



Submissions: The Stranding of People after Contact with the Justice System

Aboriginal Legal Service of
Western Australia (Inc).

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Background

On 27 May 2005, ALSWA sent a letter to the Attorney General regarding the stranding of Aboriginal people following appearances at court and treatment in hospital. ALSWA asked for a policy amendment in Western Australia providing that if the Department of Justice (now the Department of Attorney General) or the Department of Health transfers Aboriginal and Torres Strait Islander individuals from their home locality for the purposes of medical treatment or criminal justice process, then the Department must also arrange repatriation afterwards.

In response, the Department of Attorney General has now set up a working party to address this issue. On 25 July 2006, ALSWA received a request from the Director General of Department of Attorney General seeking the name of a contact person at ALSWA so as to obtain further information about the issue. In response, ALSWA sent a detailed email to the Department, which contained six recent case examples of clients being stranded in regional centres. A contact name and number was given for ALSWA's offices in Perth, Kununurra, Geraldton, Broome, South Hedland and Kalgoorlie.

The stranding of Aboriginal people after court or release from custody was again raised as an issue at ALSWA's last Executive Committee meeting on 4 December 2007. All members were concerned by the regularity and number of people being left stranded, sometimes hundreds of kilometres from their homes. The Committee believed that addressing this issue should be a State Government priority.

Currently, nearly three years after ALSWA originally raised the issue of repatriation, the Department of Attorney General has released a state-wide survey to gather statistics on the number of people stranded following contact with the criminal justice system. Aboriginal Legal Services staff, court officers, Aboriginal Liaison Officers, community corrections officers and prison staff are being asked to complete a survey form on each stranding from 1 April 2008 to 31 July 2008.

Aboriginal Legal Service of Western Australia (Inc)

ALSWA was established in 1973. It is a community based organization that provides legal advice and representation to Aboriginal and Torres Strait Islander individuals and groups in a wide range of areas. Its service extends throughout Western Australia via 17 regional/remote offices and one metropolitan office.

ALSWA is the preferred legal service provider for Aboriginal and Torres Strait Islander peoples living in Western Australia, and makes submissions on that basis.

ALSWA has established a Western Australian Aboriginal Advisory Committee ("WAAAC") to advise governments and other bodies about law and justice issues affecting Aboriginal and Torres Strait Islander peoples living in Western Australia. Members include ALSWA's Chief Executive Officer, the Manager of ALSWA's Court

Officers Unit and 16 executive officers¹ elected by the Aboriginal and Torres Strait Islander peoples from their local regions to speak for them on law and justice issues. WAAAC members and their support staff are responsible for consulting with Aboriginal and Torres Strait Islander communities to ensure that those views are also made available.

ALSWA's Lawyers and Court Officers provide invaluable information for submissions. All Court Officers are Aboriginal and represent Aboriginal and Torres Strait Islander peoples in the Magistrates Courts and the Children's Court. While many Court Officers are based in Perth, each regional office has a Court Officer who is often from the local community, providing an understanding of local issues and languages. In more remote areas of the state, Court Officers are often the only local permanent legal service.

Introduction

Each of ALSWA's country offices have reported that approximately 1-2 people are being stranded each week after being released from Court. ALSWA has 18 country offices indicating that at least 18 Aboriginal people are being stranded every week.

ALSWA submits that people being stranded on such a regular basis is indefensible and should be addressed immediately by the State Government through the implementation of a repatriation policy.

The fact that it has taken the Department of Attorney General Working Party three years, to compose a survey and send it out to stake holders, strongly indicates that the issue of repatriation is not currently a Departmental priority.

Whilst ALSWA supports any Departmental action towards the development of a repatriation policy, there is a serious concern that the survey results will not accurately depict the large number of people being stranded following criminal court proceedings and release from prison. ALSWA raises the following concerns:

- Mistrust and fear of the criminal justice system means that many Aboriginal people do not approach Court staff for repatriation assistance. Staff are therefore unaware that a person has been stranded;
- Many Aboriginal people who are stranded will go and stay with friends or family or sleep rough and will not come into contact with any service providers;
- ALSWA's clients who become stranded generally come to the attention of ALSWA's Aboriginal staff because the person is known to them or they are contacted by concerned family members. Many other service providers do not

¹ There are 2 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 the Aboriginal and Torres Strait Islander public every 3 years.

have Aboriginal staff that the community or individual would feel comfortable approaching; and

- In rural and remote areas, where stranding occurs most frequently, government and non-government agencies are over-worked and under resourced. It is a real possibility that people will forget or will not have time to fill out the survey forms. ALSWA staff already have several forms to fill out per client as required by ALSWA's funding body.

