



15 December 2014

Economic Regulation Authority  
PO Box 8469  
PERTH BC WA 6849

Dear Sir

**Re: Submission to the Economic Regulation Authority Inquiry into the Efficiency and Performance of Western Australian Prisons**

The Aboriginal Legal Service of Western Australia (Inc) ('ALSWA') frequently represents Aboriginal people who have been or who are currently sentenced to imprisonment. ALSWA has a number of concerns in relation to the efficiency and performance of Western Australia's prisons in so far as the prison system appropriately responds to and treats Aboriginal prisoners.

The Issues Paper produced by the Economic Regulation Authority covers a number of areas (including performance frameworks, service standards, performance monitoring, governance arrangements and resourcing issues). ALSWA does not wish to comment on all of these issues at this stage. However, ALSWA may provide a more detailed response to the draft report that is proposed to be published in mid-2015.

It is noted that the inquiry's terms of reference do not include consideration of juvenile detention centres. ALSWA is of the view that the exclusion of juvenile custodial facilities from the inquiry is unfortunate. Nevertheless, many of the issues raised below are also relevant to juvenile detention centres and to the appalling overrepresentation of Aboriginal children in custody in this state.<sup>1</sup>

ALSWA's paramount concern in relation to the Western Australian prison system is the continued overrepresentation of Aboriginal people in custody and high recidivism rates. As at 30 June 2014, almost 40% of the adult prison population were Aboriginal and, for females, the position is worse: 53% of female prisoners were Aboriginal.<sup>2</sup> In a 2010 Parliamentary Committee Inquiry it was observed

<sup>1</sup> As at 30 June 2014, over 77% of juvenile detainees were Aboriginal: Department of Corrective Services, Weekly Offender Statistics (26 June 2014).

<sup>2</sup> Ibid.

**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

that the recidivism rate<sup>3</sup> for Aboriginal adult males was 70% and 55% for Aboriginal adult females.<sup>4</sup>

In terms of examining the efficiency and performance of Western Australian prisons, ALSWA agrees that it is important to articulate the objectives of the prison system. The Issues Paper states that there are four primary objectives of imprisonment: incapacitation, deterrence, rehabilitation and retribution.<sup>5</sup> The objectives of incapacitation, deterrence and rehabilitation are all linked to the underlying objective of maximising community safety. ALSWA agrees with the view expressed in the Issues Paper that, realistically, those responsible for operating prisons can only be held accountable for incapacitation and rehabilitation.

ALSWA is strongly of the view that of these two objectives, rehabilitation is the most important. Incapacitation only provides short-term protection to the community (other than for the small number of prisoners who are detained for life or indefinitely). In contrast, effective rehabilitation can provide long-term and permanent community protection by ensuring that offenders do not reoffend once released.

Furthermore, ALSWA considers that the overriding objective of the prison system should be community safety. The broader concept of community safety enables an assessment of a wider range of issues within the prison system. As one example, in some instances the impact of refusing to transport (and supervise) an Aboriginal prisoner to attend a funeral of an important kin relation may have a detrimental affect on community and family cohesion. A further example would be a failure to enable an Aboriginal mother in prison to maintain an effective connection and relationship with her children because this may cause long-term consequences for the children. In other words, the overriding objective of community safety should not be restricted solely to the consideration of the individual prisoner (and whether he or she is prevented from further offending or provided with treatment to reduce the risk of reoffending). It should also incorporate the important aims of ensuring the best possible treatment and outcomes for the prisoner's family and community.

ALSWA further submits that in order to improve the efficiency and performance of Western Australian prisons in relation to Aboriginal prisoners the following issues must be addressed:

---

<sup>3</sup> Defined as returning to prison within two years from release.

<sup>4</sup> Western Australian Parliament, Community Development and Justice Standing Committee, *Making Our Prisons Work: An inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*, Report No 6 (2010) 72.

<sup>5</sup> Economic Regulation Authority, *Inquiry Into the Efficiency and Performance of Western Australian Prisons*, Issues Paper (November 2014) 19.

**The lack of sufficient Aboriginal specific and culturally appropriate rehabilitation, education and training programs in Western Australian prisons**

ALSWA is of the view that there are insufficient culturally appropriate programs for Aboriginal prisoners in Western Australia, especially in regional locations. The Office of the Inspector of Custodial Services has recently observed that:

While many risk factors are outside the Department's control, one area where it has invested heavily, with the aim of reducing recidivism, is the provision of treatment programs. International research generally accepts that treatment programs are an effective method of reducing recidivism if the right program is delivered to the right person. Treatment programs that are incorrectly allocated or delivered can be harmful, increasing the likelihood of reoffending. This is what occurred for prisoners released in 2008/09 and 2009/10, resulting in the recidivism rate being higher for those that completed a program than those that did not.<sup>6</sup>

It was also observed that despite some progress by the Department of Corrective Services in relation to the delivery of programs, two key problems remain. First, there are insufficient programs for women prisoners and for prisoners held in the 'Aboriginal-dominated prisons of Broome, Roebourne, Greenough and Eastern Goldfields'. Second, the 'Department of Corrective Services does not have any robust evaluations which can explain what works for whom, and why, by way of programs in the Western Australian context'.<sup>7</sup> ALSWA agrees that it is imperative that existing and future rehabilitation programs are subject to rigorous and independent evaluations to ensure that effective outcomes are being achieved.

