

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



**SUBMISSION TO WESTERN AUSTRALIAN LEGISLATIVE COUNCIL STANDING
COMMITTEE ON PUBLIC ADMINISTRATION**

Inquiry into the transport of persons in custody in Western Australia

24 March 2015

ABOUT THE ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA ('ALSWA')

ALSWA is a community based organisation which 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 Western Australia. ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the First Peoples of Australia;
- Ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission into Aboriginal Deaths in Custody; and
- Create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

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

ALSWA is a representative body with executive officers 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 Western Australia via 14 regional and remote offices and one head office in Perth.

ABOUT THE INQUIRY

On 26 November 2014 the Standing Committee on Public Administration ('the Committee') commenced an inquiry into the transport of persons in custody in Western Australia ('the Inquiry'). The terms of reference for the Inquiry are:

The Committee will inquire into and report on the transport of persons in custody in Western Australia, in particular:

- (a) oversight and management of the Court Security and Custodial Services Contract, including sub-contractors, by the Department of Corrective Services;
- (b) whether the current scope of the contract adequately meets service demand;
- (c) the interaction between stakeholders in the performance of the contract;
- (d) implications for Department of Corrective Services on regional transportation of prisoners and contract scope; and
- (e) any other related matters.

ALSWA'S RESPONSE TO THE INQUIRY

ALSWA is not in a position to comment on the scope, oversight and other matters associated with the Court Security and Custodial Services Contract as referred to in the above terms of reference (a) to (d).

As a preliminary general comment, ALSWA recognises that transporting persons in custody carries significant risks – there are potential risks to the safety of the community (eg, in the event of escapes) and to the wellbeing and health of persons being transported (eg, in the event of system failures such as occurred in relation to the death of Mr Ward). While the protection and safety of the community must remain paramount, it is vital that the system for transporting persons in custody is safe and humane and is designed to ensure that any risks to their wellbeing and health are minimised to the greatest possible extent.

It is also essential to ensure that the system for transportation of persons in custody recognises and accommodates the special health needs of Aboriginal people such as higher rates of cardiovascular disease, kidney disease and diabetes.¹ The transportation arrangements for Aboriginal persons in custody must include more regular stops, health checks and ensure that the methods of transportation are designed appropriately so that safety and wellbeing is achieved.

1

See for example <http://www.healthinfor.net.ecu.edu.au/health-facts/summary>.

One way to reduce unnecessary risks to the wellbeing and health of persons in custody is to reduce the unnecessary transportation of persons in custody to courts.

Transportation of persons in custody to Western Australian courts

With respect to term of reference (e), ALSWA provides the following comments in relation to the transportation of persons in custody to courts across the state.

ALSWA recognises that significant efforts have been made in recent years to increase the frequency of video and/or audio link court appearances. The Contract for the Provision of Court Security and Custodial Services Annual Report 2013–2014 states that court to prison movements have decreased by 4.4% and prison to court movements decreased by 4.5% from the previous year. Also, it is noted that there were 7,774 attendances at court in contrast to 18,465 video link appearances.²

Continued efforts to reduce unnecessary transportation of persons in custody for court proceedings is essential in terms of maximising the safety and wellbeing of prisoners and reducing costs to the justice system. However, ALSWA notes, especially in relation to regional courts, that the use of video and audio link facilities is not without its difficulties. For example, in one case involving a five-way audio/video link an ALSWA lawyer experienced problems hearing the various parties, taking instructions and she was not able to properly explain the proceedings to her client (the magistrate was in one location, the accused and prosecution in another, and the lawyer, accused's mother and juvenile justice each in three other separate locations). Other ALSWA staff have reported technological difficulties when sound cuts out and this makes it difficult for all involved in the proceedings.

ALSWA emphasises that there are significant advantages, in some cases, in having an accused present in court in person, in particular for bail and sentencing proceedings. For sentencing proceedings, instructions may be required to be taken from an accused in relation to information presented during the proceedings such as information contained in a pre-sentence report. It is far more effective and appropriate to take instructions in person than via video link or audio link. This is particularly relevant for Aboriginal accused who may not speak English as their first language or who may find the formal court process foreign and daunting. Further, in cases where an interpreter is required, it is preferable that the interpreter and accused are physically present together.

2 Contract for the Provision of Court Security and Custodial Services Annual Report 2013–2014 (2014) 5 & 8.

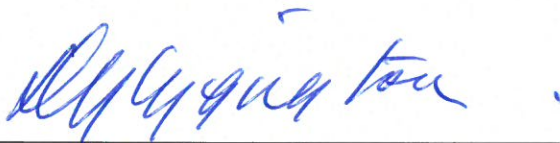
In addition, ALSWA emphasises that the risks associated with an Aboriginal person, who speaks an Aboriginal language as their first language, not having an adequate understanding of proceedings, if they are required to appear without the assistance of an interpreter, are notorious. These risks are often amplified if such persons appear from a prison or a police station via a video or audio link. The convenience involved in an appearance via video or audio link, can never outweigh the fundamental importance of an accused person understanding the proceedings and being able to participate appropriately in them. This again highlights the importance of the establishment of a properly funded and resourced state wide interpreter service which is readily available to Aboriginal persons appearing via video and audio links.

The current key legislative provisions dealing with court appearances by video or audio link are as follows:

- Section 66B(2) of the *Bail Act 1981* (WA) provides that bail proceedings may be conducted by means of a video link or an audio link.
- Section 77 of the *Criminal Procedure Act 2004* (WA) provides for the manner of appearance of accused persons who are in custody or detention for proceedings other than a trial or sentencing. For a first appearance on a charge the accused must be brought to court in person unless the court has ordered that the accused be brought to court by means of a video or audio link. For a subsequent appearance, the accused must appear by video or audio link unless the court has ordered that the accused be brought to court in person (even if there is a warrant requiring the accused to be brought to court). An order by the court that the accused be brought to court by means of a video or audio link or, alternatively, in person may be made 'at any time on its own initiative or an application by a party to the case if it is satisfied that it is in the interests of justice to do so'.
- Section 14 of the *Sentencing Act 1995* (WA) provides that a court is not to sentence an offender unless the offender is personally present in court or appears before the court by video link under s 14A (the only exceptions to this general rule are where the court decides to impose no sentence or a fine in the offender's absence or where the proceedings are directed to proceed in the offender's absence because of his or her conduct). Section 14A provides that:

- (1) A court sentencing an offender may, on its own initiative or on an application by the prosecutor or the offender, direct that the offender appear before it by video link from a place in this State.
- (2) The court shall not make a direction under subsection (1) unless it is satisfied that —
 - a. the video link is available or can reasonably be made available; and
 - b. the direction is in the interests of justice

ALSWA understands that generally there is a preference for offenders to appear in person for sentencing for superior court matters. As highlighted above, ALSWA considers that there are considerable benefits in having an offender present in person for sentencing matters. However, on balance, ALSWA is of the view that an offender should have the option of electing to attend court by video link for sentencing after being fully informed of the advantages and disadvantages of video link and that such a request should be granted unless the court is satisfied that to grant the request would not be in the interests of justice. Such a reform would indicate a presumption in favour of attendance by video link and may encourage greater use of video link facilities for sentencing cases involving persons in custody who would otherwise be required to be transported long distances throughout the state. Likewise, the *Bail Act 1981* and the *Criminal Procedure Act 2004* should be amended to enable an accused to request to appear in court by video link or audio link and that the court should grant such a request unless satisfied that it would not be in the interests of justice to do so.



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