

**Aboriginal Legal Service of Western Australia (Inc)**

**Submission to the Community Development and Justice Standing Committee**

**Inquiry into Custodial Arrangements in Police Lock-ups**

**July 2013**



## **About the Aboriginal Legal Service of Western Australia (Inc)**

The Aboriginal Legal Service of Western Australia (ALSWA) is a community-based organisation that was established in 1973, which delivers a comprehensive range of culturally matched and quality legal services to Aboriginal peoples throughout Western Australia. While criminal law matters dominate our practice, we also provide legal advice and representation to Aboriginal peoples in civil law, human rights law and family law. ALSWA also provides support services to prisoners and incarcerated juveniles. Services are available via 14 regional and remote offices and our head office in Perth.

With almost four decades' experience of working with Aboriginal peoples within the criminal justice system, ALSWA is uniquely placed to provide frontline feedback about custodial facilities, service delivery and programs throughout Western Australia, as well as the impact of policies and legislation on Aboriginal peoples. ALSWA submissions are informed by the feedback and experience of ALSWA staff and clients.

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### **1. Whether current arrangements fully comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Optional Protocol to the Convention Against Torture.**

The Royal Commission into Aboriginal Deaths in Custody (RCADC) concluded 22 years ago. While the conditions and treatment of Aboriginal people held in police custody have certainly improved over this period, the current custodial arrangements in Western Australian police lock-ups do not come close to fully complying with its recommendations. ALSWA's submission details some of the main issues of concern with reference to relevant RCADC recommendations.

As is clear from our submission, ALSWA is particularly concerned with the treatment of juveniles in police custody, the process that is followed (or not) by police in helping people in custody to access legal advice, the identification and management of people suffering from mental health issues, and unique issues experienced by Aboriginal people held in police lock-ups, particularly in remote areas.

The failure of WA Police to implement all of the relevant RCADC recommendations over the past two decades – many of which just amount to good administration – provides an extraordinary example of organisational inertia. ALSWA acknowledges the good intentions and good work of many within WA Police; however, it is simply unacceptable that facilities, conditions and police practices should vary so markedly between police lock-ups. Moreover, the conditions and treatment that many of our clients experience upon being taken into police custody – particularly in regional and remote areas of the State – is shameful.

There is a well worn saying that "sunlight is the best disinfectant". In ALSWA's view, the sluggish pace at which WA Police have implemented RCADC recommendations, and the ongoing problems with custodial arrangements in Western Australia, ultimately reflect the absence of an independent oversight body to monitor and report on conditions and practices in police lock-ups. This inquiry

presents the Committee with an opportunity to consider whether this additional responsibility should be referred to the Office of the Inspector of Custodial Services (OICS). ALSWA would strongly support such a move. Indeed, we believe it is the only initiative that has the potential to drive real change in this area.

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## **2. Access by detainees to medical and legal services and other third parties**

### **2.1 Access by detainees to legal services**

ALSWA is not aware of any examples where police officers have refused people in custody the right to access legal advice; however, client complaints indicate that police officers do not always make a reasonable effort to help people speak with a lawyer, nor do they always take into account a person's communication difficulties.

#### **2.1.1 Level of assistance provided by police**

ALSWA's main concern goes to the level of assistance that people in custody are afforded to ensure that they do, in fact, receive legal advice, and the number of attempts that are made by police on their behalf. Our staff advise that police officers often go out of their way to ensure that Aboriginal people in custody contact ALSWA; however, ALSWA offices also regularly report examples where police have made futile attempts to contact ALSWA and, if unsuccessful, have not provided the person with further opportunities to access legal advice. For example, ALSWA's South Hedland office has observed that when a local ALSWA lawyer is unavailable to take a custody call, police officers from the local lock-ups do not always make alternative enquiries with ALSWA's Perth office or Legal Aid WA. ALSWA's Bunbury office has also observed that it rarely receives phone calls from people in police custody, despite representing a large number of local Aboriginal people in criminal matters. Local staff usually only become aware that a client is being held in the Bunbury lock-up if family members contact the ALSWA office. ALSWA staff must then wait until clients are transported to the local courthouse to speak with them. This suggests that our Bunbury clients either do not ask to contact ALSWA while they are in police custody, which seems improbable, or that local police are not facilitating phone calls between people in custody and ALSWA during office hours (although ALSWA also administers an after-hours phone line, which does not receive calls from the Bunbury lock-up either). ALSWA's experience suggests there is a need for WA Police to implement a comprehensive internal legal advice policy, prescribing steps that police officers must follow to ensure that all people held in police custody are able to access legal advice if they wish.

