



Ref: SSTSLA201000190

14 May 2010

**Aboriginal Legal Service**  
of Western Australia, Inc

**Perth Head Office**  
Piccadilly Square  
7 Aberdeen Street  
Perth WA 6000  
ABN 61 532 930 441

PO Box 8194  
Perth Bus Ctr WA 6849

T 08 9265 6666  
F 08 9221 1767

Toll Free  
1800 019 900

Committee Clerk  
Committee on Environmental and Public Affairs  
Legislative Council  
Parliament House  
Perth WA 6000

Dear Committee Clerk,

## **INQUIRY INTO TRANSPORTATION OF DETAINED PERSONS**

The Aboriginal Legal Service of Western Australia (ALSWA) is writing to you to outline our recommendations on the transportation of detained persons across Western Australia, use of video conferencing and air transport, initiatives to reduce Aboriginal incarceration and recidivism and need for coronial reform.

This submission is to supplement the Committee's inquiry that is currently in progress.

The ALSWA seeks to note the progress that has currently been made since the tragic death in custody of Mr Ward on 27 January 2008 and recommend additional policies and initiatives to reduce the likelihood of deaths and discomfort in custody in the future.

If you would like to discuss this submission further, please contact our Managing Solicitor, Ms. Tammy Solonec of this Office on 9265 6693.

Yours faithfully,

**DENNIS EGGINGTON**  
Chief Executive Officer

# **ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)**

**Submission to the Standing Committee on Environmental  
and Public Affairs**

**Legislative Council**

**Parliament of Western Australia**

**INQUIRY: TRANSPORTATION OF DETAINED PERSONS**

**May 2010**



## CONTENTS

1. Executive Summary.....	2
2. Introduction and scope of the submission .....	3
3. About ALSWA.....	4
4. Progress in relation to the implementation of the Coroner’s Findings in relation to the death of Mr Ward.....	5
4.1 Coroner’s Recommendation No. 1 - “Show Cause” notices .....	5
4.2 Coroner’s Recommendation No. 2 - Inspector powers and statutory requirement to treat prisoners with humanity .....	6
4.3 Coroner’s Recommendation No. 3 - Police training on <i>Bail Act</i> .....	8
4.4 Coroner’s Recommendation No.4 - Delegating deputy registrar powers to police .....	9
4.5 Coroner’s Recommendation No. 5 - Training of JPs .....	10
4.6 Coroner’s Recommendation No. 6 - Monitoring of JPs .....	12
4.7 Coroner’s Recommendations No. 7 and No. 8 - Video conferencing .....	12
4.8 Coroner’s Recommendation No. 9 - Condition of vehicles.....	14
4.9 Coroner’s Recommendation No. 10 – Budget for replacement vehicles .....	18
4.10 Coroner’s Recommendation No. 11 – Review of G4S Policy & Procedure .....	19
4.11 Coroner’s Recommendation No. 12 – Regular review of G4S operations.....	19
4.12 Coroner’s Recommendations No. 13 and No. 14 – Training of G4S staff .....	21
5. Feasibility of Air Transport and video conferencing .....	23
5.1 Air Transport .....	23
5.2 Video Conferencing.....	24
6. The scope and efficacy of government action to reduce Indigenous incarceration and recidivism rates to prevent further Indigenous deaths in custody .....	25
7. Amendments to the Coroner’s Act 1996 (WA) .....	27
8. International Obligations and Promoting and Protecting Human Rights .....	29
9. Conclusion.....	30
10. List of ALSWA Recommendations .....	30

### Annexures

1. Letter to Minister for Corrective Services from ALSWA including recommendations regarding Prisoner Transport - 18 April 2008.
2. ALSWA submission to the inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies – April 2010.
3. ALSWA submission to the Commonwealth inquiry into the high level of involvement of Aboriginal juveniles and young adults in the criminal justice system – December 2009.

## 1. Executive Summary

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) has been striving for improvements to the transportation of detained persons in Western Australian (WA) for many years and has been intensely involved in the 'Ward matter' since the tragic and avoidable death in custody of Mr Ward on 27 January 2008. This included working with the Department of Corrective Services soon after the death to review policies and recommend change, representing the Aboriginal peoples of Western Australia in the Coronial Inquest and representing the family of Mr Ward in regards to civil compensation for the wrongful death. ALSWA takes this opportunity to note the absence of criminal charges in relation to this matter and calls upon Parliament to urge the Director of Public Prosecutions to lay charges immediately.

ALSWA commends the gradual improvements to prisoner transport in WA that have occurred since the passing of Mr Ward but is appalled by repeated failures in the system and the grave repercussions that result from such failures.

In this submission ALSWA has endeavoured to address the progress made on each of the Coroner's recommendations and to offer further recommendations, based on our experiences and the success of initiatives in other Australian and international jurisdictions. ALSWA's recommendations broadly fall within the following key themes:

1. The purchase of a fleet of WA Government airplanes that can be utilised for multiple purposes including the transport of detained persons, potentially based on the Queensland model.
2. The restriction of the delegations on judicial powers to Justices of the Peace and deputy registrar powers to police. If these delegations continue then the requirement that they are accompanied by more comprehensive training, including regarding the Bail Act and the notion of incarceration as a last resort.
3. The development of strategies to recruit and retain legal professionals (especially Aboriginal professionals) in regional and remote areas.
4. The installation and maintenance of audio visual equipment in all regional and remote police stations, court rooms and ALSWA offices.
5. The transparent review of G4S training, policies and procedures.
6. Legislative change to protect all persons in WA from inhuman and degrading treatment in custody including to empower the Inspector of Custodial Services to issue 'Show Cause' notices and the development of a Human Rights Act.
7. Amendments to the Coroner's Act to require governmental bodies and companies to respond to coronial recommendations within three months and again after 12 months.

## 2. Introduction and scope of the submission

ALSWA prepared this submission in response to the invitation from the Legislative Council's Standing Committee on Environment and Public Affairs (Committee) to make submissions relating to its inquiry into transportation of detained persons (the inquiry). The inquiry was announced on 31 March 2010 subsequent to a petition being tabled in the Legislative Council by the Deaths in Custody Watch Committee WA (DICWC) and Hon. Giz Watson MLC on 16 September 2009 and an additional report being provided to the Committee by DICWC. The petition called for, amongst other priorities, full and prompt implementation of the Coroner's findings in relation to the tragic death of Mr Ward, the use of air transport or video conferencing instead of long haul vehicle transport, that immediate steps be taken to reduce Aboriginal<sup>1</sup> incarceration and recidivism rates and for amendments to the *Coroner's Act 1996* (WA).

Mr Ward was a well respected and invaluable Aboriginal Elder from the Ngaanyatjarra lands who painfully and avoidably died as a result of suffering heat stroke in the rear pod of a prisoner transport van owned by the Department of Corrective Services (DCS) and contractually administered by GSL Custodial Services (now G4S) on 27 January 2008. Prior to his heinous death, Mr Ward had lived a traditional life as a youth, undertaken education and contributed significantly to his community, including as Chairperson of Warburton. He had been involved in matters of native title, land management and interpretation services and maintained a commitment to addressing issues of volatile substance abuse in his community. Mr Ward has also represented his people on a national and international level.

While it is beyond anyone's capacity to meaningfully compensate Mr Ward's family or the community at large for the loss that has been suffered, it is hoped that his legacy will serve to focus the Government's commitment to ensure that such deaths and blatantly inhuman and degrading treatment is avoided in the future through the establishment of safer and more transparent and accountable transportation of detained persons.

The terms of reference of the inquiry are:

1. progress in relation to the implementation of the Coroner's Findings in relation to the death of Mr Ward;
2. the feasibility of air transport or video conferencing instead of long haul vehicle transport;
3. the scope and efficacy of government action to reduce Indigenous incarceration and recidivism rates to prevent further Indigenous deaths in custody;
4. whether the *Coroner's Act 1996* (WA) should be amended to require the Government to respond to coronial recommendations within a set timeframe; and
5. any other relevant matter.

---

<sup>1</sup> In this submission, 'Aboriginal peoples' refers to Aboriginal and Torres strait Islander peoples.

ALSWA values the opportunity to address the Committee to discuss our concerns and experience relating to prisoner transport and the need for coronial reform. ALSWA was intensely involved in the inquest into the death of Mr Ward after having been granted special leave to appear on behalf of the Aboriginal people of Western Australia. ALSWA consulted with Amnesty International, the Commissioner for Children and Young People, the Australian Inquest Alliance (of which ALSWA is a member) and the Australian Human Rights Commission in the preparation of this submission.