Therefore the aim of this submission is to clearly outline case examples of when, where and how people become stranded. In addition, ALSWA has put forward some cost-effective and practical recommendations, which aim to ensure that people are repatriated home after contact with the criminal justice system.

Circumstances that lead to stranding

The issue of repatriation arises when accused people are brought from their town or community to a metropolitan or regional centre for either court or a term of imprisonment.

When a person is arrested by the police in a remote area they are either remanded in police custody until a prisoner transport van collects them or they are driven to court by a police escort.

In the event of a plea of guilty there are a number of non-custodial dispositions open to a sentence in court, including but not limited to good behaviour, fines, community based orders and sentences of suspended imprisonment.

Once released from custody, people are not taken back to their home but are released from the courthouse to find their own way home. In a state as big as Western Australia, this is often hundreds and sometimes thousands of kilometres away.

Sentenced prisoners are also released at the prison gates and left to find their own way home.

ALSWA submits that whilst there are instances of people being repatriated, such efforts are largely at the discretion of individual police officers or departmental staff as there is no current policy or statutory requirement that ensures repatriation.

Stranding and Aboriginal people

ALSWA believes that a majority of people being stranded are Aboriginal people. This belief is based on the following reasons:

- A large majority of Aboriginal people live in remote areas. The Department of Indigenous Affairs has recorded nearly 300 remote and town-based discrete Indigenous communities.²
- Aboriginal people are grossly overrepresented in the criminal justice system. In 2003, Aboriginal people were arrested at almost 12 times the rate of non-Aboriginal persons and as of April 2008, 40.7% of the prison population were Aboriginal people.³
- There is insufficient custodial infrastructure in the regions to enable Aboriginal people to be placed in prison close to home. As at 30 June 2005, there was a total of 343 Aboriginal offenders placed in prisons other than the one closest to their home.⁴
- A large percentage (38.1%) of offences committed by Aboriginal people are good order offences or driving and vehicle offences (25.8%), which more often than not results in people being released on bail.⁵
- Many Aboriginal people cannot afford to repatriate themselves. In 2006, the average equivalised household income for Aboriginal households in remote areas was \$329 per week compared to non-Aboriginal households at \$812 per week.⁶
- Many Aboriginal people do not have a registered motor vehicle or a valid license to drive home or to collect family and friends when they are released from custody. In the 2006 Census, only 47% of Aboriginal households had a registered motor vehicle.⁷

Re-offending rates

ALSWA submits that until the State government implements a repatriation policy, high re-offending rates will continue.

The rate of re-offending by Aboriginal offenders is high. The Australian Institute of Criminology found that 54% of adult police detainees had been arrested at least once in the 12 months before their current arrest and 18% had spent time in prison.⁸ In 2002, 82%

² Western Australia. *Inquiry into the Management of Offenders in Custody and in the Community* (Hon. Dennis Mahoney, AO QC Special Inquirer) (Perth: State Law Publisher, 2005), 9.8, 9.9

³ Department of Corrective Services statistics, see

http://www.correctiveservices.wa.gov.au/_files/Prison%20Count/cnt080522.pdf

⁴ Above, n 2, 9.74

⁵ Id 9.11

⁶ Australian Bureau of Statistics, (2006) 'Population Characteristics – Aboriginal and Torres Strait Islander Australians (4713.0) see <http://www.abs.gov.au/websitedbs/d3310114.nsf/Home/themes>

⁷ Id

⁸ Jason Payne, *Recidivism in Australia: Findings and Future Research*, Australian Institute of Criminology p. 67, 2007

of sentenced Aboriginal offenders were charged with a new offence following exist from prison.⁹

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that the relations between Aboriginal people and police are a crucial factor in the overrepresentation of Aboriginal and Torres Strait Islander people in custody.¹⁰ RCIADIC shows that hostile relations between police and Aboriginal people can be partially attributed to routine police action against minor offences, often committed in public space areas, for the purpose of imposing principles of 'socially acceptable behavior' as defined by the non-Aboriginal community. Many 'trifecta'¹¹ charges eventuate because police approach Aboriginal people in public spaces for behaviour that would go unnoticed if committed by non-Aboriginal people.¹²

ALSWA believes that Aboriginal people who are stranded after being released from custody are often targeted by police and re-arrested. ALSWA staff has reported that the re-arrest of clients, who have not been repatriated, is common. This is, in fact, one of the primary means by which ALSWA staff become aware that clients have been stranded.