#### **2.1.2 Communication barriers**

ALSWA represents many Aboriginal people for whom English is a second or third language, particularly in remote areas. These people are more likely to live traditionally and lack a detailed understanding of their legal rights, and are clearly vulnerable when engaging with the criminal justice system. Unfortunately, ALSWA staff have reported many instances where clients in custody have had either a language barrier or a hearing impediment, but the police considered a standard phone call between the client and a non-Aboriginal lawyer to be sufficient. In ALSWA's view, this is

far less than satisfactory and does not constitute a proper opportunity to communicate with a lawyer.

Police interviews with Aboriginal suspects who speak English but not as a first language routinely proceed in the absence of an interpreter in the relevant Aboriginal language. This is so, despite CR-1.5.2 *Obtaining an Interpreter* in the WA Police manual, and the existence of interpreter services such as the Kimberley Interpreting Service. ALSWA is only aware of one example over the past 15 years where a police interview has been conducted in circumstances where the suspect was provided with the assistance of an interpreter in their Aboriginal language. The practice appears to be that interviews proceed in English if the suspect demonstrates some capacity to speak English, regardless of fluency. This is contrary to police practice in jurisdictions such as the Northern Territory, where Aboriginal interpreters from the Aboriginal Interpreter Service are frequently listed to assist in the interview process. There is a mutual benefit to both police and the suspect in having an Aboriginal interpreter present to both frame questions and assist in the provision of answers. This issue brings into sharp relief the need for a properly funded and resourced Aboriginal interpreter service in Western Australia. The Kimberley Interpreting Service is the only interpreter service in Aboriginal languages in Western Australia. The irony and injustice is that interpreters are always provided to non-English speaking individuals charged with criminal offences; for example, an Indonesian speaking accused charged with people smuggling offences will always be provided with access to an Indonesian interpreter, but a Martu speaking Aboriginal accused from Jigalong will never have access to a properly accredited and experienced Martu interpreter.

### **2.1.3 Interview facilities in police lock-ups**

Another common issue throughout Western Australia is the lack of appropriate interview facilities for people in police custody to instruct their lawyers. One lawyer reports that she had to interview clients in the Halls Creek lock-up while standing up, speaking to them through the bars of their cell while other detainees were present. In Collie, Narrogin and Harvey, local ALSWA staff also advise that they must interview clients in their cells. Similarly, ALSWA staff in Kalgoorlie advise that all instructions are taken in the open area in front of the cells and that, as an officer needs to be present in this area for safety reasons, the confidentiality of these discussions is often compromised. Interview rooms are available in Busselton, Kununurra, Karratha, South Hedland and Geraldton but the facilities in the latter two towns are not soundproof, again raising concerns around confidentiality. The rooms in Karratha and South Hedland are non-contact and local ALSWA staff advise that, as a result, it can be near impossible to hear what the person in custody is saying.

In contrast, our Perth office advises that while the facilities at the new Perth Watch House are private for interviews, they are uncomfortable and impractical to use as the chairs are too low and fixed to the ground, and the writing surface is too high for many people. From a sitting position, taller lawyers can generally only see the clients' foreheads unless the client is standing up. Shorter lawyers need to take instructions while standing. There are no interview facilities at all in Roebourne, Halls Creek and Newman, but Newman police station allows lawyers to make use of one of the interview rooms.

ALSWA is firmly of the view that in depriving arrested persons of their liberty following police arrest, it is incumbent upon the WA Police to provide the resources and processes necessary to facilitate justice. In addition to ensuring that all arrested persons access legal advice and are provided with an

interpreter if required, every police lock-up in Western Australia should also have soundproof and private interview rooms for people in custody to provide instructions to, and seek advice from, their lawyers. These standard rooms should allow people in custody and their lawyers to speak with each other at a normal, conversational volume, and be designed to allow appropriate documents to be exchanged and viewed. These facilities should be available 24 hours a day, every day of the year.