The following submission will briefly refer to the work of ALSWA, before addressing each of the terms of reference individually. Additionally, ALSWA has attempted to briefly summarise the progress that has been made to-date in relation to the implementation of each of the Coroner's findings in relation to the death of Mr Ward.

### **3. About ALSWA**

ALSWA is a community based organisation that was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout WA.

ALSWA aims to:

- deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout WA;
- provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the Indigenous people of Australia;
- ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission Into Aboriginal Deaths in Custody; and
- create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with 16 executive officers<sup>2</sup> elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout WA via 17 regional and remote offices and one head office in Perth.

---

<sup>2</sup> There are two Executive Officers for each of the former eight ATSIC regions (Metropolitan, Central Desert Region, Murchison/Gascoyne Region, Southern Region, Pilbara Region, Goldfields Region, West Kimberley Region and East Kimberley Region). They are elected by Aboriginal peoples every three years.

#### **4. Progress in relation to the implementation of the Coroner's Findings in relation to the death of Mr Ward**

ALSWA welcomes the progress that has been made in relation to the implementation of the Coroner's findings in relation to the death of Mr Ward including the general improvements to the types of vehicles utilised in the transportation of detained persons. However, ALSWA remains concerned by the lack of uniformity in the adoption of improved vehicles and condemns the continued use, under any circumstances, of inadequate and unsafe vehicles for the transport of detained persons. ALSWA notes with abhorrence the recent medical emergency involving an Aboriginal prisoner's hospitalisation subsequent to his being transported by prison officers in the non-air conditioned rear cubicle of a vehicle.

ALSWA commends the 'Government of Western Australia's Response to Recommendations' made by the State Coroner following the investigation into the death of Mr Ward on 29 September 2009, just over three months after the release of Coroner Hope's findings. However, there remains a lack of transparency surrounding the practical implementation of the Government's commitments. ALSWA calls for increased information sharing by the Government to advise interested stakeholders, and the wider community, of on-the-ground developments to address the alarming issues in the transport of detained persons highlighted by Coroner Hope.

##### **4.1 Coroner's Recommendation No. 1 - "Show Cause" notices**

###### The Recommendation

The first recommendation suggested the introduction of a statutory system enabling the Inspector of Custodial Services (Inspector) to issue DCS 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.

###### The Government's response

In its response to the Coroner's findings, the WA Government stated that it would introduce legislation to enhance the powers of the Inspector to audit the passage of persons through the custodial system. This was to include the creation of a statutory power for the Inspector to issue "Show Cause" notices to the DCS and require responses in cases where the audit process uncovered risks to the health, wellbeing and safety of persons in custody. The Government stated that additional resourcing for the Inspector would be subject to the normal budgetary process.

###### Progress

On 9 September 2009, the Leader of the Opposition introduced a Private Members Bill, *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* seeking to amend the *Inspector of Custodial Services Act 2003 (WA)*. The amendment was to provide the Inspector with the additional power to issue "Show Cause" notices to the CEO of DCS where the Inspector, on reasonable grounds, suspected that the security, control, safety, care or welfare of a person for whom the CEO is responsible is

at risk. The “Show Cause” notice could stipulate a time period in which the CEO was to respond in writing to the Inspectors concerns and it constituted an offence for the CEO to not respond within the specified time. Additionally, the notice was to be provided to the Attorney General and tabled in the Houses of Parliament.

On 16 September 2009, the Attorney General and Minister for Corrective Services, Christian Porter MLA, responded to the Bill arguing that the Bill was inadequate and did not satisfactorily give effect to the Coroner’s recommendation. The Attorney General made an undertaking on behalf of the Government to formulate and introduce an alternate Bill that enhanced the powers of the Inspector to enable him to undertake audits of individual prisoners and a certain percentage of the daily average prisoner population to identify short-comings and issue “Show Cause” notices.

Given the rejoinder by the Government, the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* has not been passed to amend the *Inspector of Custodial Services Act 2003 (WA)*, nor has any alternate Bill been introduced to provide the Inspector powers to issue “Show Cause” notices where the Inspector is aware of issues relating to the human rights and safety of persons in custody.

ALSWA considers this to be a matter of priority in the protection of detained persons and to establish a scheme of accountability for DCS.

**ALSWA Recommendation (i): That the Coroner’s recommendation be immediately implemented with the introduction of the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)*.**

Furthermore, ALSWA notes that interaction with DCS does not usually constitute at the commencement of the detention experience. Most detained persons are first held in police lock ups and police stations and it is ALSWA’s view that these locations should also be included within the Inspector’s jurisdiction. Based on the experience of ALSWA staff, conditions in some WA police cells, such as but not limited to Derby, Fitzroy Crossing and Kununurra, are unacceptable. As places of detention for both adults and juveniles, minimum standards should be adhered to.

**ALSWA Recommendation (ii): That the Inspector be given statutory powers to inspect police lock ups and police station cells.**

#### **4.2 Coroner’s Recommendation No. 2 - Inspector powers and statutory requirement to treat prisoners with humanity**

##### The Recommendation

This recommendation related to the insertion of the terms of sections 34 and 39 of the *Terrorism (Preventative Detention) Act 2006 (WA)* into relevant legislation dealing with the Inspectors powers to enable the protections enshrined in those sections to be extended to all persons in custody and to all areas of the Inspector’s jurisdiction.



Sections 34 and 39 deal with notification to the Inspector of a person's imprisonment as soon as practicable; the requirement that the prisoner be treated with humanity and respect for human dignity and not be subjected to cruel, inhuman or degrading treatment; the authority of the Inspector to review, at any time, the prisoner's imprisonment to confirm they are treated appropriately; and the capacity for the Inspector to report and provide advice or recommendations to the CEO of DCS as appropriate.

#### The Government's Response

As with Coroner's Recommendation 1, the Government proposed an alternate system enabling the Inspector to conduct audits of the custodial process to identify problems.

#### Progress

The *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* sought to introduce the sections into the *Prisoner's Act 1981 (WA)*, *Court Security and Custodial Services Act 1999 (WA)*, *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)* and *Young Offenders Act 1994 (WA)*.

Both the Government's response and the reply by the Attorney General to the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* contended that the Recommendation and the Bill failed to meaningfully address the Coroner's, and societal, concern. The Government proposed the alternate system of providing the Inspector with increased power to audit a percentage of the prisoner population and, based on that audit, issue "Show Cause" notices.

ALSWA understands the comments of the Attorney-General in relation to the feasibility of the Inspector being able to practically oversee the detention of all detained persons in WA. Additionally, ALSWA applauds the budgetary allocation of resources to the Office of the Inspector of Custodial Services (OICS) for the upcoming financial year to enable the Inspector to conduct audits of individuals and a percentage of the prison population.

However, ALSWA condemns the failure of the Government to propose alternate legislative amendments to enhance the Inspector's powers and ensure better protection of the safety and human rights of detained persons. While, arguably, given the functions of the Inspector, the Inspector does have power to conduct the audits without legislative change, the CEO of DCS has no obligation to respond to or act upon the findings of the Inspector's audits thereby reducing the accountability of DCS and the guarantee of safer conditions for detained persons.

**ALSWA Recommendation (iii): That the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* be made law, at least as an interim measure and, in relation to the protection of the rights of persons in custody, as a permanent measure.**

**ALSWA Recommendation (iv): That the Government immediately commence the drafting and introduction of a Bill to establish the auditing powers and reporting powers of the Inspector and requirement of a written response from the CEO of DCS if the Government maintains its reservations about the long-term feasibility of the terms of the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)*.**

#### **4.3 Coroner's Recommendation No. 3 - Police training on *Bail Act***

##### The Recommendation

This recommendation involved WA police reviewing its training procedures to ensure police officers have a better understanding of the *Bail Act 1982 (WA)*.

##### The Government's Response

The WA Government's response to the Coroner's findings stated that the Department of the Attorney General (DotAG) would immediately commence a review into the *Bail Act 1982 (WA)* to ensure bail processes are appropriate. The Attorney General also advised that he was seeking support from the Minister for Police to review training procedures to ensure police had a better understanding of the *Bail Act 1982 (WA)* and their responsibilities under it.

##### Progress

ALSWA welcomes the commitments made by the Attorney General to implement the Coroner's recommendation. However, ALSWA is disquieted by the absence of any subsequent information in the public arena detailing the progress with regard to the reviews of the *Bail Act 1982 (WA)* and training procedures for police surrounding bail.

