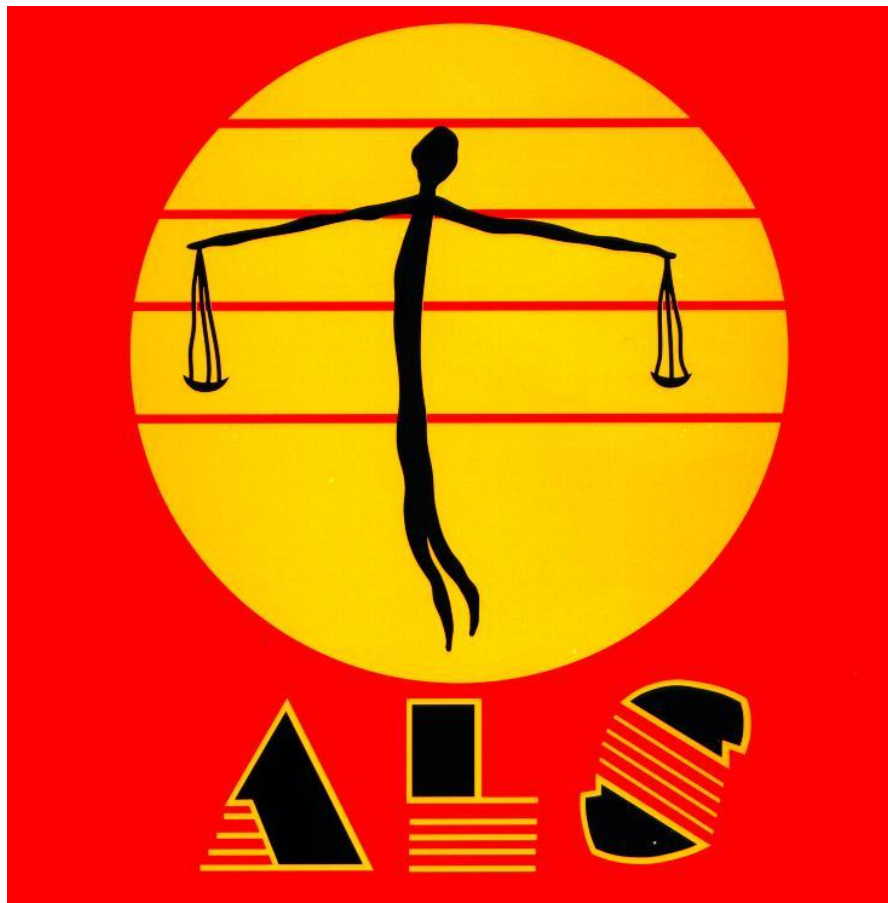


ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)

**Submission to the
Community Development and Justice Standing Committee
Legislative Assembly
Parliament of Western Australia**

**‘Making our prisons work’
Inquiry into the efficiency and effectiveness of prisoner
education, training and employment strategies**

April 2010



CONTENTS	Page
1. Introduction and Scope of Submission	3
2. About ALSWA	3
3. The WA Justice System failing Aboriginal Peoples	4
4. Terms of Reference	5
4.1 Opportunities for work and the development of a workplace culture within WA prisons	5
4.2 Current rehabilitative programs and strategies in WA prisons	6
4.3 The impact of prison education and training programs on post-release outcomes and the data collection capacity within government to evaluate the effectiveness of existing programs	8
4.4 The gaps in post release outcomes between Aboriginal and non-Aboriginal offenders	8
4.5 The legislative and community incentives and impediments to prisoner employment, education and training	8
4.6 The integration of behaviour management, education and training strategies with real work opportunities	8
4.7 The success of alternative strategies, nationally and internationally in reducing recidivism	9
4.8 Any major issue that emerges that the Committee considers should be included in the Inquiry	10
5. List of Recommendations	12

1. Introduction and scope of the submission

ALSWA prepared this submission in response to the invitation from the Parliament of Western Australia (WA), Legislative Assembly Standing Committee on Community Development and Justice (the Committee) to make submissions for “Making prisons work”: an inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies.

The Department of Corrective Services (DCS) indicated that 40% of the adult prisoner population and 74% of the juveniles in custody were Aboriginal as at 18 March 2010.¹ The Aboriginal Legal Service of WA (Inc.) (ALSWA) questions how the prison system can ‘work’ when Aboriginal peoples² are imprisoned at such a disproportionately high rate compared with non-Aboriginal peoples.