#### **2.1.4 Time restrictions for accessing legal advice in police custody**

Throughout the State, ALSWA staff generally report that they do not experience any formal restrictions around the times that they can access clients in police lock-ups. One exception is the Bunbury office, which advises that lawyers are unable to speak with clients until they are transported to the local courthouse. Our South Hedland office also advises that despite the lack of formal restrictions, police staff shortages often mean that access can be difficult to gain in practice. For example, there are commonly times in Port Hedland, Karratha and Newman where ALSWA is advised that there are no officers available at the police station to arrange a meeting between lawyers and their clients. While contact is generally facilitated at a later stage, there have been occasions where a person in custody has appeared in court via video-link without first speaking to a lawyer because there has been no police officer available to facilitate access. This points to a need for additional resources in some police lock-ups. It also serves as further evidence for the need for WA Police to implement a comprehensive internal legal advice policy, to ensure that all people held in police custody are provided with the opportunity to access legal advice before police interviews and court appearances.

#### **2.1.5 Custody notification service**

RCADC recommendation 224 states:

“..in jurisdictions where legislation or standing orders or instructions do not already so provide, appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person, other than for such arrests for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.”

This recommendation was made in response to two principal concerns. First, it was felt that permitting Aboriginal people to speak with a person highly trained in criminal law and in dealing with Aboriginal people would serve to calm an otherwise distressed Aboriginal accused and prevent self-harm or suicide. Secondly, it was believed that custody notification would permit Aboriginal people to receive legal advice delivered in a culturally sensitive manner at the earliest possible opportunity in order to prevent them from acquiescing to police demands in a manner that could jeopardise subsequent court proceedings.

RCADC recommendation 224 was enacted into legislation in NSW in the form of clause 28 of the *Crimes (Detention After Arrest) Regulation 1998*. This was later repealed and re-enacted (in the same form) as clause 33 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005* (NSW). Hence, presently, when an Aboriginal person is arrested and taken into police custody in NSW, clause 33 of the *Law Enforcement (Powers and Responsibilities) Regulation 2005* requires that the relevant custody manager (i.e. Officer in Charge of a police lockup) notify the ALS. Clause 33 states:

“If a detained person is an Aboriginal or Torres Strait Islander, then, unless the custody manager for the person is aware that the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must:

- (a) immediately inform the person that a representative of an Aboriginal legal aid organisation will be notified:
  - (i) that the person is being detained in respect of an offence, and
  - (ii) of the place at which the person is being detained, and
- (b) notify such a representative accordingly”.

This provision thus places the responsibility for notification squarely upon NSW Police, and specifically upon the relevant custody manager. It is submitted that an equivalent provision be enacted in the Criminal Investigation Act 2006. Currently, the WA Police manual requires police to send a fax to the nearest ALSWA office when a potential ALSWA client is charged. This is a meaningless process given that faxes are frequently sent after business hours and ALSWA is not resourced 24 hours a day. Indeed, this observation was made in the findings of the inquest into the death of Donald Arthur Nebro (Nebro Inquest 06/07).

A legislative requirement making it mandatory for police to contact ALSWA when an Aboriginal person has been taken into custody would provide a number of benefits and protections to the West Australian Aboriginal community.

Aboriginal people form arguably the most disadvantaged sector of the Western Australian population. To this day, they continue to be highly overrepresented in the criminal justice system. Western Australia has the highest imprisonment rates for Aboriginal adults and juveniles in the country.

A legislative requirement that ALSWA be notified about an Aboriginal person in custody would enable ALSWA to be better able to assist in reducing the overrepresentation of Aboriginal people in custody by ensuring that they are provided with legal advice where this is appropriate. In particular, a custody notification requirement would allow solicitors to ensure that the rights of Aboriginal people are observed whilst they are held in police custody and to encourage police officers to grant bail where this is appropriate. In the case of Aboriginal young persons, solicitors may be able to encourage police to deal with the relevant accused by way of diversion under the *Young Offenders Act* rather than through the laying of criminal charges.