**ALSWA Recommendation (v): That the Attorney General and Minister for Police inform the public about the process of review they are undertaking and the proposals for amending the *Bail Act 1982 (WA)* and police training procedures to ensure that bail processes are considered and applied appropriately in the future.**

This concern is exacerbated by ALSWA's observations that alleged offenders are arrested and often denied bail or subjected to unnecessarily onerous bail conditions for trivial offences. In the experience of ALSWA, this is particularly commonplace and alarming with regards to juveniles. To address this situation, ALSWA recommends that the *Bail Act 1982 (WA)* be amended to indicate that arrest is an option of last resort and should only be used when all other non-arrest options have been considered and deemed unsuitable in the circumstances of the case. ALSWA strongly recommends that police training reflect this notion of arrest as an option of last resort.

**ALSWA Recommendation (vi): That the *Bail Act 1982 (WA)* be amended to require that arrest is an option of last resort and that police training reflect this concept.**

#### **4.4 Coroner's Recommendation No.4 - Delegating deputy registrar powers to police**

##### The Recommendation

This recommendation involves DotAG not delegating powers of a deputy registrar of the Magistrates Court to police officers unless satisfied the police officers have an understanding of the powers and responsibilities attached to that role.

##### The Government's Response

The Government supported this recommendation in their response and advised that DotAG and WA Police had implemented changes to the governance process surrounding the appointment of police officers as deputy registrars. The Attorney General advised that as at 29 September 2009 the initiatives were already in the process of implementation within existing resources. Additionally, the Attorney General stated that if the initiatives did not significantly improve police understanding of their powers and responsibilities, further consideration would be given to reducing the need for the delegation of deputy registrar powers to police.

##### Progress

In its response to the Coroner's findings, the Government did not detail the initiatives that were in the process of implementation to improve police understanding of the powers and responsibilities of deputy registrars. It is noted that shortly prior to the release of the Government's response to the Coroner's findings, the Minister for Police gave the Police Commissioner power to recruit one hundred and fifty additional police auxiliary officers to reduce the pressure on WA police officers. While this may contribute to the capacity of police to undergo additional training in the powers and responsibilities of deputy registrars, ALSWA submit that this change alone is highly inadequate in ensuring police understanding of the role of deputy registrars.

**ALSWA Recommendation (vii): That DotAG and Minister of Police are more forthright in their provision of information relating to the initiatives adopted to ensure police officers have a better understanding of their powers and responsibilities as deputy registrars.**

**ALSWA Recommendation (viii): That police are required to undergo a specific training course in the role and responsibilities of a deputy registrar and, upon completion of the course, satisfactorily complete assessments to demonstrate their understanding, prior to being delegated the powers of a deputy registrar.**

**ALSWA Recommendation (ix): That police officers who are currently delegated the powers of a deputy registrar engage in a refresher course on the role and responsibility of deputy registrars including assessments to demonstrate their understanding. That participation in such a course be periodic and the continued delegation of deputy registrar powers be conditional upon satisfactory completion of the course.**

Additionally, it is noted that the Attorney General recognised in the Government's response that there is possibility of reducing the need for deputy registrar powers to be delegated to police. ALSWA supports this assertion and recommends that consideration be given to establishing other processes to remove the need to delegate deputy registrar powers to police.

**ALSWA Recommendation (x): That DotAG give consideration to establishing other processes to remove the need to delegate deputy registrar powers to police and subsequently withdraw deputy registrar powers from police.**

#### **4.5 Coroner's Recommendation No. 5 - Training of JPs**

##### The Recommendation

This recommendation was aimed at DotAG suggesting that it review the use of Justices of the Peace (JPs), particularly in remote locations, to ensure that JPs performing court duties have received training in their duties and responsibilities and have successfully completed assessments after such training.

##### The Government's Response

The Government advised that as at 29 September 2009, DotAG had already commenced work on revising the current JP training module to improve cultural awareness, encourage communications with Aboriginal Elders and community leaders and augment the distribution of the handbook to JPs. The Government assured that ongoing training would be provided to JPs through training modules and assessments or attendance and participation at annual training seminars.

The Government recognised that an additional enhanced and targeted training module for JPs performing judicial functions may require additional resources and stated that this would be subject to the normal budgetary processes.

##### Progress

It is noted that the most recent edition of the "Handbook for Justices of the Peace" available through DotAG remains the fourth edition published in 2006. This handbook already includes a chapter entitled "Cultural Diversity Issues: Aboriginal and Ethnic" which briefly discusses the history of oppression experienced by Aboriginal persons and their disadvantage in the justice system. However the mere existence of the chapter did not prevent the grave errors of JP Barrye Thompson that contributed to the premature and distressing demise of Mr Ward.

There is no encouragement in the handbook for JPs to meet Aboriginal Elders or community representative to better their understanding of the community and its members.

Initial JP training is administered by the Central Institute of Technology (formerly Central TAFE). This Institute advised ALSWA by telephone on 7 May 2010 that course 'V0041 – Competencies for Justices of the Peace' has retained the same content for at least the past two years and has not been subject to recent amendments.

ALSWA recognises that WA has a long history of JPs with the first eight JPs being appointed with the foundation of the colony in 1829. From that time, as had always been the case in the UK, JPs had certain judicial powers despite not necessarily having completed a formal legal education.

In 2008-2009, 4304 legal practicing certificates were issued across the State compared with 3378 in 1998/1999 financial year and 2880 in 1995/1996.<sup>3</sup> Furthermore, based on the degrees conferred statistics of the University of Western Australia (UWA)<sup>4</sup> and the Graduate Register of Murdoch University<sup>5</sup>, over five hundred law students graduated in WA during 2008 and 2009.

Based on these statistics, ALSWA submits that there are sufficient qualified legal practitioners and law graduates within WA to phase out the judicial powers of JPs and install appropriately qualified people to work within the justice system. Particularly given that only 13.5% of WA JPs perform judicial functions.

While it is accepted that JPs have an important administrative function, ALSWA supports the Government re-investing resources into recruiting and retaining legal professionals, both lawyers and magistrates, to service rural and remote areas across WA. Such measures would minimise the occurrence of injustice and improve access to justice for remote Aboriginal populations. ALSWA submits that additional Aboriginal lawyers would afford better service provision to the WA population and that efforts should be made to assist Aboriginal law students and recruit Aboriginal lawyers. To this end, ALSWA applauds programs such as the Country Lawyers Program supported by the State and Commonwealth governments and the Pre-Law Program developed by UWA and mirrored by many other universities. Although these efforts are commendable, ALSWA promotes increased commitment to the development and resourcing of more, similar programs.

If it is not immediately feasible to recruit legal staff to contribute to the justice system in remote areas and consequently JPs retain their powers to perform judicial functions, ALSWA strongly supports the Coroner's recommendation and submits that all JPs with judicial powers be obliged to undertake additional training, including assessments, on their role, powers, duties and responsibilities and cultural awareness on an annual basis and their appointment be subject to successful completion of the training and assessments.

---

<sup>3</sup> Legal Practice Board of Western Australia Annual Report 1 July 2008-30 June 2009

<sup>4</sup> See <http://www.stats.uwa.edu.au/StatsOffice/unistats/2009>, accessed on 6 May 2010.

<sup>5</sup> See <http://gradregister.murdoch.edu.au/>, accessed on 6 May 2010.

**ALSWA Recommendation (xi): That JPs are no longer empowered to perform judicial functions.**

**ALSWA Recommendation (xii): That the Government increases resource allocation and programmes to encourage the recruitment and retention of qualified legal practitioners, including Aboriginal practitioners, as lawyers and magistrates in remote areas of WA to take over the judicial functions previously performed by JPs.**

#### **4.6 Coroner's Recommendation No. 6 - Monitoring of JPs**

##### The Recommendation

Again directed to DotAG, the recommendation stated that JPs performing court duties be regularly monitored to ensure that they are performing their duties appropriately.

##### The Government's Response

The Government stated DotAG would investigate a two tiered system of JP appointments separating judicial responsibilities and administrative duties to enable more comprehensive training and closer monitoring of those JPs performing court duties.

##### Progress

There is little information on the public record in relation to any such investigation undertaken by DotAG.

As discussed above, ALSWA submits that the need for JPs to perform court duties no longer exists and that legal practitioners should adopt these responsibilities. Should this not be accepted, or in the interim while a new system is being introduced, ALSWA supports the immediate development and implementation of a stringent review process for all JPs performing court duties. This should include frequent, random evaluations of judicial decisions made by JPs and the decision-making processes adopted by JPs. Additionally, JPs should be required to maintain detailed written note of their decisions which are regularly audited to ensure they are performing their duties appropriately.