The disproportionately high level of Aboriginal peoples in the prison population is compelling evidence of the justice system not working for Aboriginal peoples in WA. ALSWA urges immediate action to address the overrepresentation of Aboriginal peoples in the justice system as a critical factor to making our prisons work, whilst also making our society a fairer, more just and respectful place for all citizens to equally enjoy living in dignity as human beings.

In this submission, ALSWA will provide an overview of its services to demonstrate our relevant expertise and experience in the justice system, then briefly highlight our key concerns about the appalling level of overrepresentation of Aboriginal peoples in the criminal justice system and prison population, before referring to the inquiry terms of reference and making various recommendations that we hope will assist in directing the Committee to where further attention and action is required to improve the realities of the prison and justice system for Aboriginal peoples.

ALSWA welcomes the opportunity to appear before the Committee to assist in directing the current inquiry and providing a voice for the Aboriginal community of WA.

2. 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.

¹ DCS Weekly Offender Statistics, <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2010/cnt100318.pdf> at 26/03/10.

² In this submission, ‘Aboriginal peoples’ refers to Aboriginal and Torres Strait Islander peoples.

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 officers³ 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.

3. The WA justice system failing Aboriginal peoples

Aboriginal peoples in WA have been disproportionately and detrimentally affected by government policies since colonisation through many acts and omissions including dispossession of traditional lands, lack of citizenship, economic and social marginalisation, limited access to services, protection and assimilation policies. The impact of these previous policies is still felt by Aboriginal peoples in contemporary society. Aboriginal peoples are often victims of disadvantaged and dysfunctional family backgrounds and are more likely to be on the streets, interacting with police, and in turn become absorbed in a system that is ill-equipped to assist them.

ALSWA is frustrated with the lack of progress and political will to fundamentally improve the experience of Aboriginal peoples in contact with the justice system and the far-reaching impact this has on our society as a whole. This appalling situation contributes to a perceived divide between Aboriginal and non-Aboriginal peoples, feeds negative stereotyping and racism, and seriously threatens the spiritual strength and pride of Aboriginal peoples, whilst tarnishing the 'fair-go' reputation of Australia as a civilised nation.

The WA Government continues to tolerate over-policing, racism, poor utilisation of diversionary schemes by police, absence of crisis care accommodation, bail hostels and rehabilitation programs, and denying Aboriginal peoples' access to adequate legal advice. The renewed emphasis on mandatory sentencing and other punitive laws, refusing parole and denial of medical treatment leading to deaths in custody suggests that the WA Government is more intent on incarcerating vulnerable people in sub-standard conditions and keeping them there, instead of taking meaningful and effective steps towards rehabilitation and addressing the underlying causes of their disadvantage and interaction with the justice system, thereby reducing this injustice in our society.

ALSWA recommends the Committee explore a fundamentally different approach to criminal justice policy through the adoption of the 'Justice Reinvestment' framework to address the failure of the justice system for Aboriginal peoples, which was explained by the (former) Aboriginal and Torres Strait Islander Social Justice Commissioner as follows:

Justice reinvestment is a localised criminal justice policy approach that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes of crime in those communities.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending. Justice reinvestment is not just

³ There are two Executive Officers for each of the former 8 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.

*about reforming the criminal justice system but trying to prevent people from getting there in the first place.*⁴

The United States of America (USA) demonstrated that increased expenditure on imprisonment does not make financial sense. Despite increasing expenditure on prisons, recidivism and return to custody increased to the point where two thirds of prisoners were returning to custody.⁵ Research in the United Kingdom (UK) has indicated justice reinvestment provides a cost-effective alternative, with a long run value of benefits 'in excess of £100 million over a ten-year period.'⁶

ALSWA submits this new positive framework is desperately needed to reverse current trends and make the justice system and our society 'work' in a more just, fair and economically viable manner.

4. Terms of Reference

For the purpose of this inquiry and its terms of reference, we acknowledge the relevant expertise of the Office of the Inspector of Custodial Services (OICS) in this area and endorse its comprehensive submission. We make the following comments based on our general expertise in the area of justice issues.