WA Police will also benefit from the work of ALSWA solicitor in determining whether a particular Aboriginal person is affected by drugs, alcohol or mental illness. Acquisition of such information about an accused will allow custody managers to better understand the circumstances of the person and to provide appropriate medical attention. This will in turn prevent the occurrence of self-harm and suicide in custody.

By being in a position to better respect the rights of an Aboriginal person, WA Police will also benefit from courts not excluding evidence obtained in unlawfully.

The Western Australian criminal justice system would greatly benefit from a custody notification requirement in a number of ways. First, on the basis that solicitors will be able to speak with both

the Aboriginal person and the relevant custody manager, bail will more frequently be granted where this is appropriate. This will result in a saving of police resources where Aboriginal persons are held in custody for shorter periods of time. Assistance provided to custody managers by ALSWA solicitors in upholding the rights of Aboriginal persons will ensure that evidence obtained by police is obtained in a lawful manner and not excluded by judicial officers once it has reached the court after significant time and effort has been put into building a case against the accused. Thirdly, and perhaps most importantly, Aboriginal people will benefit from a robust defence which may prevent them from ultimately being subjected to a custodial sentence. This will result in significant savings for the Western Australian Department of Corrective Services.

Of course, any custody notification service would need to be adequately funded and resourced to operate effectively, especially after hours and on weekends. In that respect, the NSW/ACT Aboriginal Legal Service has been provided with Government funding to employ legal staff to provide legal advice to Aboriginal clients in police custody on 24 hour seven day a week basis. Similar funding would need to be available in Western Australia should the Criminal Investigation Act 2005 be amended in order to ensure that any legislative change was effective.

## **2.2 Access by detainees to medical services**

### **2.2.1 Access to medical assistance generally**

Across ALSWA offices, the consistent feedback is that people in police custody are provided with access to medical assistance if required. Typically, police will accompany the person to the local hospital, but sometimes a health professional will attend the lock-up. Our Kununurra office noted that the only 'medical access' problem it observes is the lack of local services available, particularly for people suffering from a mental illness.

### **2.2.2 Identification and management of people with a mental illness**

From ALSWA's perspective, the most significant health issue in the police custodial setting is the identification and treatment of people of people who suffer from a mental illness. In ALSWA's view, police often mishandle situations where the alleged offender has mental health problems. This may be because police are not appropriately trained to identify mental health problems, or they are not appropriately trained to manage people suffering from mental illness. Throughout Western Australia, this issue is exacerbated by the lack of facilities and services for people with mental illness outside the criminal justice system. Against this backdrop, it is easy for police custody to become the default solution.

Feedback from ALSWA offices indicates that the initial screening process for mental illness varies between police lock-ups; for example, our Kununurra office reports that police in that region arrange for a local mental health nurse to assess people, whereas our South Hedland office is not aware of any formal assessment process at all. Generally, it appears that arrested persons only seem to be given access to psychiatric assistance or assessment if they present with overt symptoms of mental illness, express suicidal ideation, or disclose a diagnosed mental illness. In ALSWA's view, this approach can be problematic: the person in custody may not yet have been diagnosed – indeed,

their offending may be symptomatic of this – or given the stigma associated with mental illness, they may feel embarrassed about their condition and be reluctant to disclose it to police.

ALSWA offices also raised general concerns with the management of people suffering from mental illness who come into contact with police. ALSWA staff report that it is not uncommon for police to fail to administer prescribed medications for arrested persons suffering from a mental illness, pointing to a need for improved training and internal processes. Although it may not be immediately life-threatening, people taking antipsychotic medication or mood stabilisers, in particular, can suffer significant psychiatric repercussions from missing between 12-48 hours of a medication. Across the organisation, ALSWA staff are also aware of countless examples where people suffering from mental illnesses have been charged with various offences in circumstances where a knowledge of the person's mental health status may have allowed for alternative custody management strategies to be implemented.