**ALSWA Recommendation (xiii): That until judicial powers are removed from JPs, stringent review process for all JPs performing court duties is immediately developed and implemented including evaluations of JP decisions and audits of JP notes.**

#### **4.7 Coroner's Recommendations No. 7 and No. 8 - Video conferencing**

##### Recommendations

These recommendations involved DotAG reviewing present procedures to extend the availability of video conferencing and, in the absence of video conferencing, to consider increased use of telephone conferencing so decisions, particularly regarding the liberty of detained persons, can wherever possible be made by qualified magistrates. Also, for

DotAG to review current court procedures with a view to limiting unnecessary transportation of accused persons over long distances.

#### The Government's Response

The Government advised that DotAG would investigate the feasibility of a centrally located judicial service accessible by audio and video conferencing.

#### Progress

ALSWA is unaware of the publication of details of the progress and results of the DotAG investigation. ALSWA noted from experience however that there has been an increase in the use of video conferencing since the release of Coroner Hope's findings.

ALSWA notes that at various times since the death of Mr Ward there have been two working groups considering the feasibility of utilising audio visual (AV) technologies in the judicial process. A strategic working group was in existence in July 2008 including both DCS and DotAG and the Chief Justice also convened a working party on the issue. ALSWA encourages continued discussion on the best methods of utilising AV technologies to improve the efficacy of the justice system and the safety and welfare of detained persons. Acknowledging the multitude of issues requiring attention, ALSWA has some concerns about the erratic attention focused on this priority given the postponement of the working group meetings at various times since their inceptions.

ALSWA continues to support the wide-spread installation of 4-way AV equipment (to enable contact between detained persons, magistrates, legal representation and interpreters as required) in all regional police stations to enable magistrates to be contacted and in all metropolitan courtrooms to enable prisoners to appear by videolink for uncomplicated mentions and uncontested applications. However, it is noted that there are many diverse and complicated issues to be considered in contemplating the use of video and telephone conferencing involving Aboriginal persons and the judicial system.

Based on the experience of ALSWA staff, the effectiveness of video conferencing is severely limited in situations where there is inadequate ground support to assist users, particularly Aboriginal clients, utilising video conferencing facilities for court appearances. It has been noted that video conferencing facilities have been used to enable clients to appear in Kalgoorlie court from Warburton for example however the effectiveness of the method has been reduced by the inexperience of Aboriginal clients with the technologies and minimal ground support.

AV facilities have been used to better effect by enabling Magistrates to consider the bail of a detained person in a remote community rather than transporting the person over long distances to appear in court. ALSWA believes this interaction could be improved if AV facilities were available to enable detained persons to interact with legal representation who could appear for them on the bail application.

The feasibility of video conferencing is discussed in greater depth at 4.2 below.

ALSWA continues to advocate for a best case scenario of Government investment in the recruitment and retention of qualified legal practitioners and magistrates in remote locations to contribute to and make legal decisions in relation to matters such as the liberty of persons.

**ALSWA Recommendation (xiv): That all regional and remote police stations in WA and all regional, remote and metropolitan courtrooms be equipped with 4-way AV equipment.**

**ALSWA Recommendation (xv): That agencies who provide significant criminal representation to people in remote locations be provided with resources to enable offices to be equipped with AV facilities.**

#### **4.8 Coroner's Recommendation No. 9 - Condition of vehicles**

##### The Recommendation

This recommendation touched on one of the most horrifying elements of the death of Mr. Ward: the conditions of the vehicles in which detained persons are transported. The Coroner recommended that DCS replace the current fleet of prisoner transportation vehicles with vehicles that are both safe and humane.

##### The Government's Response

The Minister for Corrective Services supported this recommendation and several steps have been taken to improve the standard of the vehicles and modes of transport utilised in transporting detained persons.

In the months after the death of Mr Ward an inaugural Custodial Transport Forum was convened, including various West Australian stakeholders such as GSL, DCS, DotAG, ALSWA, Governmental and Police representatives as well as some of their nation and international counterparts. The forum discussed, amongst other things, possible national standards for custodial transport and vehicles, health, human rights and cultural issues as they related to custodial transport and international models. ALSWA applauds the convening of this forum which was one of 21 recommendations made by ALSWA to the then Minister for Corrective Services, Hon. Margaret Mary Quirk MLA, in a letter dated 18 April 2008 (**enclosed as Annexure 1**). ALSWA notes however that the recommendation called for the conference to be biannual and therefore ALSWA is hopeful that another forum will soon be announced. ALSWA also praises the establishment of both the Client Agency Group (CAG), considering issues relating to the transport of detained persons and the Transport of Prisoners in Custody working group.

A new fleet of transport vehicles is currently in the process of being rolled out with all 40 new vehicles expected to be in operation by December 2010.

In the interim, DCS directed G4S to withdraw from service all Mazda vehicles such as that in which Mr Ward died and one Holden Rodeo from operating north of Perth.



Unfortunately this has not stopped similar vehicles being utilised by prison officers in the transportation of detained persons. Currently, the G4S contract does not include transportation of detained persons for important personal reasons such as funeral attendance.

On 12 March 2010, an Aboriginal man with acute diabetes, serving a prison sentence, was transported by prison guards to attend a funeral of a relative. Disgracefully, the prisoner was transported in the rear of an old van, without air conditioning, in significant temperatures of up to 41 degrees Celsius. This combination of circumstances resulted in his hospitalisation.

**ALSWA Recommendation (xvi): That DCS immediately direct that all old and unsafe vehicles stop being used for the transport of detained persons and that alternate vehicles, such as the coach owned by DCS or vehicles from the new fleet which is currently being rolled out, are available in their place.**

#### *Coaches*

ALSWA applauds the speed at which DCS introduced coach services for long-haul inter-prison transfers. DCS completed the process, including procurement, security procedures, site evaluations and contract arrangements within two days – a true testament to the speed at which positive change can be achieved with proper Government commitment.

Since July 2008, coach services have provided improved transport outcomes and contracts with coach companies continue until July 2010. However, ALSWA maintains some concerns about the method in which detained persons are transported in the vehicles including the use of handcuffs to restrain individuals' hands and feet.

**ALSWA Recommendation (xvii): That the use of appropriate restraints during transportation on coaches be considered taking into account road safety, personal safety and risk assessments of individuals.**

ALSWA also applauds the purchase of a coach by DCS which will supplement the new fleet of 40 prisoner transport vehicles expected to be operational by December 2010.

#### *New fleet of transport vehicles*

ALSWA commends the improvements included in the vehicles comprising the new fleet such as forward facing seats in mid-size vehicles and temperature controlled pods which enable G4S staff to monitor and control airflow. However ALSWA harbours some reservations about the specifications of the new fleet. It is noted that specifications of all the new vehicles are not widely known including factors such as whether the seats are padded or whether there are seat belts. It is also noted that while the Inspector's 2001 thematic report on prisoner transport vehicles was considered in the designing of the vehicles, the OICS was not consulted during the process of vehicle development.

**ALSWA Recommendation (xviii): That more details of the specifications of the new vehicles be provided to the public.**

ALSWA has qualms about the continued use of some questionable vehicles while awaiting the delivery of all the new fleet. ALSWA notes with concern that in January this year, seven DCS vehicles that continue to be utilised were non-operational due to vehicle breakdowns and air-conditioning problems. Similarly ALSWA is alarmed by reports that two G4S vehicles broke down within the last month on one trip to Albany causing at least one detained person to wait on the roadside for several hours while alternate vehicles were arranged. Moreover, it is understood that the intention is that the vehicles will both be repaired and one will remain operational in the Albany region in conjunction with a new vehicle.

Given the long distances and extreme climactic conditions in which detained persons are transported in WA, ALSWA is anxious about the continued repairs and use of these vehicles.

**ALSWA Recommendation (xix): That DCS discontinue using vehicles that habitually break down or experience air-conditioning problems and instead arrange for the charter of additional coach or air services until the delivery of all vehicles of the new fleet.**

ALSWA notes with anxiety that at April 2010, DCS advised that the contracted production company was three weeks behind schedule on delivering the full fleet by December 2010. Although latest reports are that the production is back on track for delivery by December 2010, ALSWA recommends that a contingency plan is place in the event that vehicles are not delivered on time.

**ALSWA Recommendation (xx): That DCS arrange a contingency plan in case new vehicles are not delivered on time.**

#### *Air Transport*

ALSWA celebrates the continued and increasing use of air transport to convey detained persons across the vast expanse of WA. Discussions about air travel as an alternative commenced between police and DCS as early as December 2008 and by early 2009 air transport was being utilised on an ad-hoc basis in the Goldfields and Gascoyne regions of WA. In July 2009 the tender process began to engage a charter air service for the east Kimberley region and northern part of the Pilbara. The contract was awarded in October 2010 and flights started to transport detained persons in areas such as Broome, Newman, Kununurra, Karratha and Roebourne. Within the first month, 17 flights were operated under the contract. The contract was for a period of six months after which it would be reviewed and could be extended for an additional six months and to cover a larger area.

