diversity training module to include the completion of online Cultural Competency Training provided by Diverse WA as a pre-requisite for all recruits prior to completing the Diversity module. This training is also available to all WA Police personnel, with the online course being proactively marketed.</p> <p>The Objectives of the Diverse WA course is to develop cultural competency by:</p> <ul style="list-style-type: none"> • explaining the Western Australian Government’s commitment to supporting diversity • providing information on Western Australia’s cultural diversity and its benefits • explaining the responsibilities of public sector staff in delivering equitable outcomes for people from CaLD backgrounds • examining the policies, resources and services that support Western Australia’s diverse communities • increasing individual understanding of culture, including their own • explaining what cultural competency is and how it is developed • developing individual cultural awareness • building on individual cross-cultural communication skills for engaging with people from CaLD backgrounds. <p>Recruits at the WA Police Academy also complete a two day module on Diversity.</p> <p>The Learning Outcome of this module is that the recruits will be able to, ‘Describe culturally diverse communities and how best to engage them in a policing environment.’</p> <p>This module is further ameliorated where practicable in Scenario Training via the insertion of actors from CaLD backgrounds to provide contextual application of classroom learning.</p> |

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| <p>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.</p> | NOTED | This recommendation is noted. The content and delivery of induction packages is determined at business unit level according to local needs. No ongoing training is provided by the WA Police Academy. |
| <p>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.</p> | YES | WA Police agrees with this recommendation. WA Police is currently reviewing the Lock-up Procedures manual and it is anticipated that its contents will be incorporated into a police station induction package to ensure all staff are aware of their custodial roles and responsibilities. In addition, the delivery of training on this issue is subject to further consideration as it is accepted that greater reinforcement at all levels is required. |
| <p>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.</p> | NO | <p>The State Coroner's Annual Report already publishes details about the deaths of persons in care and this includes 'deaths possibly caused by or contributed to by actions of members of WA Police.'</p> <p>However, there would be significant resource implications that would arise should the current level of reporting be widened. Furthermore, the Office of the State Coroner does not have powers to enforce recommendations, nor is there a legislative requirement to implement or respond to coronial recommendations many of which do not necessarily relate to Government agencies.</p> |