4.1 Opportunities for work and the development of a workplace culture within WA prisons

The Department of Corrective Services (DCS) outlined opportunities for work in WA prisons in their '2010 Handbook, A guide to services provided by the Department.'⁷

ALSWA acknowledges that some meaningful opportunities for prisoners in the Prisoner Work Camps and the Prisoner Employment Program do exist, however we note that these opportunities are very limited.

One positive development has been the commitment from some mining companies to employ prisoners completing Work Ready programs that prepare them for employment upon release. Only about 50 ex-prisoners over the past five years have gained successful employment in the mines.⁸ More of these opportunities should be available and promoted to prisoners and also in the broader community.

Prisoners have limited access to opportunities that exist in only some and not all of the prisons. OICS has previously reported on the lack of infrastructure to support vocational skills and employment based programs in the 'Aboriginal prisons' of Broome, Roebourne and Eastern Goldfields.⁹ The Inspection Standards for Aboriginal Prisoners¹⁰ produced by OICS provide suitable guidance for appropriate education and training needs that should be incorporated as fundamental requirements in WA prisons.

The impact of overcrowding further reduces the availability of opportunities in prisons so that where opportunities exist they are not for sufficient periods of time. The Hon

⁴ Social Justice Report 2009, Australian Human Rights Commission, pp 9-56, http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/.

⁵ S Tucker and E Cadora, 'Ideas for an Open Society: Justice Reinvestment', Open Society Institute (2003), in Social Justice Report 2009, pp. 12-13, above note 4.

⁶ New Economics Foundation, 'Unlocking Value: How we all benefit from investing in alternatives to prison for women offenders,' 2008, in Social Justice Report 2009, p13, above note 4.

⁷ DCS, <https://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/handbook-2010.pdf>

⁸ DCS Media Release, 'Roebourne Prisoners have Mines in Sight,' 4 December 2009.

⁹ OICs, *Report of an Announced Inspection of Roebourne Regional Prison*, Report No. 24 (October 2004) 36-41.

¹⁰ OICS, Version 1, 2008, p19-24.

Tom Stephens MLA publicly expressed these concerns over the lack of training and education for people in WA prisons, claiming that Casuarina was overflowing with over 170% capacity, half of those prisoners being Aboriginal and from regional areas, and the negative impact this has on tax-payer money by failing to divert people from the prison system.¹¹

OICS gave further insight on this point in Professor Morgan's evidence to the Inquiry, stating that most opportunities for work involve menial tasks and are frequently split between prisoners because of overcrowding.¹²

ALSWA is further concerned that over-crowding is exacerbated by the increasing numbers of Aboriginal prisoners being refused parole. ALSWA has been informed by several clients serving sentences of imprisonment that Aboriginal prisoners are increasingly reluctant to participate in rehabilitation programs because they feel that such participation will not assist them in being released on parole, and that prison behaviour is generally worsening.

4.2 Current rehabilitative programs and strategies in WA prisons

ALSWA is concerned about the lack of rehabilitative programs and strategies in prisons, and in particular the lack of culturally appropriate programs suited to the needs of Aboriginal peoples.

ALSWA is further concerned about the impact of failing to provide rehabilitative programs to offenders, demonstrated in the following case:

An Aboriginal man from Fitzroy Crossing was sentenced to a term of imprisonment in relation to a serious assault committed on his female partner. The man had numerous prior convictions for previous assaults on the partner. At the time of sentencing, the man was serving a term of imprisonment for an assault committed upon another woman. Prison documents provided by the man to his ALSWA lawyer noted that the man had been assessed as needing to participate in Aboriginal specific alcohol rehabilitation, anger management, and cognitive behavioural therapy programs. None of these programs were made available to the man whilst serving the sentence. The man was not released to parole because he had not addressed the core reasons for his offending behaviour and remained a danger to the community. He was effectively trapped in the system.

The unavailability of such programs in Perth metropolitan prisons, begs the question as to whether such programs are available for prisoners in regional areas. These programs are necessary to address and manage offending behaviour to prevent reoffending.

ALSWA is also concerned at the lack of programs and strategies available in the community where efforts are being made to divert people from prison, especially in regional and remote areas, for offenders subject to community based dispositions. Lack of access to programs in the community contributes to preventable breaches of orders and bail conditions, leading to imprisonment and overcrowding.

