

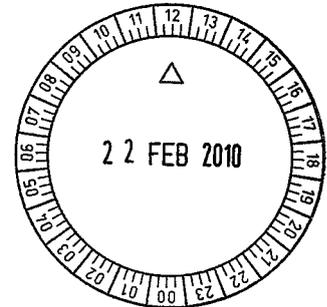


PUBLIC

Attorney General; Minister for Corrective Services

Our Ref: 35-06868

Hon Brian Ellis MLC
Chairman
Standing Committee on Environment and Public Affairs
Legislative Council of Western Australia
Parliament House
PERTH WA 6000



Dear Mr Ellis

PETITION NO 43 – TRANSPORTATION OF DETAINED PERSONS

Thank you for your letter dated 18 November 2009 concerning Petition No 43 (Petition in relation to the death in custody of Mr Ward). I hereby provide the following response to the matters addressed in Petition No 43 itself and in the submissions by the tabling Member and the principal petitioner.

In relation to item 1 of the Petition: The Government's *Response to the Recommendations made by the State Coroner following the Investigation into the death of Mr Ward* details the actions the Government intends to take to address the Coroner's recommendations. A copy of the response is attached. Implementation of the listed actions is already well underway. I have been provided with a copy of the Deaths in Custody Watch Committee's report "*Special Report of a Working Party of the Deaths in Custody Watch Committee: the Ward Case and Lessons for the WA Government: System-Wide Dysfunction Requires a System Wide Approach*". The recommendations of that report are being taken into consideration in the process of implementing the Government's response to the Findings of the Coroner.

In addition, of the 14 recommendations contained in the Coroner's findings following the Inquest into the death of Mr Ward, recommendations 9 – 12 were referred to the Department of Corrective Services (DCS) and relate primarily to the transportation of prisoners.

As evident in the attached Government response, the State Government supports these recommendations and as such, DCS is implementing them in full as a matter of priority.

Recommendations 13 and 14 relate to appropriate training for G4S staff, and G4S submitted an Action Plan to address the training requirements contained in the recommendations. DCS is monitoring the rollout of the Action Plan including the provision of regular refresher training to G4S staff. A follow-up review of G4S training will take place in the first half of 2010.

It is noted that the Death in Custody Watch Committee (DICWC) submission in support of Petition no. 43 states that the December 2010 timeline for completion of the fleet vehicle replacement is unacceptable by community standards. DCS has made the replacement of the original fleet vehicles a priority and to date 13 new vehicles have been produced and are in operation. It was a requirement to manufacture the new vehicles as there were no existing vehicles in the market meeting the necessary standards. While DCS is at the mercy of the

manufacturers to some extent in regard to timeliness, the building process is comparatively efficient and DCS is receiving 2 new vehicles per month.

It is also noted in the DICWC submission that as a key stakeholder it was not consulted during the vehicle design process. DICWC was not consulted for vehicle design; however DCS engaged a number of stakeholders across the community, including the Aboriginal Legal Service for input into the Aboriginal perspective.

In relation to item 2 of the Petition: Section 27(5) of the *Coroner's Act 1996* provides in part that a coroner may report to the Director of Public Prosecutions (DPP) if the coroner believes that an indictable offence has been committed in connection with a death which the Coroner investigated. The Coroner has reviewed the evidence available to him and has decided not to make such a report to the DPP. The Coroner's findings into Mr Ward's death are publicly available through the Coroner's Office on request.

In relation to item 6 of the Petition: To reduce the need for prisoner transport to occur, the Department of the Attorney General (DotAG) is developing a proposal to significantly expand the use of audio-visual and telephone conference equipment in regional and remote court locations. The Department is also undertaking a number of reforms to improve the initial and ongoing training of Justices of the Peace who deliver judicial services in remote and regional areas.

I can also advise that DCS supports the use of air transport where appropriate and currently utilises air charter services for some transport within the Kimberley region.

DCS actively supports the use of videoconferencing to the extent that one of the Department's key priorities is to upgrade and install new video conferencing facilities in metropolitan and regional prisons and juvenile detention centres to a standard that is appropriate for court proceedings to be conducted.

DCS also engages coach providers for long-distance transport to destinations including Broome, Kalgoorlie and Albany. The success of these services will inform the Department on the future mix of transport options.

In relation to item 7 of the Petition: Reducing the level of Aboriginal people's involvement in the criminal justice system both as offenders and as victims is a key priority of the current Government. It is important to recognise that a significant proportion of violence, abuse and other crime goes unreported, particularly in Aboriginal communities. Improving the safety of children and families is a fundamental precursor to 'closing the gap' for Aboriginal people. To this end, significant resources are being devoted to establishing and maintaining twelve Multi-Function Police Facilities (MFPFs), across the most remote parts of the State, that collocate police with child protection workers. MFPF staff work closely with Aboriginal communities to build trust, so that disclosures about child abuse and family violence can be made with some confidence that they will be acted upon.