Most importantly, in order to maximise the effective rehabilitation of Aboriginal prisoners it is vital that programs are delivered in a culturally appropriate manner and, wherever possible, delivered by Aboriginal controlled community organisations and services.

**The unique health needs of Aboriginal prisoners**

Bearing in mind the overrepresentation of Aboriginal people in prisons in Western Australia, it is imperative—in terms of future wellbeing and rehabilitation—that prison healthcare services recognise and accommodate the lower life expectancy and special health needs of Aboriginal people (eg, higher rates of cardiovascular disease and diabetes).<sup>8</sup> The availability and delivery of appropriate and effective treatment for physical and mental health illness within the prison environment is an important component of ensuring future rehabilitation. Prison health care services must be culturally appropriate and work collaboratively with the prisoner's family and community. A useful model in

---

<sup>6</sup> Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (September 2014) [6.1].

<sup>7</sup> Office of the Inspector of Custodial Services, *Recidivism Rates and the Impact of Treatment Programs* (September 2014) [6.2].

<sup>8</sup> See for example <http://www.healthinonet.ecu.edu.au/health-facts/summary>.

this regard is the requirement under the new *Mental Health Act 2014* for medical practitioners and psychiatrists to consult with Aboriginal mental health workers, Aboriginal Elders and traditional healers when treating Aboriginal mental health patients. ALSWA believes that prison health care services for Aboriginal prisoners should, wherever possible, be delivered by Aboriginal-controlled service providers.

### **The need for a properly resourced state-wide Aboriginal interpreter service**

For many years ALSWA has called for the establishment of a state-wide Aboriginal interpreter service. Therefore, ALSWA is extremely concerned about the state government's decision to cease funding to the Kimberley Interpreting Service.

In the prison context, Aboriginal language interpreters are essential to provide, among other things, assistance to prisoners in relation to participation in programs; with health care; with the preparation of court reports; and with other issues that may arise. If English is an Aboriginal prisoner's second or third language it is highly unlikely that he or she will gain any insights into past behaviours or develop any skills to assist rehabilitation as a result of participating in a treatment program delivered by non-Aboriginal providers. Likewise, Aboriginal prisoners who do not speak or understand English sufficiently well may be significantly disadvantaged when community corrections officers and/or psychologists prepare reports for court proceedings based on interviews conducted in the absence of an interpreter. ALSWA is strongly of the view that the provision of Aboriginal interpreters to prisoners is necessary to maximise the overall effectiveness and performance of the prison system.

### **The need to support Aboriginal prisoners and their communities in relation to funeral attendance**

The current policy in relation to funeral attendance by prisoners is set out in the Department of Corrective Services, Policy Directive 9, Permit for Absence (14 October 2013). This policy provides that, generally, funeral attendance by a prisoner will only be permitted if the relationship between the prisoner and the deceased is one of an immediate family member (and as long as attendance at the funeral is within the specified financial and security guidelines). Immediate family is narrowly defined and excludes important kinship relationships under Aboriginal culture. It specifically excludes aunties and uncles, cousins, and nieces and nephews despite the reality that for Aboriginal people these relationships are often equivalent to parents, siblings and children.

The OICS explained in its review of funeral attendance by incarcerated people in Western Australia that:

It is a matter that has particular resonance for Aboriginal people, who comprise over 40 per cent of the state's prison population. They have a lower life expectancy and significant cultural obligations surround funeral attendance. For



many Aboriginal people, failing to attend a funeral can be damaging to mental wellbeing. It may also be seen as a sign of disrespect for which there may be cultural consequences.<sup>9</sup>

As just one example, ALSWA represented one Aboriginal male prisoner who was refused permission to attend the funeral of the woman who had raised him since he was a baby, who he referred to as 'Mum' and who was also his biological aunty. This man was concerned that he may be shunned from the family and the refusal to allow him to attend the funeral of his 'mother' is clearly not conducive to his cultural, social and emotional wellbeing or his future rehabilitation.

The OICS observed that even if failure to attend a funeral is beyond the control of the prisoner, there may be consequences include 'distress and shame' and in some circumstances 'community sanctions'.<sup>10</sup> As noted earlier, the importance of enabling Aboriginal prisoners to attend funerals of important kin should be viewed holistically – not only is in the best interests of the prisoner but also the prisoner's extended family and community.

ALSWA requests that the abovementioned issues be considered during the review and, as stated at the outset, ALSWA will consider the draft report when it is circulated for public consultation next year.

Yours Faithfully

Dennis Eggington  
Chief Executive Officer  
Aboriginal Legal Service of Western Australia (Inc)

---

<sup>9</sup> Office of the Inspector of Custodial Services, *Funeral Attendances by Incarcerated People in Western Australia* (September 2013) i.

<sup>10</sup> Ibid 2.