ALSWA recently noted in its evidence before the Inquiry into Regional and Remote Indigenous Communities:

¹¹ ABC News, *MP urges more prison training opportunities*, 25/03/10, <http://www.abc.net.au/news/stories/2010/03/25/2856037.htm?site=news>

¹² Community Development and Justice Standing Committee, 'Making Prisons Work', Transcript, 10 February 2010.

“Fitzroy Crossing... is one of the 26 large Aboriginal communities that is being targeted by the federal government with its new funding policy. It has one drug and alcohol counsellor for the whole town. There is no psychiatric or psychological diversion or rehabilitation program. There is no sex offence program. There is no victim offender mediation. There is very limited capacity for the department of corrections or juvenile justice to put adults or juveniles on work orders, particularly females. So what it all means is that when a magistrate sitting in these jurisdictions is sentencing a person and trying to craft a fair and just community-based order, they have got no practical options which they can incorporate in those orders. The unfortunate consequence on many occasions is that magistrates become frustrated and turn to the next option in the line, which is a term of either suspended or immediate imprisonment, and that just increases incarceration rates.”¹³

DCS stated to the Inquiry:

“We have to be completely honest ... and say that remote delivery of programs is not happening in the short term due to lots of logistical problems and the fact that it is an expensive option and also that, in real terms, we do not have the staff or the skills to be able to deliver these programs.”¹⁴

Another example in this context can be found in the Ngaanyatjarra Lands in the Central Desert area of WA. Warburton is the main Aboriginal community in this area. Within this area there are no community based alcohol and drug programs, petrol sniffing programs, domestic violence programs or diversionary programs run by DCS.

Aboriginal communities in the Ngaanyatjarra Lands are alcohol free. The nearest WA town to the Ngaanyatjarra Lands, where alcohol can be accessed, is Laverton. Laverton is 700 kilometres from Warburton and 380 kilometres from Kalgoorlie. Alcohol related offending by Aboriginal peoples coming to Laverton from the Ngaanyatjarra Lands to drink is notorious, yet in Laverton there are no community based rehabilitation programs run by DCS nor is there a sobering up shelter in the town.

In August 2007, the Chief Justice of the Supreme Court of Western Australia created the Indigenous Justice Taskforce (“IJT”). The IJT was established to bring together the judiciary and relevant agencies involved in the delivery of justice services to deal with increased numbers of individuals (most of whom were Aboriginal) from the Kimberley region charged by police with sexual offences. ALSWA has acted for over 200 clients charged with sexual offences since mid 2007. A number of young Aboriginal males have been sentenced to community based orders in relation to willing sexual activity with their underage female partners. Some of these cases have involved young males who were unaware of the legal age of consent and who had engaged in unprotected sex. Unfortunately, despite judicial criticism, no community based sex offender education and treatment program for Aboriginal offenders has been put in place in the Kimberley. This has led to young Aboriginal males being placed on community based orders which have no capacity to address the core reasons for their offending behaviour.

¹³ D Brunello, ALSWA, *Committee Hansard*, 9 October 2009, p 3 in Senate Select Committee Report, Regional and Remote Indigenous Communities, *Third Report 2009*, Commonwealth of Australia, Canberra, at para 4.38.

¹⁴ J Tang, DCS, *Committee Hansard*, 26 August 2009, p. 9, in Senate Select Committee Report, Regional and Remote Indigenous Communities, *Third Report 2009*, Commonwealth of Australia, Canberra, at para 4.39.

4.3 The impact of prison education and training programs on post-release outcomes and the data collection capacity within government to evaluate the effectiveness of existing programs

We note the international evidence that participation in education in prisons generally reduces recidivism.¹⁵ The question is whether the education and other programs that exist in WA prisons are having any effect on reducing reoffending in WA. ALSWA does not have the resources to undertake such a review and provide detailed information on this issue. The current high rates of reoffending are a general indicator that programs are not having the necessary impact and could be improved.

We suggest that both quantitative and qualitative data is required to critically assess the effectiveness of programs. Competent researchers with an ability to communicate with people from different cultural and socio-economic backgrounds, in particular Aboriginal peoples, need to enter the prisons and speak directly with prisoners about their views and ideas to understand their experiences and needs.

We recommend the Committee consider employing Aboriginal consultants to undertake this research.