Overall, it appears there is scope to improve and standardise the process for identifying mental health issues in police custodial settings across Western Australia, and for referring people to mental health professionals for further assessment and treatment, where appropriate. There is also a clear need for WA Police to strengthen police training in the identification and management of people suffering from a mental illness.

It is ALSWA's position that every police lock-up should have access to an on-call mental health nurse in the local area to assess and, if necessary, treat every person in custody demonstrating mental health problems. This was also a finding of the inquest into the death of Mark Anselo Ugle (Ugle Inquest 11/03).

## **2.3 Access by detainees to third parties**

### **2.3.1 Visiting rules and restrictions**

Throughout Western Australia, ALSWA offices consistently report that people have trouble visiting family members in police lock-ups. This is despite the RCADC recommendation that "police should take all reasonable steps to both encourage and facilitate the visits by family and friends of persons detained in police custody": recommendation 146. In the considerable experience of ALSWA staff, it is very important to the wellbeing of Aboriginal people in custody that they remain in contact with family members, even during short periods in detention. This is particularly true for juveniles, people suffering from a mental illness, and other vulnerable sub-groups.

Visiting rules and restrictions appear to vary between police lock-ups across Western Australia. For example, ALSWA's local offices advise that visits are not allowed in the Geraldton police lock-up, while contact visits are permitted in Kalgoorlie when the person in custody is a juvenile awaiting transfer to Perth. ALSWA's Kununurra office often hears complaints from families about a lack of access and poor visiting facilities, and ALSWA's Perth office advises that police only appear to facilitate visits if the arrested person is a juvenile. In South Hedland, visits other than official visits are only permitted in exceptional circumstances.

There is clearly a need for WA Police to implement a policy throughout Western Australia to guide police discretion in facilitating visits of family of people held in custody. Such a policy should prescribe that juveniles and other vulnerable groups should be permitted regular visits with family members.

### **2.3.2 Communication between police and family members of detainees**

ALSWA's South Hedland office reports that there is often a lack of communication between the police and family and friends about the status of a person in custody. Even when people have been dealt with in court and are due to be released, there are often significant delays and family and friends are often left frustrated and uninformed. A key RCADC recommendation called for the police to notify the relevant Aboriginal Legal Service or the parent or guardian whenever an Aboriginal juvenile is arrested: see recommendation 243. Yet, regrettably, ALSWA staff throughout the State can provide examples where the families of juveniles have not been advised by police that the young person has been taken into police custody until many hours after the arrest. It is of great concern to ALSWA that this particular RCADC recommendation has not been implemented. It goes without question that a responsible adult should be advised immediately when a juvenile is taken into police custody. In ALSWA's view, there should not be any scope for police discretion on this matter.

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## **3. Lock-up design, staffing & administration**

### **3.1 Conditions**

#### **3.1.1 Safety and hygiene in cells**

Feedback from ALSWA offices suggests that the holding cells in police-lock ups throughout Western Australia are generally safe and in a good state of repair, although there are some notable exceptions, including the lock-ups in Collie and Halls Creek.

In ALSWA's view, the most pressing issue is over-crowding and hygiene, particularly in police lock-ups across the Pilbara. ALSWA's South Hedland office reports that there is often significant overcrowding in cells in this region, with it not being unusual to find three or four men sharing one cell. As a result, conditions in these cells become unhygienic over the course of the day with uneaten food and smelly blankets and clothes strewn across the floor. Cell inhabitants must all share one toilet in the corner, and it is not uncommon to find flies and other insects in the cell. Another ALSWA lawyer provided an example of two clients who were held in the Halls Creek lock-up during summer. She described the temperature inside the cells as "stifling hot", and reported that the two clients – an adult and a juvenile, both with health problems – stayed in what looked like an outdoor cage with concrete floors and dirty mattresses on the ground.

With the exception of Kununurra and Halls Creek, ALSWA staff could not advise of any lock-up facilities in Western Australia that have appropriate areas for clients to exercise and access sunlight and fresh air: see recommendation 149. Of even greater concern, ALSWA's Kununurra office advises

that staff have observed hanging points in police cells in Kununurra and Halls Creek: see recommendation 165.