ALSWA Kalgoorlie office reported that clients are regularly re-arrested for breach of bail conditions. For example bail will often include a condition to reside at their home address. Clients from Warburton are released from Kalgoorlie courthouse and left to find their own way home, which is nearly one thousand kilometres away. The first leg of this journey is 400km to Laverton by bus, which only runs once a week. In the process, clients stay with friends or family in Kalgoorlie. Upon reaching Laverton, they are recognised by police and re-arrested for breach of their bail condition. The client is then driven back to Kalgoorlie Court to be re-released on bail and to start the whole process again.

ALSWA submits that the high rate of re-offending is linked to the fact that people are being stranded in metropolitan and regional centres without money, food or stable accommodation. It is nonsensical that people are being released from court on bail with the condition that they must reside at a certain address and then are not being repatriated back to that address, especially in circumstances where the person is required to report to their local police station or corrective services officer within 48 or 72 hours of their release to bail. In such circumstances a person will breach their order as without being repatriated it is often impossible for them to report as required.

⁹ Above n.2, 9.87

¹⁰ RCIADIC, (1991), *Op.cit.*, [13.3.8]

¹¹ People are apprehended for a minor offence and thereafter the situation escalates into resisting arrest and assaulting the arresting officers. This is commonly known as the 'trifecta'.

¹² RCIADIC (1991), *Op.cit.*, [13.3.6].

Specific issues of repatriation as identified in each metropolitan and regional area

The following information and case examples have been collected from ALSWA staff. All case examples have occurred in the last six months.

East Kimberley Region

ALSWA's Kununurra office has recently received a number of complaints about the fact that juveniles and women are being taken from Balgo to Kununurra (800km trip) by police and then left to find their own way home.

There is one bus per day that runs between Kununurra and Halls Creek. For an adult ticket, the cost is \$80 - \$115, which is unaffordable for many Balgo residents as they generally depend on welfare payments. This bus leaves Kununurra at 6.50pm and arrives in Halls Creek at 10.45pm thus leaving people in Halls Creek late at night, potentially without accommodation.

Once in Halls Creek, people then have to wait until they can hitch a lift to Balgo community as there is no public transport for this 400km trip. These arrangements can result in people being stranded in Halls Creek for a number of days whilst waiting for a lift. People have difficulty affording safe accommodation if no family or friends live in Halls Creek.

A recent case example of this occurring involved a female client from Balgo community who was brought by a police escort to Kununurra on an arrest warrant. The night previous to her arrest, the client had been badly beaten by her partner and had a fractured leg and serious bruising. The client was released by the Magistrates Court on bail and left to find her own way home. ALSWA staff had to organise for the client to stay at a women's refuge in Kununurra and then paid for her bus ticket to Halls Creek.

ALSWA is funded exclusively by the Commonwealth Government pursuant with a contract with the Attorney General's Department. Strict guidelines are in place with respect to the expenditure of money under the contract. The contract does not allow for ALSWA to pay for the repatriation of clients. In any event, organising and paying for the repatriation of people should not be ALSWA's responsibility.

Another case example involved five young boys who were arrested in Kalumburu, refused bail by police and flown to Kununurra for court on a Thursday night. The boys were aged 10-14 years. The boys were taken to Kununurra without responsible adults being contacted in Kalumburu. On Friday morning they were released to bail but were not repatriated. At this time of year the only way to get to Kalumburu is by light aircraft. It was pure luck that one of the boys mothers was in Kununurra and became aware of her son appearing in court. Equally by chance, the mother had chartered a flight back to Kalumburu that day, which had seats available for all the boys. The cost of chartering a plane is approximately \$1500.

ALSWA's Kununurra office has stated that in their experience the stranding of Aboriginal people occurs at least once every week as people from all over the Kimberley are taken to Broome because court only goes on circuit in the Kimberley once a month.

West Kimberley Region

People who are brought to Broome for court and subsequently released from custody are regularly left to find their own way home, even if they have been remanded in custody for several days.