4.4 The gaps in post release outcomes between Aboriginal and non-Aboriginal offenders

The high rates of reoffending by Aboriginal peoples provide further evidence of the need for programs and opportunities that are better targeted to their needs. The obstacles many Aboriginal peoples face when they leave prisons provide further challenges that need to be addressed. These include prisoner stranding, where prisoners are left with no means of returning to their communities, and lack of programs and opportunities in communities when they do return, as noted above. ALSWA prepared a submission for the WA Attorney-General in May 2008 on 'The Stranding of People after contact with the Justice System,' which is **attached** as Annexure 1.

This is even more important, where prisoners are now being refused parole more frequently and potentially released back to the community without the opportunity of supervision and support being provided by parole.

ALSWA recommends a more holistic approach is needed to improve the situation of Aboriginal peoples individually as well as collectively for Aboriginal communities. The framework of justice reinvestment, referred to above, is the appropriate type of holistic strategy that is urgently needed to address these challenges.

4.5 The legislative and community incentives and impediments to prisoner employment, education and training

We endorse the comprehensive overview of incentives and impediments provided by OICS in their submission on this point.

4.6 The integration of behaviour management, education and training strategies with real work opportunities

ALSWA has no knowledge of culturally appropriate programs for Aboriginal peoples that effectively integrate behaviour management, education and training strategies with real work opportunities, and suggest this is an area of major improvement for

¹⁵ UK Social Exclusion Unit Office of the Deputy Prime Minister, '*Reducing Re-Offending by Ex-Prisoners*,' (London, 2002).

prisons to focus on delivering. As noted above at 4.2, ALSWA is concerned at the failure of specific programs being made available to Aboriginal prisoners and the impact this has on offender behaviour.

One particular method of teaching and generally interacting with Aboriginal peoples has been produced by the Department of Education, known as the 'What Works Program.'¹⁶ These types of programs and tools have been developed by Aboriginal peoples for Aboriginal peoples, to assist in providing culturally appropriate training and education to Aboriginal peoples. We recommend this type of strategy be adopted by the prisons.

4.7 The success of alternative strategies, nationally and internationally in reducing recidivism

Justice Reinvestment

This concept referred to above has been explored in greater detail by the Aboriginal and Torres Strait Islander Social Justice Commissioner in the 2009 Social Justice Report. ALSWA recommends this strategy be implemented in targeted areas to reduce Aboriginal recidivism in WA.

Kimberley Aboriginal Law and Culture

Recently, the independent organisation Kimberley Aboriginal Law and Culture (KALAC) received funding to run a one-off bail intervention program for approximately 10 young Aboriginal males who were before the Fitzroy Crossing Children's Court in respect of a spate of group burglary offences committed around the Fitzroy Crossing town site over Christmas 2008. The boys were released to bail with a condition that they comply with the directions of KALAC. KALAC then placed the boys in groups for a number of weeks on Aboriginal run cattle stations in the vicinity of Fitzroy Crossing to live, work and learn about station life and Aboriginal culture. The results were outstanding. Most of the boys enthusiastically participated in the program, showed real improvement in their behaviour and attitude and have subsequently either re-engaged in school or accepted transition into the workforce, without re-offending. The success of the KALAC program shows that investment in early intervention and rehabilitation programs has a greater potential to decrease offending than does adversarial law enforcement.

Aboriginal Community Courts

Aboriginal Community Courts operate in Kalgoorlie-Boulder and Norseman in WA as a sentencing court service that is "more culturally inclusive and relevant for Aboriginal people than traditional courts."¹⁷ These Courts were introduced in an attempt to reduce the high involvement of Aboriginal peoples in the criminal justice system.

Aboriginal Community Courts have the same sentencing options as the Magistrates Court. However, a major goal is to make sentencing orders more appropriate to the social and cultural background and circumstances of the offender. Victims also play an important role in helping the offender understand the impact of the offence, accept responsibility and learn from the experience. Aboriginal members speak directly with

¹⁶ www.whatworks.edu.au

¹⁷ Government of WA, Department of Attorney General Court and Tribunal Service: Aboriginal Community Courts http://www.courts.dotag.wa.gov.au/A/aboriginal_community_court.aspx?uid=4279-5018-6799-1500 accessed 10/12/09.

the offender to further ensure the offender understands the effects of their behaviour and encourage them to change.¹⁸

Most offences dealt with in the Magistrates Court can also be dealt with in the Aboriginal Community Court. Aboriginal people pleading guilty to an offence and who show an intention to take responsibility for their actions are eligible to participate in the Aboriginal Community Court.¹⁹

ALSWA made a submission to the current review of the Community Courts in June 2009. The submission outlined the positive impact the Courts have had on offenders, panellists, Magistrates, court staff and the community, made recommendations to improve their current format and advocated for their extension into other communities. A copy of our submission is **attached** as Annexure 2.