A trial eight-week agreement was also established in March 2010 for air services between Broome and Perth with possible stopovers in Geraldton and Karratha. This service would support the transport of fifteen detained persons on each plane.

Unfortunately, the current air transport arrangements are on an expensive, charter basis with the initial charter planes costing \$1,250 per hour and only being able to transport three detained persons and four guards on each trip (with the exception of the Broome-Perth service). ALSWA understands that this may not be financially sustainable despite the largely increased outcomes of air transport. To this end, ALSWA encourages the Government to look to successful arrangements in other States that enable sustainable air transport of detained persons. This is discussed further at 4.1 below.

**ALSWA Recommendation (xxi): That the Government research and develop a business case for owning and maintaining its own fleet of airplanes, potentially based on the successful Queensland model.**

#### *Juveniles*

Finally, ALSWA notes with concern that the transport of detained juveniles is not covered by the existing contract between DCS and G4S. Currently, police retain responsibility for the transport of juveniles. The result of this anomaly is that many of the improvements instituted by DCS have not benefitted juvenile transport.

In October 2009 a 17 year old person was transported 175 kilometres from Warradarge to Geraldton in a canvas-covered cage at the rear of a police paddy wagon. The juvenile was not provided with a seatbelt and the outside temperature was approximately 30 degrees Celsius. While this appears to have been an exceptional case, ALSWA condemns any such transportation of juveniles.

Increasingly, it appears that juveniles are transported by police using air charter services, a situation that is robustly supported by ALSWA. Unfortunately, there have been several occasions on which the use of air transport has been accompanied by different hardships. ALSWA is aware of some incidents where juveniles have been held in the police watch house in a remote area for several days after being remanded whilst air transport is arranged. ALSWA submits that this is a deplorable and unlawful practice that requires immediate attention and correction. ALSWA submits that this problem could be resolved if the Government were to own and operate their own small fleet of planes for purposes including the transport of detained persons. Discussion on Government ownership of airplanes is included at 4.1 below. In the interim, ALSWA recommends that air charter arrangements include contingencies for urgent transport requirements, such as where juveniles are concerned.

**ALSWA Recommendation (xxii): That a direction be given that juveniles are to be held in police custody in a watch house prior to transportation for as little time as possible after being remanded, in line with law, and that practical arrangements be made to ensure that this is possible.**

ALSWA notes that discussions are currently underway for DCS to assume responsibility for the transportation of juveniles. DCS has proposed a contract variation to include the transportation of juveniles within the scope of the G4S contract.

While the difficulties in transporting juveniles may be best managed if the transportation of juveniles is included within the DCS contract with G4S, ALSWA flags at the outset that certain issues will need particular consideration. Specifically, it is noted that Article 10 of the International Covenant on Civil and Political Rights (ICCPR) states at 2(b) that *“Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication”*. While Australia did state a reservation at the time of becoming a signatory to the ICCPR in 1980 in relation to 2(b) on the terms that *“the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned”*, ALSWA submits there would be very few circumstances in which it would not be beneficial to a juvenile to be segregated from adults during transportation of detained persons.

In light of the horrific death of Liam Ashley in New Zealand in 2006, as a result of injuries sustained during an assault in a prisoner transportation vehicle in which he was not segregated from adult prisoners, under the supervision of a private contractor, ALSWA submits that the Government must establish clear directions and procedures ensuring the separation of juveniles and adults during the transportation of detained persons. Should the transportation of detained youths be included in the G4S contract, arrangements would need to exist to enable G4S to always be able to segregate juveniles from adults during transportation.

**ALSWA Recommendation (xxiii): That transportation of detained juveniles be included in the scope of the contract between DCS and G4S.**

**ALSWA Recommendation (xxiv): That arrangements exist to enable the segregation of juveniles from adults whenever both juveniles and adults are to be transported as detained persons.**

#### **4.9 Coroner’s Recommendation No. 10 – Budget for replacement vehicles**

##### The Recommendation

Coroner Hope recommended that DCS ensure that there is a suitable replacement strategy and budget in place for the future to ensure that vehicles are replaced regularly and old and unsafe vehicles are not in use.

##### The Government’s Response

The Government assured the Coroner that DCS’ budget in the current financial year and forward estimates includes full funding for ongoing replacement of the prisoner transport fleet.

#### **4.10 Coroner's Recommendation No. 11 – Review of G4S Policy & Procedure**

##### The Recommendation

This recommendation stated that DCS conduct on-going review of all G4S policy and procedure relating to the welfare of detainees and duty of care to ensure that procedures are comprehensive and address known risks.

##### The Government's Response

The Government advised that G4S procedures relating to the conduct of escorts and duty of care were immediately reviewed and appropriately amended following the Review of Prisoner Transport Services in February 2008. Eighteen recommendations were made as a result of the Review and these recommendations were continuing to be implemented at September 2009.

DCS and G4S also conducted a review of all G4S policies and procedures in 2008/09 and amendments were being undertaken as required. DCS instituted a system whereby G4S policies and procedures are subject to annual review by DCS. The DCS process for approving G4S policies also changed in 2008 so that G4S must submit all new or amended policies to DCS for approval prior to implementation. Policies and procedures are assessed for suitability by the Court Security and Custodial Services Policy Review Panel and the Contract Manager has delegated authority under the contract to provide final approval of policies and procedures.

##### Progress

By mid-September 2008 GSL and the DSC Contract Manager advised that they were half-way through reviewing and updating GSL policies. This process continued in December and is believed to have been completed. However, there has been no indication about whether these policies were again reviewed in 2009 in line with the Government's assurance that G4S policies and procedures would be reviewed annually. Additionally, ALSWA retains concerns that the process of developing and approving policies is restricted between G4S and DCS given the impact that G4S policies and procedures have on detained persons. ALSWA supports the provision of G4S policies and procedures to relevant external stakeholders, such as participants of CAG, for review and comment.

<p><b>ALSWA Recommendation (xxv): That if G4S policies and procedures have not been reviewed since the initial process in 2008, they be reviewed by the Contract Manager immediately and also provided to relevant stakeholders for external review.</b></p>
--

#### **4.11 Coroner's Recommendation No. 12 – Regular review of G4S operations**

##### The Recommendation

The Coroner recommended that DCS ensure there are sufficient contract monitors to regularly review operations in regional locations to ensure that the transportation fleet

is maintained in a safe manner and G4S staff is complying with the company's policies and procedures.

#### The Government's Response

The Government advised that prior to September 2009 DCS had already increased the number of monitors available to audit and review the transport and court services in regional and metropolitan areas from two to five personnel. It was acknowledged that additional monitors may be required to undertake additional activity where risk assessments indicate that more monitoring is required. DCS was to prepare and submit a proposal for budgetary consideration to request greater resources.

#### Progress

ALSWA is aware that two additional contract monitors commenced work in September 2009 although their duties were not limited exclusively to review of prisoner transportation. By November 2009, there were to be eight contract monitors who rotated between reviews and audits of G4S and Acacia Prison.

In 2010, DCS announced that after considering available resources a plan had been developed whereby every regional G4S site would be 'audit processed' by contract monitors at least twice each year and every outer metro site would be subject to 'audit processing' three times a year.

ALSWA appreciates the efforts and commitment by the Government however notes that results of the reviews of contract managers of G4S compliance with policies and procedures and fitness of vehicles are not made public. Consequently, there is little public appreciation of the state of the prisoner transport system until after serious and, often damaging, incidents.

**ALSWA Recommendation (xxvi): That where a review uncovers serious violations of vehicle safety standards or manifestly inappropriate behavior of G4S staff, these findings be made public to improve transparency and accountability and provide incentive to DCS to guarantee safe vehicles and to G4S to ensure staff compliance with policies and procedures.**

#### **4.12 Coroner's Recommendations No. 13 and No. 14 – Training of G4S staff**

##### The Recommendation

The Coroner recommended that all G4S staff be provided with appropriately detailed practical training regarding duty of care obligations and that training be refreshed regularly. Also, that G4S arrange specific training for site supervisors in regional locations covering management skills and duties in respect of monitoring staff compliance with policies and procedures relating to welfare of detainees and duty of care.

##### The Government's Response

The Government recognised its non-delegable duty of care and stated that in response to a DCS request, G4S has submitted an Action Plan to address training requirements of staff, including a specific duty of care module. It stated that DCS would monitor the roll out of the Action Plan.

##### Progress

ALSWA appreciates that within twelve months of the demise of Mr Ward, pressure was placed on GSL/G4S to improve its training practices. GSL began developing standardised training DVDs covering operational procedures in October 2008 although it is unclear whether these DVDs are now in use.