Adults are generally brought to Broome in prison transport vans whilst juveniles are escorted by police. Juveniles are sometimes escorted back by police or a community corrections officer however this is not an official procedure and occurs at the discretion of individual officers.

If an adult offender has been remanded in custody for a number of days in Broome Regional Prison they are sometimes given bus tickets home. However, ALSWA's Broome office has advised that prison staff sometimes forget to give the person a ticket, particularly if it is unexpected that the person be released by the courts.

A recent case example of this involved a female client from Halls Creek. ALSWA's Broome Court Officer found the woman standing outside the Court House unsure of where to go. She had just been released from custody on bail and the prison staff had forgotten to give her a ticket home. She was unaware that she was entitled to a ticket and was too shy to ask for assistance from the court staff. It was the first time she had ever been to Broome and she was very scared. ALSWA's Court Officer took her to an ATM so she could withdrawal some cash. Unfortunately her family had accessed her funds whilst she was in custody and she had no money. The Court Officer then took the woman back to the prison so that she could get a ticket home, which she was given. The client told ALSWA's Court Officer that if she had not found her she would have walked around Broome until she found someone she knew and stay with them until she could get a lift back to Halls Creek.

People are commonly brought down from Derby to Broome's Magistrate's Court. ALSWA's Broome office and Broome's DCS office said that people, including juveniles, are often brought from Derby by police and subsequently released by the courts on bail until the Court sits in Derby at the end of each month. These juveniles are left to find their own way home.

Pilbara Region

People are regularly brought to Port Hedland's Magistrate's Court from Newman. If bailed or dealt with by a sentence to non-custodial disposition, people are expected to travel approximately 600km home.

ALSWA's Executive Committee member from the Pilbara region and ALSWA's Court Officer from the Newman Office believe it to be common practise for people to jump on the Iron Ore train so as to get back to Newman from Hedland Court. Having been

released from custody by the court, people walk down the railway line to a place where the train slows enough to jump aboard and then jump off the train in Newman. Last year a man lost his leg jumping off the train. It is only a matter of time before further injuries and even death results in these circumstances.

ALSWA's office in Newman has advised that Newman Police also take people as far as Karratha and Roebourne to appear in court. Again once released by the court, people are left to find their own way home. People from outlying communities such as Jigalong, Cotton Creek and Kunawarritji are also being brought to Newman for JP or Magistrates Court by police and then left to find their own way home. As in all remote Aboriginal communities, the ability to get home is dependent upon the fact that people can get a lift, which may take several days. It is common that people in such circumstances are re-arrested by police for minor offences whilst they are waiting in town. There is also a risk that if no repatriated people may re-offend in a serious way and run the risk of being the subject of Schedule 2 of the Bail Act, which means that they can only be released to bail if they can satisfy the court that there are exceptional reasons why they can be released to bail.

Metropolitan Region

Offenders who are released from the Courts are less likely to be stranded due to extensive public transport in the Perth metropolitan area. However several incidents have occurred in recent months where clients have become stranded.

Last month, ALSWA represented a 14 yr old boy whose case was not called in court until 3.30pm. The case was heard by the Perth Children's Court. The boy was in custody. The boys mum came from Cullacabardee with 3 small children. At 12 she spoke to the ALSWA solicitor and said that she couldn't wait much longer because her bus ticket ran out at 12.56pm and if she missed it she would be stuck in town with all the children and have to beg for money. The ALSWA lawyer asked Community Justice Services to assist. Community Justice Service informed that Department of Child Protection would assist however through further investigation it was found that no Department of Child Protection officers were there. ALSWA's lawyer ended up giving the mother \$10 so that she could wait to collect her son.

Southern Region

People from Katanning are regularly brought to Albany by police and left to find their own way home. The closest 24 hours police station is in Albany. Accordingly, a person who is arrested in Katanning, Gnowangerup or Kojonup who are not granted police bail are transported to Albany for the next court appearance. Only 1 bus per day runs from Albany to Katanning. This bus leaves at 9am so people who appear in court during the day will have to spend the night in Albany before catching the bus in the morning.

Recently, a young boy from Katanning was released from the Albany Magistrates Court on bail. ALSWA's Court Officer found him standing out the front of the Court House unsure of where he should go. He had no money and no way of contacting family. The ALSWA Court Officer had to drive the boy home due to lack of alternative. She knew

the family and knew that no family members had the means to come and collect the boy from Albany.