### **3.1.2 Temperature control**

The lack of temperature control in police lock-ups is a major issue. Throughout the state, ALSWA staff regularly hear complaints from clients about the temperature in police lock-ups, most commonly that it is far too cold. Staff from ALSWA's South Hedland office have regularly observed clients from remote communities, unused to cold weather, shivering in the air-conditioned environment. Several ALSWA staff from across the State advise that they have, at times, suspected that police officers have intentionally turned up the air-conditioning in police lock-ups to make detainees uncomfortable.

### **3.1.3 Provision of clothing**

Another common observation from ALSWA staff is that people in police custody are rarely provided with warm clothing. Indeed, our Geraldton office advises that sometimes clients are held without shirts. Where clothing is supplied, it is often inappropriate. Our South Hedland office once observed a man enter the courtroom in Newman with a shirt that suggested a poor attitude to violence against women, and the prosecutor referred to the shirt in his submissions. It was subsequently revealed that the police had provided him with the shirt. The man was unable to read. In ALSWA's view, it is not unreasonable for WA Police to provide people held in police custody with standard issue clothing, if required.

### **3.1.4 Food**

The nutritional quality of the food provided in police lock-ups is another issue of concern. RCADC quite reasonably called for police-lock ups to provide regular, nutritious meals to detainees: recommendation 143. While ALSWA staff report that meals are regularly provided in police lock-ups, the standard of the food is generally quite poor throughout the State. Feedback from ALSWA offices suggests that people in police custody are typically fed pies and little else. Our Geraldton office noted that young people who are awaiting transport to the juvenile detention facility in Perth sometimes go days in police custody without a proper meal. When healthy and inexpensive frozen meals are so readily available, there is no justification for police lock-ups to provide people with such nutritionally poor meals. Such unreasonable and easily remediable practices further demonstrate the urgent need for the conditions and treatment of people in police custody to be monitored by an independent body.

## **3.2 Custodial care**

### **3.2.1 Screening form**

RCADC recommended that a screening form should be completed and a risk assessment made whenever a person is taken into police custody, before being placed in a cell: recommendation 126; also see recommendation 125. Generally, ALSWA offices report that the initial screening process conducted by WA Police is quite thorough, although as discussed above, it is ALSWA's view that a

more comprehensive mental health assessment is necessary. Importantly, ALSWA's South Hedland office noted that the thoroughness of the screening process appears to vary enormously depending on the officer conducting it, despite the pro forma questions. This potential for variability points to a need for improved police training, and perhaps a review of the internal controls and supervision of police officers performing this important role. ALSWA also believes that the screening process – and ultimately the general welfare of arrested people – would be enhanced by the appointment of independent welfare officers at each police lock-up, to assist police conduct the initial screening process. This was also one of the recommendations of the inquest into the death of Mark Anselo Ugle (Ugle Inquest 11/03).

### **3.2.2 Welfare checks and cell monitoring**

At recommendations 137 and 139, the RCADC called for police to conduct regular in-person welfare checks of all people held in police custody, but only ALSWA's Kalgoorlie and South Hedland offices were able to confirm that local police lock-ups followed this practice. The RCADC also called for police lock-ups to emphasise direct visual surveillance of cells over the use of CCTV; however, our Geraldton and Kununurra offices advise that local police lock-ups rely primarily on CCTV. From ALSWA's perspective, the layout of the cells in the Kalgoorlie police lock-up appears to be best practice and should be replicated throughout the State, where possible. From the description provided by our local office, cells are set out in a semi-circle curve so police can directly interact with people in custody at all times, but CCTV also monitors the area. ALSWA would like to see a similar layout introduced in all new police lock-ups, and for WA Police to consult with relevant community organisations – such as ALSWA – in the design: see recommendation 148.

Similarly, RCADC also recommended that all cells should be equipped with an alarm or intercom system to facilitate direct communication between people in cells and police officers: recommendation 144. Only ALSWA's South Hedland office could confirm that the cells in local police lock-ups have these facilities, although the design of the Kalgoorlie lock-up would indicate that if cells do not have alarms or intercoms, it is because the cell layout may make them redundant.