In January 2009, just before the one-year anniversary of Mr Ward's death, a consultant was engaged to review GSL training procedures and materials. To address the deficiencies identified in the review, G4S began developing a new training package in June 2009. G4S advised that the new material was developed by October 2009 and by that stage all new staff undertook the new training. G4S also stated that they were conducting refresher courses for Perth Metro staff that included topics such as the use of force, duty of care and cultural awareness. By January 2010, six staff members were daily involved in refresher training and the numbers were set to increase.

ALSWA congratulates G4S on its improved training scheme, particularly the regular refresher courses undertaken by staff. However, ALSWA notes that in June 2009, prior to the implementation of the new training material, G4S agreed to provide the training material to relevant stakeholders for feedback and this never occurred. ALSWA believes that it would be useful for there to be some external review of training materials and delivery to ensure that the training covers the relevant topics, such as training in relation to the health risks faced by Aboriginal detainees, and is presented in a useful manner to maximise staff benefit from the training. This would also address ALSWA's second concern regarding training: the uncertainty surrounding the nature of new managerial training to ascertain whether staff members are properly complying with policies and procedures and the degree of inclusion of human rights and health risk training in the new package.

<b>ALSWA Recommendation (xxvii): That the new G4S training materials be provided to relevant stakeholders for review and comment.</b>
---

ALSWA commends G4S' employment of a Diversity Liaison Coordinator in January 2009. However, ALSWA has misgivings about whether the role has been utilised to its maximum potential. G4S approached ALSWA in 2009 to participate in a G4S Diversity Advisory Group which was to include the Diversity Liaison Coordinator. Unfortunately, given the nature of the group, ALSWA was unable to acquiesce however provided details of alternate Aboriginal organisations that G4S could approach to seek Aboriginal representation. Despite these efforts, at May 2010, the Diversity Advisory Group was yet to be established. G4S state that they are awaiting the provision of a suitable Aboriginal candidate for membership of the Group from DCS. Similarly, G4S advised in October 2009 that all trainees would undertake cultural awareness training delivered by the Diversity Liaison Coordinator yet the success of these courses has not been reported on in any great detail.

**ALSWA Recommendation (xxviii): That DCS direct G4S to establish a Diversity Advisory Group including Aboriginal representatives who may be consulted on cultural issues and be able to monitor the effective delivery of cultural awareness training within G4S.**

ALSWA submits that in addition to proper training of staff, it is imperative that there be an appropriate disciplinary system within G4S and beyond to respond to inappropriate conduct of contractual staff. Having worked closely with the family of Mr Ward subsequent to his demise, ALSWA has an acute appreciation of the profound impact his death has had on his family and community, members of whom repeatedly demonstrated disbelief at the Government inaction that substantially contributed to his passing. ALSWA advocates for the Government, G4S and individual staff to be made to take greater responsibility for their actions. This involves staff facing appropriate employment and criminal action for their contribution to deaths or inhuman treatment of detained persons.

**ALSWA Recommendation (xxix): That G4S develop, with consultation, and implement appropriate disciplinary channels to address misconduct of staff to the detriment of detained persons.**

**ALSWA Recommendation (xxx): That the Government push for criminal charges to be laid against the two drivers and G4S for their significant contribution to the death of Mr Ward.**



## 5. Feasibility of Air Transport and video conferencing

### 5.1 Air Transport

As stated at 3.8 above, ALSWA applauds the increased use of air transport and the entering into charter air contracts to provide air transport options to detained persons in WA. ALSWA agrees that transporting detained persons by air is a vast improvement on long-haul road journeys. However, ALSWA queries the long-term feasibility of the current situation given the expenses involved in regularly chartering air services.

As stated above, ALSWA recommends that the Government consider its capacity to purchase and maintain its own small fleet of airplanes. ALSWA notes that the Queensland Police Service (QPS) currently has an Air Wing comprised of pilots and four<sup>6</sup> planes employed, owned and operated by QPS. The QPS Air Wing has multiple functions including the transport of detained persons, transport of police officers, search and rescue assistance, transfer of freight, emergency response and disaster management situations and, on occasion, the speedy delivery of organs from donors.

ALSWA submits that a business case for the Government owning and operating a small fleet of airplanes would be feasible given the current exorbitant costs of chartering air services. Additionally, the cost could be shared between various agencies if the airplanes were utilised for the provision of other important services administered by the government to remote communities. For example, the same airplanes could be used to transport magistrates and court staff for circuit courts and to freight medical supplies to remote communities and transport medical staff.

By owning its own fleet of airplanes, the Government would be in a position to make modifications to the planes to better suit its needs. This was seen with the installation of a curtain in the one coach purchased by DCS, in order to accommodate both detained men and women in the same vehicle in a culturally appropriate and respectful manner. QPS also advise that the Air Wing has the capability to carry specialised equipment which may be problematic to commercial airlines. Moreover, if the Government is not chartering air services, it is likely that the response time to requests for air services will be dramatically decreased. Planes from the QPS Air Wing unit are able to be deployed within two hours of a request which is a sizeable improvement on the current situation and would address one of the significant concerns relating to the transport of juveniles discussed at 3.8 above.

---

<sup>6</sup> According to the 2008-2009 Queensland Police Service Annual Report a fifth plane was due for delivery in late 2009/early 2010.

## 5.2 Video Conferencing

As stated at 3.7, ALSWA recognises the value of video conferencing in certain scenarios. The increase in the use of AV facilities is particularly welcomed in enabling magistrates to consider issues relating to the bail of detained persons at police watch houses in remote communities thereby reducing the unnecessary transport of detained persons to appear in court. ALSWA commends Children's Court Practice Direction No. 2 of 2008 which attempts to avoid unnecessary transportation of young persons from their own country to Perth by requiring that efforts be made for a Magistrate to determine bail either in person, or if this is impossible, by video link or audio link prior to the youth being transported. The purpose of the Practice Direction is to expedite bail decisions and prevent unnecessary transportation of children from their own country area to Perth.

To this end, ALSWA supports the installation of four-way video conferencing facilities in all regional and remote police stations to enable the question of bail to be considered by a magistrate wherever possible, without requiring long-haul transportation.

While the use of AV facilities during court proceedings could reduce the need to travel long distances to attend court, ALSWA has some reservations about using these technologies. It is noted that without adequate support, the use of video conferencing facilities can be complicated and difficult for many people, including our clients. Similarly, persons who are unfamiliar with the technology could feel uncomfortable with providing instructions to solicitors via video conferencing. This may impact on the quality of evidence or information provided to the court and consequently on the outcome of criminal proceedings.

Similarly, the use of video conferencing to obtain instructions can be challenging and, in some circumstances, raise issues of privacy and confidentiality. If clients are only able access AV facilities in locations such as police stations, and require the support of police officers to utilise the equipment, the privacy of their instructions is violated by the environment. Similarly, if prisoners are only able to communicate with their lawyers via videolink from the prison before their court appearances, the presence of any prison officers in the vicinity may impact on the quality of the instructions provided.

Beyond this, there are other practical issues such as the effective use of interpreters. If an accused person or witness is unable to communicate effectively in English and requires an interpreter, the video conferencing facilities may be ineffective if enabling proper communication between an in-court interpreter and Aboriginal person in another location.

ALSWA recognises the immense benefits that increased use of video conferencing could provide to Aboriginal persons across WA. The vast distances that must be travelled by both detained persons and persons at liberty to attend court can be very challenging and largely avoided with the use of video conferencing. ALSWA supports continued consideration of best practices around the utilisation of video conferencing. However

ALSWA urges caution and careful contemplation of the adverse effects video conferencing may have by further alienating Aboriginal defendants from the judicial system if not properly implemented with adequate supports. ALSWA recommends extensive consultation with Aboriginal persons to determine how video conferencing can best be used in the specific context of remote WA.

## **6. The scope and efficacy of government action to reduce Indigenous incarceration and recidivism rates to prevent further Indigenous deaths in custody**

Across Australia, Aboriginal incarceration continues to rise at an alarming rate. Between 2000 and 2008 the imprisonment rate increased by 46 percent for Aboriginal women and 27 percent for Aboriginal men.<sup>7</sup> Aboriginal adults are 13 times more likely to be incarcerated than non-Aboriginal adults and Aboriginal juveniles are 28 times more likely to be in detention than non-Aboriginal juveniles.<sup>8</sup> WA continues to have the highest rate of Aboriginal incarceration in Australia. As at 29 April 2010, the WA adult prison population numbered 4,826, 39.4% of whom were Aboriginal.<sup>9</sup> Similarly, 204 youths were in custody, 72.5% of whom were Aboriginal.<sup>10</sup> ALSWA submits that these high rates of Aboriginal incarceration demonstrate that current government initiatives to reduce Aboriginal incarceration and recidivism are inadequate and ineffective.