ALSWA's Albany office reported that people are stranded in Albany from Katanning approximately 2-3 times a month.

Goldfields and Western Desert regions

People are regularly brought from Laverton to Kalgoorlie and left to find their own way home. The distance between Laverton and Kalgoorlie is roughly 400km. People are also being brought from the lands, most commonly Warburton, which is approximately 1000km trip. The roads between Laverton and Warburton are dirt roads and there is no public transport. Some people brought to Kalgoorlie for court are from community's roughly 1500km from Kalgoorlie. The bus service between Laverton and Kalgoorlie runs once a week.

In the past, people have stolen cars and even on one occasion, a helicopter, in order to return home. Other people have been stuck in Kalgoorlie for weeks on end staying on the streets or with family if they are in town.

ALSWA Kalgoorlie office believes that people are getting stranded in Kalgoorlie anywhere between 2 to 5 times a week.

Stranding of juveniles

Leaving juveniles stranded in regional centres to find their way, sometimes hundreds of kilometres home is a major ongoing concern for ALSWA.

Children as young as 10 years old have been left to find their own way back to remote communities. The care and protection issues in such circumstances are self-evident. Under no circumstances should a person under 18 years of age be left without money, support, accommodation and a ticket home after being released from any court in Western Australia.

A staff member at the Department of Corrective Services has told ALSWA that their department has no responsibility for repatriating juveniles who are released on bail from court. The Department said that if a young person is released on an order then Corrective Service staff usually plays a supportive role but there is no statutory requirement that juveniles are repatriated.

If a young person becomes stranded then it is the responsibility of the parents or guardians to collect the young person. If the parents do not then it becomes a welfare issue and is the responsibility of the Department of Child Protection.

It is wrong to assume that all parents have the financial means to travel hundreds of kilometres to collect their children from court. It is even more unfair to assume that if they do not have such financial abilities then they are irresponsible parents and the

Department of Child Protection should become involved. As previously mentioned a lot of Aboriginal people do not have cars, valid licenses or adequate monies for bus fares.

ALSWA submits that when a young person is signed into the custody of a responsible adult it is wrong to assume that they have the finances to repatriate the young person home, particularly if the young person is from a remote community. Finances should be made available to the responsible adult to ensure that the young person is properly repatriated or alternative arrangements be put in place to ensure that the young person get home safely.

Stranding of sentenced prisoners

Approximately 3-4 people a month come into ALSWA's head office in Perth seeking assistance from staff to return home after being released from prison.

An ALSWA Solicitor was recently contacted by a client who had just been released from prison in Perth. He was from Kalgoorlie and had no money to get a ticket back to Kalgoorlie. A service in East Perth was prepared to refund the cost of his train fare but he had to purchase the ticket first, which he could not do as he had no money to buy the ticket. ALSWA's solicitor paid for the ticket by visa and the service reimbursed the money the same day. If the Solicitor did not pay for the ticket it would have left the client in the ridiculous position of a service having money to refund his ticket which he could not afford to purchase in the first place.

It is ALSWA's experience that upon release, prisoners are sometimes given a ticket home or money to purchase a ticket. They are then released through the front gates of the prison and left to find their own way to the train, bus or aeroplane. On the way back from Acacia prison, ALSWA's prison support officer has often had to pick up releasees who are trying to hitch a ride back to town. Most metropolitan prisons are not well serviced by public transport.

Prisoners being released from Woorooloo who are not being picked up by family are driven to Midland train station by peer support officers and put on the train. They are then left to get to the airport or bus station by themselves.

As far as ALSWA is aware, similar methods of repatriation are practised by all prisons in Western Australia.

There are a number of issues with releasing prisoners in this way. These are:

- People from regional and remote areas may not be familiar with the Perth metropolitan area or public transport generally. Many releasees may not have the confidence nor the desire (particularly if the person is a prison officer) to ask for assistance.
- A lot of prisoners have literacy and numeracy problems and may be unable to read the ticket in order to find the correct transport. Outcare listed a number of

clients who had been in the prison system for years without their lack of literacy and numeracy skills being detected.