4.8 Any major issue that emerges that the Committee considers should be included in the Inquiry

Overcrowding

This issue has been raised numerous in our submission as a critical factor that is detrimentally impacting on opportunities and experience of Aboriginal peoples in prison and must be addressed as an urgent priority in any attempt made by the government to improve the situation in WA prisons. Of particular concern is the issue of double-bunking and reports of prisoners having to sleep on mattresses on the floor, raising serious questions as to whether this constitutes a breach of Australia's obligations under international law, such as the right of all persons deprived of liberty to be treated with humanity and respect for the inherent dignity of the person.²⁰

Conditions in prisons affecting the health and welfare of prisoners

ALSWA has been advised of poor standards within prisons, such as lack of air conditioning in prison transport vehicles and in prisons where temperatures regularly exceed 40 degrees.

ALSWA is acting for a sentenced prisoner who was recently placed into a prison escort van to attend a funeral of a family member in Perth. The temperature that day was 41 degrees Celsius. The prisoner has been a Type 2 insulin dependent diabetic for 20 years. Our instructions suggest the air conditioning in the back of the van was not working and the circumstances of the transportation placed the prisoner in a life-threatening situation that bears a shameful resemblance to the now infamous case of Mr Ward.

A recent inspection of Rangeview Remand Centre by ALSWA staff revealed that there is no air-conditioning and the cells get extremely hot during the summer months.

These poor conditions in prisons are even more alarming when combined with the well known indicators of lower health status for Aboriginal peoples. For example, the life expectancy for Aboriginal peoples is 16-17 years less than for non-Aboriginal

¹⁸ Government of WA, Department of Attorney General Court and Tribunal Service: Aboriginal Community Courts, above n 41

¹⁹ Government of WA, Department of Attorney General Court and Tribunal Service: Aboriginal Community Courts, above n 41

²⁰ International Convention on Civil and Political Rights (ICCPR), article 10. See also other international instruments and guidelines such as the *Basic Principles for the Treatment of Prisoners*, and the *Standard Minimum Rules for the Treatment of Prisoners*, which contains standards in regards to prisoner accommodation, <http://www2.ohchr.org/english/law/treatmentprisoners.htm> .

peoples.²¹ The Australian Bureau of Statistics (ABS) has also reported that Aboriginal peoples:

*have higher rates of hospitalisation and higher prevalence rates for many health conditions than other Australians. The burden of disease suffered by Indigenous Australians is estimated to be two-and-a-half times greater than the burden of disease in the total Australian population. Long-term health conditions responsible for much of the ill-health experienced by Indigenous people include circulatory diseases, diabetes, respiratory diseases, musculoskeletal conditions, kidney disease, and eye and ear problems. For most of these conditions, Indigenous Australians experience an earlier onset of disease than other Australians.*²²

It is therefore critically important that all staff working with prisoners receive adequate training to understand the particular health needs of Aboriginal peoples and how to handle situations of increased risk to the health of Aboriginal prisoners.

Critical underfunding of services in regional and remote areas

Aboriginal peoples living in regional and remote areas are severely disadvantaged by the lack of public services available due to critical underfunding and neglect by governments. In ALSWA's own experience, we are not funded to provide lawyers in many important areas like Roebourne and the Ngaanyatjarra Lands. Instead we are provided limited funding to employ Aboriginal court officers, who do not possess legal qualifications. Due to the low salary and challenging conditions that include high volumes of work, recruitment and retention of staff in these positions is exceptionally difficult. ALSWA notes that we currently receive no funding from the WA government to combat the overrepresentation of Aboriginal peoples in the WA justice system and recommends that serious consideration be put into the WA Government and DCS funding ALSWA to provide better quality services.

Prisoner Review Board

At present prisoners applying for parole before the Board, do not have a right of appearance. More recently the decision has been made to prevent prisoners appearing via video link before the board, requiring all applications to be made in writing.