This Government has also moved to extend alcohol restrictions along the lines of those introduced in Fitzroy Crossing in 2007, to a range of additional communities including Halls Creek and Oombulgurri. Such restrictions complement the establishment of MFPFs and help to address one of the main factors contributing to Aboriginal offending and incarceration.

The Aboriginal Justice Agreement (AJA) co-ordinated by the Department of the Attorney General is an important engagement mechanism enabling Aboriginal people and key government agencies to work together at local, regional and State-wide levels to address justice-related issues. The AJA works towards achieving safe and sustainable communities;

a reduction in the number of victims of crime; and a reduction in the over-representation of Aboriginal people in the criminal justice system.

From a correctional perspective, provided below are steps taken by DCS designed to reduce indigenous incarceration and recidivism rates.

West Kimberley Prison

DCS is currently in the process of building a prison in Derby to house offenders from the West Kimberley region, where a large proportion of offenders are Aboriginal. It is by placing prisoners in a location close to their homes, families and support networks, and in facilities suited to their offending needs that there is the greatest chance of rehabilitative success, assisting in reducing recidivism. The West Kimberley Prison has been designed with the unique cultural and rehabilitative needs of Aboriginal prisoners in mind.

Casuarina Prison Indigenous Unit

An expanded Indigenous Unit at Casuarina prison is in operation to accommodate Aboriginal prisoners enabling them to reside and interact with others from the same geographical and cultural background. There are two classrooms and new purpose built shed to provide activities, education, life skills, programs and health information within a framework of indigenous culture and environment designed in collaboration with the offenders. Staff members working in this area receive specialised cultural awareness training from specialised elders within regions.

Youth Diversionary Strategies

DCS is currently realigning service delivery for young people, particularly young Aboriginal people, in the justice system, focusing on early intervention and diversion; multi-disciplinary and multi-agency teams; servicing regional and remote areas; and Monitoring and Improving Performance. The new service delivery model will strengthen DCS' capacity to respond to the needs of young people who offend or are at high risk of offending, providing appropriate case management of these young people and ensuring a seamless approach to service delivery.

DCS currently operates two regional youth justice centres (Geraldton and Kalgoorlie) providing services and programs to help reduce the need for juvenile remand and detention while improving community safety in each region. The services offered at the centres include juvenile justice teams to help steer at-risk young people away from the justice system; an after-hours outreach family support service; and an after-hours seven-day-a-week bail service.

Offender Programs

DCS offers a number of programs targeted at the specific cultural needs of Aboriginal offenders to assist with their rehabilitation in order to reduce recidivism. Such programs include the Aboriginal Educational Preventing and Managing Relapse Program, Indigenous Men Managing Anger Substance Use Program, Building on Aboriginal Skills program, Indigenous Sex Offender Treatment Program and Indigenous Family Violence Program.

DCS will roll out a new model of program delivery in the first half of 2010, which will focus on improving the quality and quantity of programs, and target remote and regional areas particularly Aboriginal offenders.

In relation to item 8 of the Petition: Please refer to the Government's Response to the recommendations made by the State Coroner following the investigation into the death of Mr Ward.

In relation to item 9 of the Petition: The Law Reform Commission of Western Australia is currently undertaking a major review of the *Coroner's Act 1996*. A discussion paper is expected to be released in 2010.

In relation to item 10 of the Petition: Please refer to the Government's Response to the Recommendations made by the State Coroner following the investigation into the death of Mr Ward.

Thank you for this opportunity to inform your Committee of the Government's response to the tragic death of Mr Ward, and of work currently underway to implement our response.

Yours sincerely



C. Christian Porter MLA
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

Attach: Government of Western Australia Response to the recommendations made by the State Coroner following the investigation into the death of Mr Ward

- 4 FEB 2010

PUBLIC



**GOVERNMENT OF
WESTERN AUSTRALIA**

**RESPONSE TO THE RECOMMENDATIONS
MADE BY THE STATE CORONER
FOLLOWING THE INVESTIGATION INTO THE DEATH OF MR WARD**

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Recommendation No. 1

I recommend that a statutory system be put in place which would enable the Inspector of Custodial Services to issue the Department of Corrective Services with a "Show Cause" Notice in cases where the Inspector is aware of issues relating to the human rights and safety of persons in custody.