- A majority of prisoners suffer a mental illness. The Mahoney Inquiry found that approximately 80% of prisoners in WA suffer from a diagnosed mental illness, a behavioural disorder, intellectual impairment or drug and alcohol induced mental illness. Such an illness may make it difficult for the releasee to negotiate their own repatriation.
- Releasee's who are from regional and remote areas may have to find their own accommodation whilst waiting for transport. Money to pay for such accommodation is often sourced from Centrelink crisis payment, which is roughly \$200. Access to this money is through an Electronic Banking Card, which is activated by Centrelink staff. Outcare advised ALSWA that these cards regularly do not work. Releasee's therefore cannot access their money until they visit Centrelink. This is particularly problematic if a prisoner was released on a Friday as they may be stuck without money for the entire weekend.
- If the releasee is not repatriated home immediately it is more likely that the money will be spent on things other than transport tickets and/or safe accommodation. If an older family member requests the money from the releasee then they are under cultural obligation to give that money to the family member.
- Prisoners are sometimes released without legal identification. This makes it difficult to organise accommodation, money or transport.

It is highly possible that each prisoner released will suffer from one or more of the issues listed above. In such an instance, re-entry into the community is made more difficult as releasees do not have their support networks around them, may not have stable accommodation and could be stranded in a metropolitan or regional centre for a long period of time. ALSWA submits that in such circumstances the likelihood of a person re-offending is very high.

Summary of key issues identified

The following key issues have been identified:

1. Establishing and implementing a repatriation policy is currently not a State government priority and it should be.
2. ALSWA estimates that approximately 18 people per week are being stranded. A majority of these people are Aboriginal people.
3. The stranding of people often results in those people re-offending.

4. People are being left to travel significant distances to areas, which are not well serviced by public or other transport. People from remote communities can only get home by hitching a ride.
5. Juveniles are also getting stranded after being released from court custody.
6. Difficulties with transport often mean that offenders are unable to comply with certain bail conditions, which relate to their intended place of residence, because they have not been repatriated.
7. Released prisoners are not being provided with adequate support to ensure that they are repatriated, which increases risks to prisoner safety.

Review of Best Practice to Bail

Repatriation problems are exacerbated by punitive police bail practises which result in many people being refused police bail.

ALSWA has already given a number of case examples where people have appeared in Court only to be bailed to appear locally when the Magistrates Court is on circuit. All of ALSWA's country offices stated this to be regular police practise.

Police Bail

The RCIADIC made three recommendation in relation to bail. These are:

Recommendation 89

That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practise. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators.

Recommendation 90

That in jurisdictions where there is not already the position:

- *Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact.*
- *An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and*
- *There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights.*

Recommendation 91

That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:

- *To enable the same or another police officer to review a refusal of bail by a police officer;*
- *to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and*
- *to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.*

ALSWA notes that there is no qualified right to bail for adults under Western Australian legislation, only a right to have bail considered.¹³ Recent amendments to the *Bail Act 1982* (WA) do not incorporate Recommendation 91. ALSWA submits that the *Bail Act* should be amended to incorporate Recommendation 91.

ALSWA further submits that formal arrangements should be introduced with the Western Australian Police Service to ensure that police contact ALSWA on every occasion an Aboriginal person (who requests ALSWA's assistance) is either refused police bail or if bail is granted, where police are aware that the conditions of bail cannot be met.

Recommendation 1

Recommendations 89, 90 and 91 of the Royal Commission into Aboriginal Deaths in Custody should be implemented by the State government with the objective of reducing the number of Aboriginal people being refused police bail and subsequently being transported hundreds of kilometres to court.

Recommendation 2

The *Bail Act 1982* (WA) should be amended to provide that adults have a qualified right to bail subject to the usual conditions which militate against a grant of bail.

ALSWA submits that these reforms will result in considerable financial and resource savings for the Western Australian Police Service. It follows that the fewer people in police custody the less custodial care obligations will arise for police.

Video link up facilities

ALSWA submits that the use of video linkup facilities in appropriate cases has greater potential to alleviate many repatriation issues identified in this submission. This requires the installation of appropriate video facilities in all Western Australian regional courts,

¹³ *Bail Act 1982* (WA), s 5

police stations and ALSWA offices. At present, ALSWA has not been provided with funding to install video link up in any of its offices.

Recommendation 3

All of Western Australian regional courts, police stations and ALSWA offices should have the adequate technologies to facilitate telephone conferencing and video link up with the nearest regional centre. Protocols should be established to enable persons refused police bail to appear as soon as is reasonably possible before a magistrate either by way of telephone or video linkup to have bail considered.