ALSWA have provided numerous previous submissions over several years relating to the overrepresentation of Aboriginal persons in the criminal justice system and prison population in WA. These submissions also discuss the scope and effectiveness of government policies and action in reducing Aboriginal incarceration and recidivism. Two recent ALSWA submissions that discuss these topics are **enclosed**. **Annexure 1** is a submission to the inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies.<sup>11</sup> **Annexure 2** is a submission to an inquiry into the high level of involvement of Aboriginal juveniles and young adults in the criminal justice system.<sup>12</sup> These submissions discuss the causes of the high level of Aboriginal involvement in the criminal justice system, specific case studies and the success of alternate strategies in reducing recidivism.

---

<sup>7</sup> Productivity Commission Key Indicators 2009, p4, accessed 11 May 2010.

<sup>8</sup> Productivity Commission Key Indicators 2009, p4, accessed 11 May 2010.

<sup>9</sup> Government of WA, Department of Corrective Services, Weekly Offender Statistics as at 11 May 2010, [http://www.correctiveservices.wa.gov.au/\\_files/about-us/statistics-publications/statistics/2010/cnt100429.pdf](http://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/statistics/2010/cnt100429.pdf)

<sup>10</sup> *Ibid.*

<sup>11</sup> ALSWA Submission to the Community Development and Justice Standing Committee of the Western Australian Legislative Assembly on the 'Making our prisons work' inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies, April 2010.

<sup>12</sup> ALSWA Submission to the Commonwealth House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system, December 2009.

ALSWA believes that even simple legislative and attitudinal changes could have dramatic impacts on the rate of imprisonment of Aboriginal peoples. As noted at 3.3 above, amendments to the Bail Act and police training to reflect that arrest is an option of last resort would likely reduce the number of persons in detention. Weekly offender statistics from DCS indicate that 17.2% of adult prisoners and 52.5% of juvenile detainees are on remand and unsentenced respectively. Similarly, if WA police were mandated to contact ALS immediately upon an Aboriginal person being taken into custody, as is the requirement in NSW, there would be a greater level of accountability surrounding the treatment and holding of detained persons.

Given the conspicuous failure of government action to reduce Aboriginal incarceration and recidivism, ALSWA strongly urges the Government to adopt the more holistic policy of Justice Reinvestment.

Justice reinvestment diverts a portion of the funds spent on imprisonment to local communities where there is a high concentration of offenders.<sup>13</sup> The money is invested in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities by engaging the community to be part of the solution.

Justice Reinvestment initiatives have had laudable success in the USA with Kansas having reduced its prison population by 7.5 percent, its reconviction rate of parolees by 35 percent and parole revocation by 48 percent. Even more remarkable is the decrease in the detention of young people by 72 percent in Oregon.

The model for Justice Reinvestment involves:

- identifying high stakes communities with high rates of imprisonment. This has already been done by the Australian Human Rights Commission<sup>14</sup>;
- developing options to generate savings and improve local communities by considering why people are being imprisoned (such as the limited provision of rehabilitation courses or the quality and availability of community supervision);
- quantifying saving and reinvesting in the communities to improve public safety (for example in Wichita, Kansas portions of the city liquor tax revenue were diverted to support substance treatment programs, a local job placement agency, a program for children with incarcerated parents and employing local young people to landscape and revitalize their own suburbs); and
- measuring and evaluating impact.

---

<sup>13</sup> *Juvenile Justice Strategy: A Better Way* presented on 20 March 2010 at the Sydney Mechanics School of Arts, by the Australian Human Rights Commission's Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda.

<sup>14</sup> The AHRC identified Broome, Carnarvon and Port Headland as high stakes Indigenous juvenile justice communities and Broome, Halls Creek, Derby – West Kimberley local government area and the Swan and Stirling local government areas as high stakes Indigenous adult justice communities in the *2009 Social Justice Report*, by the former Australian Human Rights Commission's Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma.

ALSWA accepts that a small number of current initiatives are having some success in addressing the disproportionately high involvement of Aboriginal Australians in the criminal justice system, such as the operation of community and drug courts and the Kimberley Aboriginal Law and Culture bail intervention program in Fitzroy Crossing. However, ALSWA recommends that the more comprehensive Justice Reinvestment initiative be implemented by the Government to address the epidemic of Aboriginal incarceration.

**ALSWA Recommendation (xxxi): That the Government immediately commence research and consultation into developing Justice Reinvestment initiatives for targeted communities in WA.**

## **7. Amendments to the Coroner's Act 1996 (WA)**

Coroner's Courts have a specific role in the judicial system: to investigate a particular death and not necessarily apportion blame, but rather to identify systemic problems or failures and provide recommendations to address them in order to avoid future deaths in similar circumstances. A significant quantity of time and resources are invested in coronial investigations and in the absence of a mandatory reporting requirement, it is possible that coronial recommendations may be disregarded to the detriment of the community. It is imperative that the powers of the Coroner support the Coroner in effectively achieving his purpose of preventing future deaths and injuries from occurring unnecessarily.

ALSWA robustly supports the recommendations previously made by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)<sup>15</sup> and the Parliament of Victoria Law Reform Committee's Paper on the *Coroners Act 1985*<sup>16</sup> requiring Government Agencies and Departments, to whom recommendations have been made by the Coroner, to provide timely written responses to the recommendations. ALSWA further believes that this obligation should extend to private companies who contribute to avoidable deaths. The mandatory responses should include a report outlining whether any action has been taken or is proposed to be taken in response to the recommendations, and if no action is intended, reasons explaining why this stance has been adopted.

ALSWA recommends that governmental departments or agencies and private companies addressed be mandated to provide the Coroner with their written responses within three months of the publication of the Coroner's findings and, to maintain an accountability circuit and community involvement, that the Coroner be compelled to publish Governmental responses along with his report within 30 days of receipt of the response.

---

<sup>15</sup> Specifically recommendations 14-18 relating to mandatory responding to coronial recommendations and a system of subsequent review.

<sup>16</sup> Victoria Law Reform Committee's Parliamentary Paper No. 229 of Session 2003-2006 on the *Coroners Act 1985*.

ALSWA also recommends that the government department, agency or private companies be mandated to provide an additional follow-up report twelve months after the initial response detailing the action that has been taken in the preceding twelve months to practically implement the commitments they made in their initial three-month response to the Coroner. This report will clearly demonstrate the commitment of the Government or company evidenced by their action or inaction in implementing the recommendations. Furthermore, a period of twelve months will include a budgetary cycle to enable the Government to obtain the necessary funding to implement the recommendations or the alternate solutions it proposed in its initial response to the Coroner's findings.

The majority of States and Territories in Australia currently have a framework under which responses are required from government agencies and departments to certain coronial recommendations. The Australian Capital Territory (ACT), Northern Territory (NT), South Australia (SA) and Victoria have imposed statutory requirements for the Government to respond to Coroner's recommendations. The NT requires responses from government agencies and/or the police force to all coronial investigations whereas SA requires responses only in relation to coronial recommendations arising from a death in custody. ACT requires responses only from custodial agencies concerned in respect to a death in custody the subject of coronial recommendations and Victoria requires responses in relation to coronial recommendations made to a public statutory authority or entity arising from a death or fire. In NSW there is no statutory requirement for the Government to respond to coronial recommendations however in June 2009 the Premier issues a memorandum to Ministers and government agencies directing them to respond to coronial recommendations within six months of receipt of them.

ALSWA accepts that it is not always practical or feasible to implement a Coroner's recommendations. However, it is submitted that a mandatory response scheme will require agencies and companies to properly consider the recommendations which in turn will substantially improve the effectiveness of the coronial system. Not only would the requirement to respond to coronial recommendations within a three month period, and again 12 months on, improve the accountability of Government and companies with some connection to a death, it would also assist in monitoring the implementation rates of recommendations and thus the effectiveness of the Coroners Court. Additionally, it would encourage greater consideration and professionalism amongst coroners, whose recommendations would be subject to greater scrutiny, whilst also providing them with a better understanding of practical limitations on the implementation of recommendations.

ALSWA hopes that the requirement to respond to coronial recommendations and to provide a later report on the implementation of recommendations would also go some way to assisting families of deceased persons who may gain some relief from knowing that changes have been made which may prevent future deaths and therefore reducing the meaninglessness of the death of their loved one.