Recommendation No. 2

I recommend that the terms of section 34 and 39 of the Terrorism (Preventative Detention) Act 2006 be inserted in relevant legislation dealing with the Inspectors powers so that those protections be extended to all persons in custody and to all areas of the Inspector's jurisdiction.

Response to Recommendation No. 1 and Recommendation No. 2

The Minister for Corrective Services supports these recommendations in principle.

To understand the significance of these recommendations, it is necessary to understand the manner in which the legislation to which the Coroner refers operates. The *Terrorism (Preventative Detention) Act 2006 (WA) (Terrorism Act)* was enacted to allow persons to be detained without trial where it was suspected that they were involved in terrorist activity. Given the extraordinary nature of that legislation, it was judged necessary to give persons detained under that Act broadly worded protections. It is feasible for the Office of the Inspector for Custodial Services (OICS) to have direct oversight over every person detained under the Terrorism Act, because it was never contemplated that a large number of persons would be subject to preventative detention. Indeed, no person has yet been detained pursuant to the Terrorism Act.

In the context of the approximately 10,000 persons going into detention in various forms of custody in Western Australia each year, protections of the nature provided by the Terrorism Act would be largely symbolic. To merely insert the terms of sections 34 and 39 of the Terrorism Act into the relevant legislation dealing with the Inspector's powers would not oblige the Inspector to do anything with those names, or provide him with any investigatory powers or additional resourcing. Indeed, this approach would not provide the Inspector with any information to which he does not already have effective access, given that the Inspector can and does access information from the Total Offenders Management System (TOMS) database which details all persons going into custody

To give effect to what the Coroner has identified as an issue of concern, and honour the spirit of Recommendations 1 and 2, the Minister for Corrective Services, will pursue legislation to enhance the role of the Inspector for Custodial Services as follows.

Proposed legislation will be designed to empower the Inspector to audit a certain proportion of the total population of persons in custody every year.

This auditing power recognises that tragic, avoidable circumstances such as those which led to the death of Mr Ward, can occur as a result of process failures spanning several different agencies and organisations and further recognises that these deficiencies are not always readily apparent from static inspections of facilities or equipment.

The enhanced powers will allow the Inspector of Custodial Services to audit the passage of persons through the custodial system to ensure that persons are treated safely and humanely at every stage of their contact with the custodial aspects of the criminal justice system.

A key feature of such an auditing process would be the creation of a statutory power for the Inspector to issue "Show Cause" notices to the Department of Corrective Services (DCS) and to require responses where the audit process has disclosed risks to the health, wellbeing and safety of persons in custody.

The provision of additional resourcing to OICS to allow the Inspector to undertake this enhanced role will be the subject of a business case that will be considered as a part of, and subject to, the normal budgetary processes.

Recommendation No. 3

I recommend that WA Police review its training procedures to ensure that police officers have a better understanding of the Bail Act 1982.

Response to Recommendation No. 3

The Attorney General supports this recommendation in principle.

The Department of the Attorney General (**DotAG**) will immediately commence a review into the *Bail Act 1982* (WA) to ensure that Western Australia's bail processes are appropriate and workable, particularly for people living in remote communities.

In addition, and irrespective of the outcome of the review, the Attorney General has written to the Minister for Police to seek his support for a review of training procedures to ensure that police officers operating under the present terms of the *Bail Act* have a better understanding of the operation of and their responsibilities under this legislation.

Recommendation No. 4

I recommend that the Department of the Attorney General not delegate to police officers the powers of a deputy registrar of the Magistrates Court of Western Australia under section 26 of the Magistrates Court Act 2004 unless the Department can be satisfied that those police officers do have an understanding of the powers and responsibilities of a deputy registrar.

Response to Recommendation No. 4

The Attorney General supports this recommendation.

DotAG and WA Police have together implemented changes to governance processes surrounding the appointment of police officers as deputy registrars. These changes are designed to ensure that police officers appointed as deputy registrars have a clear understanding of their powers and responsibilities.

These initiatives are currently being implemented within existing resources and consideration of further changes aimed at decreasing the need for delegation of the power of deputy registrars to police will occur if it is determined that the newly implemented changes to governance processes surrounding the appointment of police officers as deputy registrars has not significantly improved police understanding of their powers and responsibilities.

Recommendation No. 5

I recommend that the Department of the Attorney General review the use of Justices of the Peace, particularly in remote locations, to ensure that Justices performing court duties have received training in their duties and responsibilities and have successfully completed assessments after such training.

Response to Recommendation No. 5

The Attorney General supports this recommendation.