Northern Territory Repatriation Policy

Current policy

The Northern Territory has a Court Support Services Repatriation Policy, which helps defendants return to remote communities following criminal court proceedings.

The primary aim of the policy is to return a defendant to his or her community, where the support of the family or community is readily available. The scheme also aims to reduce the level of re-offending by defendants who are on bail and unable to return home.

Assistance is provided to a person who meets the following criteria:

- the person has been charged with an offence against a law of the Northern Territory or a Commonwealth law in the Northern Territory;
- the person was under obligation to attend before the court;
- the Court released the person on bail, by acquittal or by conviction without sentence, by the impositions of a non-custodial sentence or by an immediate suspended sentence;
- the applicant is unable through his or her own resources to return home, and assistance is not available from any other source; and
- the grant of assistance is reasonable given the applicant's financial situation and distance involved.

The main restrictions when applying for repatriation include:

- people are generally repatriated to their usual place of residence unless it results in breach of a court order;
- people cannot apply for repatriation if they have received assistance in the last 6 months unless the assistance was extended following a court appearance in the same case or cases; and
- no payment of cash will be made to the applicant.

An application for repatriation assistance is generally made on the day of the court appearance, as late applications would tend to defeat the purpose of the scheme. Court staff help applicants to complete the form when necessary.

ALSWA submits that the existing Northern Territory repatriation policy should be used as a guideline for developing a similar repatriation policy in Western Australia.

Northern Territory Government review of Repatriation Policy

ALSWA has been advised that the repatriation policy in the Northern Territory is currently being reviewed by the Northern Territory Correctional Services.

Two important issues being investigated are:

1. The lack of support emergency accommodation for people who are travelling to remote locations when regular transport is not available.
2. The current repatriation policy takes people to the nearest centre that can be accessed by public transport, often the centre within which they committed the offence, and leaves people to find their way the extra distance back to their community.

One of the proposed solutions to these problems is to contract a non-government agency, in this case the Larrakia Nation Aboriginal Corporation, and fund them to be a referral agency for the Northern Australian Aboriginal Justice Agency and Legal Aid to fill in repatriation forms and then pick up the client and physically assist them to travel back to their community. All expenses are to be invoiced to the Northern Territory Department of Justice.

ALSWA submits that the above two problems identified with the current Northern Territory Repatriation policy will also be key issues within Western Australia. Such issues needs to be considered through the development of Western Australia's repatriation policy.

Recommendation 4

The Northern Territory Court Support Services Repatriation Policy should be used as a guideline for the Department of Attorney General when developing a Western Australian Repatriation Policy.

The findings and subsequent changes made under the current review of the Northern Territory Policy by the Northern Territory Correctional Services must also be considered.

Recommended changes to current policy and procedure

Police policy and procedure

ALSWA recommends the following police procedures for when an adult is denied police bail in a remote area:

1. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, ALSWA should be notified. Formal protocols should be established between ALSWA and police to facilitate a notification process.
2. In the event of the refusal of police bail, arrangement should be made to ensure that the person appears as soon as reasonably possible by telephone or video linkup before a Magistrate to have their bail reconsidered.

Reasons as to why people have been refused police bail should be annually reviewed by a designated Government Department. The purpose for this review is outlined in Recommendation 89 of the Royal Commission into Aboriginal Deaths in Custody (see page 14).

Recommendation 5

If police arrest an adult or juvenile in a regional or remote community, which does not have a Magistrate Court regularly sitting, and police bail is refused then the following procedure should be adhered to:

- 1. If the person is Aboriginal then ALSWA should be immediately notified.**
- 2. In the event of the refusal of police bail, arrangement should be made to ensure that the person appears as soon as reasonably possible by telephone or video linkup before a Magistrate to have their bail reconsidered.**

If a young person or an adult is refused bail they should be entitled to apply to a magistrate for bail by telephone application.

Recommendation 6

The *Bail Act 1982 (WA)* should be amended to provide that where an adult or child has been refused bail by police, JP or authorized community services officer or the accused is unable to meet the bail conditions of bail that have been set, the accused is entitled to apply to a magistrate for bail by either video or telephone application if he or she could not otherwise be brought before the court (either in person or by video or audio link) by 4.00pm the following day.¹⁴

Courts policy and procedure

As outlined in the Northern Territory Court Support Services Repatriation Policy, the application for repatriation assistance is generally made at court with the assistance of Court support staff.