**ALSWA Recommendation (xxxii): That the *Coroner's Act 1996 (WA)* be amended to require:**

- **Government departments and agencies and private to respond to coronial recommendations within three months of the publication of coronial recommendations;**
- **the Coroner to publish the Government or company response, along with his report, within 30 days of receipt of the response; and**
- **Government departments and agencies and private companies to provide a progress report on the practical implementation of the coronial recommendations twelve months after their initial response.**

ALSWA also endorses the submission of the Australian Inquest Alliance in relation to the need for coronial reform.

## **8. International Obligations and Promoting and Protecting Human Rights**

It is noted that the horrific death of Mr Ward and the unacceptable circumstances in which it occurred has gained international attention. The Special Rapporteur on the situation on the human rights and fundamental freedoms of indigenous peoples, James Ananya, commented specifically on the "*disturbing case in Western Australia on the death of [Mr] Ward*"<sup>17</sup> following his recent visit to Australia in talking about the failure of many of the recommendations of the RCIADIC to be fully and adequately addressed.

Coroner Hope in his Findings, and the submission of the Human Rights and Equal Opportunity Commission (HREOC) (as it was then known) to the Coroner during the inquiry into the death of Mr Ward, noted that Australia, as a signatory to numerous international conventions, has certain international legal obligations. The Coroner was unambiguous in recognising the breach by Australia of the ICCPR as a result of the supervision, treatment and care of Mr Ward in the hours leading to his death. Given the Coroner's conclusions, it is apparent that through the treatment of Mr Ward, Australia was also in breach of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

ALSWA shares the concerns of HREOC and the Coroner in relation to the treatment of Mr Ward and the circumstances in which other detained persons are transported in WA. ALSWA endorses the submission of HREOC to the Coroner during the inquest into the death of Mr Ward. ALSWA supports the Coroner's second recommendation that there be an explicit legislative provision assuring that all detained persons are treated with humanity and respect for human dignity and are not subjected to cruel, inhuman or degrading treatment, in line with Australia's international obligations.

---

<sup>17</sup> Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 'The Situation Of Indigenous Peoples In Australia,' A/HRC/15/ 4 March 2010, p22.

Furthermore, in light of the recent announcement by the Federal Government to establish a national Human Rights Framework, ALSWA encourages the WA Government to also develop a human rights framework including the introduction of a Human Rights Act. ALSWA submits that an improved human rights culture in WA would reduce the incidence of inappropriate and inhuman treatment of detained persons and would benefit the State and its citizens by the development of an enforcement mechanism to ensure judicial remedies are available to persons who have had their human rights breached.

ALSWA also supports the development of more comprehensive and frequent human rights education and training in the community, within government and involving government contractors to improve the protections afforded to Western Australians, including detained persons.

**ALSWA Recommendation (xxxiii): That the Government introduce a human rights framework including a Human Rights Act in WA.**

## 9. Conclusion

ALSWA recognises that the Government has taken limited steps to implement some of the recommendations of the Coroner following the inquest into the tragic death of Mr Ward. Those steps which have been taken are applauded. In particular, ALSWA is pleased with the general improvements to the vehicles in which detained persons are transported. As stated above however, there remains much work to be done. Inappropriate vehicles are still in use which unnecessarily increases the risk associated with transporting detained persons. Unfortunately there are no statutory requirements to ensure that detained persons are treated humanely and the Inspector does not have the power to issue “Show Cause” notices to require DCS to justify the treatment of prisoners. Training of police, JPs and G4S staff needs to be continually addressed and overall there needs to be greater transparency surrounding the efforts of the Government to implement the recommendations.

The tyranny of distance reigns in WA and needs to be considered and addressed through means such as the use of AV facilities and air transport. ALSWA welcomes this inquiry in the hope that serious reform can be achieved to reduce the transportation of detained persons and to confront the alarming overrepresentation of Aboriginal people in the justice system and prison population.

## 10. List of ALSWA Recommendations

1. That the Coroner’s recommendation be immediately implemented with the introduction of the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)*.
2. That the Inspector be given statutory powers to inspect police lock ups and police station cells.



3. That the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)* be made law, at least as an interim measure and, in relation to the protection of the rights of persons in custody, as a permanent measure.
4. That the Government immediately commence the drafting and introduction of a Bill to establish the auditing powers and reporting powers of the Inspector and requirement of a written response from the CEO of DCS if the Government maintains its reservations about the long-term feasibility of the terms of the *Acts Amendment (Safety and Human Rights of Persons in Custody) Bill 2009 (WA)*.
5. That the Attorney General and Minister for Police inform the public about the process of review they are undertaking and the proposals for amending the *Bail Act 1982 (WA)* and police training procedures to ensure that bail processes are considered and applied appropriately in the future.
6. That the *Bail Act 1982 (WA)* be amended to require that arrest is an option of last resort and that police training reflect this concept.
7. That DotAG and Minister of Police are more forthright in their provision of information relating to the initiatives adopted to ensure police officers have a better understanding of their powers and responsibilities as deputy registrars.
8. That police are required to undergo a specific training course in the role and responsibilities of a deputy registrar and, upon completion of the course, satisfactorily complete assessments to demonstrate their understanding, prior to being delegated the powers of a deputy registrar.
9. That police officers who are currently delegated the powers of a deputy registrar engage in a refresher course on the role and responsibility of deputy registrars including assessments to demonstrate their understanding. That participation in such a course be periodic and the continued delegation of deputy registrar powers be conditional upon satisfactory completion of the course.
10. That DotAG give consideration to establishing other processes to remove the need to delegate deputy registrar powers to police and subsequently withdraw deputy registrar powers from police.
11. That JPs are no longer empowered to perform judicial functions.
12. That the Government increases resource allocation and programmes to encourage the recruitment and retention of qualified legal practitioners, including Aboriginal practitioners, as lawyers and magistrates in remote areas of WA to take over the judicial functions previously performed by JPs.

13. That until judicial powers are removed from JPs, a stringent review process for all JPs performing court duties is immediately developed and implemented including evaluations of JP decisions and audits of JP notes.
14. That all regional and remote police stations in WA and all regional, remote and metropolitan courtrooms be equipped with 4-way AV equipment.
15. That agencies who provide significant criminal representation to people in remote locations be provided with resources to enable offices to be equipped with AV facilities.
16. That DCS immediately direct that all old and unsafe vehicles stop being used for the transport of detained persons and that alternate vehicles, such as the coach owned by DCS or vehicles from the new fleet which is currently being rolled out, are available in their place.
17. That the use of appropriate restraints during transportation on coaches be considered taking into account road safety, personal safety and risk assessments of individuals.
18. That more details of the specifications of the new vehicles be provided to the public.
19. That DCS discontinue using vehicles that habitually break down or experience air-conditioning problems and instead arrange for the charter of additional coach or air services until the delivery of all vehicles of the new fleet.
20. That DCS arrange a contingency plan in case new vehicles are not delivered on time.
21. That the Government research and develop a business case for owning and maintaining its own fleet of airplanes, potentially based on the successful Queensland model.
22. That a direction be given that juveniles are to be held in police custody in a watch house prior to transportation for as little time as possible after being remanded, in line with law, and that practical arrangements be made to ensure that this is possible.
23. That transportation of detained juveniles be included in the scope of the contract between DCS and G4S.
24. That arrangements exist to enable the segregation of juveniles from adults whenever both juveniles and adults are to be transported as detained persons.
25. That if G4S policies and procedures have not been reviewed since the initial process in 2008, they be reviewed by the Contract Manager immediately and also provided to relevant stakeholders for external review.
26. That where a review uncovers serious violations of vehicle safety standards or manifestly inappropriate behavior of G4S staff, these findings be made public to

improve transparency and accountability and provide incentive to DCS to guarantee safe vehicles and to G4S to ensure staff compliance with policies and procedures.

27. That the new G4S training materials be provided to relevant stakeholders for review and comment.
28. That DCS direct G4S to establish a Diversity Advisory Group including Aboriginal representatives who may be consulted on cultural issues and be able to monitor the effective delivery of cultural awareness training within G4S.
29. That G4S develop, with consultation, and implement appropriate disciplinary channels to address misconduct of staff to the detriment of detained persons.
30. That the Government push for criminal charges to be laid against the two drivers and G4S for their significant contribution to the death of Mr Ward.
31. That the Government immediately commence research and consultation into developing Justice Reinvestment initiatives for targeted communities in WA.
32. That the *Coroner's Act* 1996 (WA) be amended to require:
  - Government departments and agencies and private to respond to coronial recommendations within three months of the publication of coronial recommendations;
  - the Coroner to publish the Government or company response, along with his report, within 30 days of receipt of the response; and
  - Government departments and agencies and private companies to provide a progress report on the practical implementation of the coronial recommendations twelve months after their initial response.
33. That the Government introduce a human rights framework including a Human Rights Act in WA.