DotAG has already commenced work on revising the current, initial Justice of the Peace (JP) training model to:

- improve the cultural awareness of approved JP applicants through training;
- encourage all applicants to meet with Aboriginal Elders and Aboriginal community leaders from the local community to promote awareness of the principal persons within the region; and
- review and augment the JP handbook for distribution to all JPs.

Ongoing training will be provided to safeguard against gradual loss of knowledge and keep JPs updated on developments within the justice system. This will be provided through:

- adequate completion of a justice system training module assessment; or
- attendance and participation at annual training seminars with other JPs, local magistrate/s and/or guest speakers, with a greater use of adult learning techniques such as role plays and case studies.

The implementation of an enhanced and targeted training model for JPs performing judicial functions may require additional resources. If necessary a business case will be considered as a part of, and subject to, the normal budgetary processes.

Recommendation No. 6

I recommend that the Department of the Attorney General ensures that JPs who perform court duties are monitored regularly to ensure that they are performing their duties appropriately.

Response to Recommendation No. 6

The Attorney General supports this recommendation.

DotAG will investigate the introduction of a two tier system of JP appointments by separating judicial responsibilities from administrative duties.

This systemic change would be designed to ensure that those JPs performing court duties are better trained and more easily monitored on a regular basis, and recognises that only a minority of all Western Australian JPs (13.5%) actually perform judicial functions. The creation of two tiers of JP appointments would recognise that the majority (86.5%) of the functions performed in the wider community are administrative in nature.

Under a two tier structure it would be proposed that all JPs would still undertake administrative duties, however judicial functions would only be performed by those JPs who had undertaken specialised training. This enhancement would also enable "second tier" JPs to be subject to more stringent monitoring in respect of their judicial responsibilities.

Should this two tier approach prove feasible, a business case will be developed for any additional resources required for the Implementation of a two tiered JP appointment and monitoring system.

Recommendation No. 7

I recommend that the Department of the Attorney General review present procedures to extend the availability of video conferencing and, in the absence of available video conferencing, give consideration to increased use of telephone conferencing so that decisions, particularly those relating to the liberty of the subject, can be wherever made possible by qualified magistrates.

Recommendation No. 8

I recommend that the Department of the Attorney General review current court procedures with a view to limiting unnecessary transportation of accused persons over long distances.

Response to Recommendation No.7 and Recommendation No. 8

The Attorney General supports these recommendations.

DotAG will investigate the feasibility of establishing a centrally located judicial service to be available via audio visual infrastructure to respond to the needs of regional and remote communities.

Under this proposal it is envisaged that a judicial roster system will be located in Perth to deal with simple matters, including bail and violence restraining orders using audio visual facilities. Additional resources would be required for such a system and the extent of these resources will depend on whether the audio visual court is convened by:

- registrars of the Magistrates Court of WA;
- registrars (legally qualified); or
- magistrates.

The resourcing of this proposed model will also depend on an evaluation of what time periods either registrars, registrars (legally qualified), or magistrates are to be made available. DoTAG will develop costings based on an after hours service being available from 4pm until 11pm each weeknight and from 10am until 11pm on weekends.

After costings and business cases of the different models have been developed, the Department will submit them to Government as part of the normal budgetary processes.

Recommendation No. 9

I recommend that the Department of Corrective Services replace the current fleet of prisoner transportation vehicles with vehicles which are both safe and humane.

Response to Recommendation No.9

The Minister for Corrective Services supports this recommendation.

DCS commenced action to replace the original fleet as early as November 2004. The State Tenders Committee approved awarding of a contract in late 2005, however the contractor went out of business in January 2006. Negotiations then commenced with alternative providers, but it was not until late 2006 that sole provider status for SVM Queensland was approved. The first new prototype vehicle was delivered in November 2007 after significant consultation on the design of the vehicles. Two prototype vehicles were delivered, one in November 2007 and the other in January 2008. Following a three month trial an audit was undertaken by G4S, Easifleet and DCS in April 2008, which specifically reviewed the electrical systems, occupational health and safety considerations, and general pod design of the prototype vehicles. The improvements identified in the audit were incorporated into the production vehicle specifications.

DCS has assessed all vehicles to evaluate their suitability for ongoing use. This included considering the age of the vehicles, the service history, the distance travelled and the general condition of the vehicle. Ongoing monitoring and maintenance on the vehicle fleet occurs and only those vehicles deemed suitable remain in service. DCS also notes that consistent with the *Road Traffic (Vehicle Standards) Regulations 2002*, all fleet vehicles will undergo an annual inspection by the Department of Planning and Infrastructure for ongoing registration purposes. In addition, all existing fleet vehicles have had remote temperature monitoring and updated duress alarms fitted after the death of Mr Ward.