¹⁴ Law Reform Commission of Western Australia, *Aboriginal Customary Laws Final Report: The interaction of Western Australian Law with Aboriginal Law and culture* (Perth: Quality Press, 2006) Recommendation 31

Recommendation 7

Identifying whether or not a person needs repatriation assistance should be a standard part of court administrative procedures when a person has been released from custody.

Prisons policy and procedure

ALSWA is appalled that prisoners from regional and remote areas can be released from custody without prison support staff first ensuring that they have the financial means and ability to get themselves home whilst ensuring that they have stable accommodation in the interim.

Releasing prisoners out of the prison gates without any family support or other support services is completely unacceptable, particularly for prisoners who have been identified with mental health problems.

ALSWA submits that allowing people to be released without access to money, personal identification and stable accommodation is setting people up to fail.

Recommendation 8

Repatriation plans should be developed for each qualifying prisoner at least one month prior to release. Families and the appropriate support services should be notified of this plan.

Section 33 of the *Prisons Act 1981 (WA)* states that upon releases of a prisoner from prison, the chief executive officer *may, out of the money available to him for the purpose,* provide the prisoner with the means of returning home by paying for the prisoners fare or by providing other means of transport. ALSWA recommends the following amendment.

Recommendation 9

The *Prisons Act 1981 (WA)* should be amended to read that the Chief Executive officer *must* provide the prisoner with the means of returning home if they do not have the sufficient resources or outside support.

Prisons should be adequately funded to provide such a service.

Such a measure would reduce the likelihood of re-offending, ensure prisoner safety and provide an area where families can assemble.

In addition, ALSWA submits that support accommodation hostels should be set up in all metropolitan and regional areas where the State prisons are located. The purpose of such hostels would be a safe and secure place for prisoners to go upon release that offers support staff if required. The hostel would also be a place where families could come down and wait at the hostels pending prisoner release and then travel home together.

Recommendation 10

The State government should commit to the resourcing an implementation of secure hostels for recently released prisoners and their families. All relevant government and non-government stake holders should be consulted during the development and implementation process.

Conclusion

ALSWA understands that the implementation of the above recommendations may be costly, however ALSWA strongly believes that the recommendations will reduce the re-offending rates of Aboriginal people and thus their overrepresentation in the criminal justice system.

ALSWA submits that in the long run, costs can be reduced through an adequate, evidence-based review of offenders entitlement to bail and the conditions by which police refuse bail.

Adequate video linkup facilities in all regional and remote centres will also reduce costs in the long run for the same reasons.

ALSWA is also strongly of the view that custodial care issues do not end at the prison gate when prisoners are released not at the door of the court when prisoners are released. A sound repatriation policy will enhance prisoner safety.

Summary of ALSWA's Recommendations

Recommendation 1

Recommendations 89, 90 and 91 of the Royal Commission into Aboriginal Deaths in Custody should be implemented by the State government with the objective of reducing the number of Aboriginal people being refused police bail and subsequently being transported hundreds of kilometres to court.

Recommendation 2

The *Bail Act 1982* (WA) should be amended to provide that adults have a qualified right to bail subject to the usual conditions which militate against a grant of bail.

Recommendation 3

All of Western Australian regional courts, police stations and ALSWA offices should have the adequate technologies to facilitate telephone conferencing and video linkup with the nearest regional centre. Protocols should be established to enable person refused police bail to appear as soon as is reasonably possible before a Magistrate either by way of telephone or video linkup to have bail considered.

Recommendation 4

The Northern Territory Court Support Services Repatriation Policy should be used as a guideline for the Department of Attorney General when developing a Western Australian Repatriation Policy.

The findings and subsequent changes made under the current review of the Northern Territory Policy by the Northern Territory Correctional Services must also be considered.

Recommendation 5

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Recommendation 7

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Recommendation 8

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Recommendation 9

The *Prisons Act 1981* (WA) should be amended to read that the Chief Executive officer *must* provide the prisoner with the means of returning home if they do not have the sufficient resources or outside support.

Prisons should be adequately funded to provide such a service.

Recommendation 10

The State government should commit to the resourcing an implementation of secure hostels for recently released prisoners and their families. All relevant government and non-government stake holders should be consulted during the development and implementation process.