### **3.3 Treatment of Aboriginal detainees**

While ALSWA staff consistently work with police officers throughout the State who treat Aboriginal people respectfully and appropriately, regrettably, every ALSWA criminal lawyer and court officer can cite examples of police interacting with people in custody in a manner which is discourteous, inappropriate or inhumane: see recommendation 134. There is unquestionably a need for additional police training in this regard, as well as an internal review within WA Police of organisational culture.

Our South Hedland office suggested that the failure of some police officers to explain the processes of arrest to Aboriginal people may cause offence. For example, clients often report finding the way in which strip searches are conducted at the time of intake to be distressing and humiliating. Other examples of police behaviour cannot be explained, such as the time an ALSWA juvenile client was awoken when he was kicked in the head by a police officer.

### **3.4 Juveniles**

The RCADC made explicit recommendations about the treatment of juveniles who are arrested, as well as the inappropriateness of detaining juveniles in police lock-ups; however, this remains an issue of ongoing concern for ALSWA. The feedback provided by our offices indicates that the relevant recommendations have not been implemented in Western Australia: see recommendations 242, 243, 244.

ALSWA is unaware of any police lock-up in Western Australia with separate holding facilities for juveniles. Overall, internal feedback suggests that juveniles are held in separate cells from adults; however, as adults and juveniles are held in the same lock-up area, it is often still possible for them to communicate with each other. Only ALSWA's Kununurra office knew of examples – from the Halls Creek lock-up – where juveniles had shared cells with adults. It is ALSWA's strong view that juveniles should not be held in the same custodial facilities as adults.

Unfortunately, whether or not police contact a juvenile's parent or guardian seems to vary between police lock-ups and police officers. This is obviously of great concern to ALSWA. ALSWA's Kalgoorlie office reports that officers in local lock-ups generally go out of their way to contact both ALSWA as well as a responsible adult when a young Aboriginal person is taken into custody. In contrast, our South Hedland office advises that this practice varies between police lock-ups throughout the Pilbara. There is clearly a need for WA Police to implement an internal policy, prescribing the process for contacting a responsible adult when a juvenile is held in police custody.

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## **4. Training of custodial officers on cultural issues**

ALSWA is unable to comment on the training undertaken by WA Police on Aboriginal cultural issues, but the feedback from our offices suggests that awareness of the culture and practices of Aboriginal peoples varies markedly between individual police officers. For example, our South Hedland office reports that the police officers working in both Nullagine and Jigalong have a good relationship with the community and that there is a clear respect shown for Aboriginal culture and practices. Unfortunately, however, the same level of respect is not always evident in the larger Pilbara towns of Newman, Roebourne, Karratha and Port Hedland.

ALSWA staff report occasional complaints by clients of racist or offensive language by lock-up staff. This feedback again points to the need for WA Police to review the Aboriginal cultural awareness training provided to police officers.

## **5. Whether oversight mechanisms, procedures and disciplinary measures for personnel involved in custodial processes are adequate**

ALSWA offices were not aware of whether people held in police custody are told how they can make a complaint, however, feedback suggests that the clients are generally unaware of the complaints process until they have sought advice from a lawyer. The standard complaint process for police lock-ups throughout Western Australia appears to be that an initial complaint is lodged with the police station, and then escalated if necessary through formal channels. Our South Hedland office noted that the Officers in Charge at most of the police stations within the Pilbara region are willing to facilitate meetings to discuss complaints and concerns, but clients would rarely be aware of this or pursue that course of action without assistance. In ALSWA's view, this is further evidence for the need for an oversight body, as well as an improved communications strategy relating to the WA Police complaints process.

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## **6. Conclusion**

This submission has attempted to outline some of the problems with custodial arrangements in police lock-ups in Western Australia, as well as identify some of the relevant RCADC recommendations that have not been implemented in the 22 years since the Royal Commission concluded. This submission also makes several suggestions about improvements to internal WA Police policies and practice. ALSWA is ultimately of the view that OICS should be given the role of overseeing custodial arrangements in police lock-ups to ensure that the RCADC recommendations are fully implemented, and the treatment and conditions of people held in police custody is independently monitored.