ALSWA is concerned that these new requirements disadvantage Aboriginal peoples who generally experience lower literacy rates than non-Aboriginal people,²³ and frequently do not speak English as a first or second (and sometimes not even third or fourth) language. The ABS reported that one in eight Aboriginal peoples speak an Aboriginal language at home, and that one in five Aboriginal language speakers reported they do not speak English well or at all.²⁴ This means many Aboriginal prisoners have absolutely no capacity to prepare written applications for parole.

²¹ Australian Government, Australian Institute of Health and Welfare, http://www.aihw.gov.au/mortality/life_expectancy/indig.cfm as at 15/04/10.

²² ABS, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2008, <http://abs.gov.au/ausstats/abs@.nsf/39433889d406eeb9ca2570610019e9a5/C6A652B63569051BCA2574390014B4EB?opendocument> as at 15/04/10.

²³ Indigenous Literacy Project, Indigenous Literacy – a snapshot, <http://www.worldwithoutbooks.org/About/IndigenousLiteracy.aspx> as at 15/04/10.

²⁴ ABS, Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006, Language and Proficiency in English <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/FA57A2E7FDC4C14FCA257418000E3D42?opendocument> as at 15/04.

ALSWA recommends that prisoners, in particular Aboriginal prisoners, be afforded the right of legal representation for personal appearances at Board hearings. This right of personal appearance is in accordance with principles of natural justice and procedural fairness. ALSWA notes this would place additional pressure on ALSWA's existing services and would therefore require additional funding to provide this service to prisoners.

Access to legal assistance

ALSWA is concerned about the poor facilities and lack of opportunity to provide confidential legal advice to prisoners. The Broome prison interview facilities are appalling, where ALSWA has been forced to interview prisoners in the property room. The visiting hours of prisons like Broome are incredibly limited, which makes it almost impossible for ALSWA lawyers working daily in courts to visit prisons during normal working hours. There is an urgent need to improve video-link facilities from some prisons, for example clients are practically inaudible during audio-links with Roebourne. These interviews are also conducted in the presence of prison guards thereby denying prisoners their right to legal privilege.

5. List of Recommendations

- The Committee engage Aboriginal researchers and consultants to design a research project to ensure the views and experiences of Aboriginal prisoners are appropriately included in this inquiry.
- The Committee review each of the emerging issues outlined above and recommend the Government conduct a more comprehensive view of the entire state of prisons to address these alarming trends.
- The Committee recommend the WA Government embrace the framework of justice reinvestment in WA. This would include establishing a team to design further research to provide comprehensive demographic mapping and a feasibility study of a suitable area to implement a pilot project, such as Broome or Halls Creek Local Government Areas, which were already identified as target areas by the Social Justice Commissioner.²⁵
- The Committee visit the 'Aboriginal prisons' of Broome, Roebourne and Eastern Goldfields, to enter the prison and speak to prisoners with direct guidance from Aboriginal staff at the prison.
- The Committee consider ways that Aboriginal peoples could have greater control over the prisons, for example there should be dedicated s.50(d) positions in Senior Management of prisons to work alongside and advise the Superintendents.
- The Committee consider Aboriginal culture and identity as an intrinsic part to any interaction with Aboriginal peoples. In this regard, we recommend the following:
 - any programs or opportunities in prisons must be culturally appropriate and developed by or in consultation with Aboriginal peoples, and as much as possible, should be delivered and implemented by Aboriginal peoples or by competent individuals who regularly participate in culturally appropriate training and are cognisant with issues affecting Aboriginal peoples;
 - strategies are needed for allowing access and contact with the families of Aboriginal peoples, especially children, and especially for Aboriginal peoples

²⁵ Social Justice Report 2009, p. 39, above note 4.

- from regional and remote areas to ensure they keep in contact with their culture, country and family;
 - provision for interpreters and the dissemination of information in Aboriginal languages;
 - the rules and regulations in prisons need to better cater for low literacy levels and language barriers experienced by Aboriginal peoples; and
 - strategies are needed to enable Aboriginal prisoners to safely attend funerals of family members in the community.
- The Committee recommend the WA Government commit to improving our justice system by setting meaningful targets for reducing the disproportionately high incarceration rate of Aboriginal peoples.