As at 31 August 2009, DCS has taken delivery of three new prototype vehicles and eight new production vehicles as part of the replacement program. Based on the current production schedule all original fleet vehicles will be replaced by December 2010.

Recommendation No. 10

I recommend that the Department of Corrective Services ensure that there is in place a replacement strategy and budget to ensure that in future, vehicles are replaced on a regular basis and there are no old or unsafe vehicles in use.

Response to Recommendation No. 10

The Minister for Corrective Services supports this recommendation and advises that DCS' budget in the current financial year and forward estimates period now includes full funding for ongoing replacement of the fleet. DCS' current vehicle replacement strategy includes the leasing of all cab chassis and vehicle pods, for all new vehicles, through State Fleet and the fleet management through Easifleet. This arrangement provides for the replacement of the vehicle cab chassis every five years and vehicle pod every 10 years, and, as noted above, is fully funded.

Recommendation No. 11

I recommend that the Department of Corrective Services conduct ongoing review of all G4S policies and procedures relating to the welfare of detainees and duty of care to ensure that procedures in place are sufficiently comprehensive and address known risks.

Response to Recommendation No. 11

The Minister for Corrective Services supports this recommendation and advises that contractor procedures relating to the conduct of escorts and duty of care implications were immediately reviewed and amended as required, following the Review of Prisoner Transport Services conducted by in February 2008.

The Review made 18 recommendations. These recommendations specifically sought to make improvements to:

- the governance framework;
- performance management;
- risk management;
- compliance management;
- financial management; and
- the secure vehicle fleet.

Implementation of the Review recommendations is continuing.

In addition to the abovementioned Review, DCS also conducted a review in 2008/09, in conjunction with the Contractor, of all other Contractor policies and procedures relating to the service, and amendments have been undertaken as required. These policies and procedures are now subject to annual review.

To provide a further level of scrutiny DCS' process for managing the approval of Contractor policies and procedures were also changed in 2008. The Contract Management Framework and associated Work Instructions in place in early 2008 required the Contractor to submit policies to DCS for assessment for compliance with legislation and suitability prior to their implementation. Any changes to policies required approval by Contract Management.

Following a review of the Contract Management Framework and associated Work Instructions, DCS now requires that each policy and procedure is reviewed consistent with the process identified below. This process is detailed within the Court Security and Custodial Services (CS&CS) Contract Management framework and associated Work Instructions.

The changes to the CS&CS Contract Management framework and associated Work Instructions were:

- The Contractor is responsible for developing Policies and Procedures in relation to the Services.
- Each procedure must be submitted to, and approved by, DCS Services prior to its implementation.
- All Contractor Policy and Procedures are assessed by Court Security and Custodial Services Policy Review Panel.
- The Contract Manager has delegated authority under the Contract for final approval of the policies and procedures.
- Each procedure is to be reviewed at least annually.
- Any changes to policies and procedures proposed by the Contractor must first be reviewed by Contract Management, and then follow the process articulated above.

Recommendation No. 12

I recommend that the Department of Corrective Services ensure that there are sufficient contract monitors to regularly review operations in regional locations so as to ensure that the prisoner transportation fleet is maintained in a safe manner and that G4S staff are complying with the company's policies and procedures.

Response to Recommendation No. 12

The Minister for Corrective Services supports this recommendation.

Consequent upon internal restructuring DCS has already increased the number of monitors available to undertake the audit and/or review of transport and court services in regional and metropolitan areas from two to five personnel. However, it is likely that a small number of further positions will be required to allow for greater capacity to undertake additional activity where risk assessments indicate that additional monitoring is required. In preparation, DCS will develop a submission to Government for the additional resources necessary to implement the recommendation. As the implementation of this proposal would require additional resources, any accompanying business case will be considered as a part of, and subject to, the normal budgetary processes.

Recommendation No. 13

I recommend that all G4S staff should be provided with appropriately detailed practical training in respect of duty of care obligations and that such training be refreshed on a regular basis for all staff.

Recommendation No. 14

I recommend that G4S arrange training specific to the role of site supervisors in regional locations in respect of management skills and duties in respect of monitoring staff compliance with policies and procedures relating the welfare of detainees and duty of care.

Response to Recommendation No. 13 and Recommendation No. 14.

While acknowledging the non-delegable duty of care owed by the State in this case, the Minister for Corrective Services supports these recommendations

To this end, and in response to DCS' request, the Minister notes that G4S has submitted an Action Plan to address the training requirements contained in the Coroner's recommendation, including a specific duty of care module.

DCS will monitor the rollout of the Action Plan including the provision of regular refresher training to G4S staff.