

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



**SUBMISSION TO ECONOMIC REGULATION AUTHORITY DRAFT REPORT OF  
THE INQUIRY INTO THE EFFICIENCY AND PERFORMANCE OF WESTERN  
AUSTRALIAN PRISONS**

**19 August 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.

## **ALSWA SUBMISSION TO THE ECONOMIC REGULATION AUTHORITY'S ISSUES PAPER**

On 15 December 2014, ALSWA provided a written submission to the Economic Regulation Authority ('the Authority') in response to its Issues Paper. In its submission, ALSWA highlighted the following matters:

- ALSWA's fundamental concern in relation to the Western Australian prison system is the appallingly high level of overrepresentation of Aboriginal people in custody and the ineffectiveness of imprisonment in terms of community safety (as evidenced by high recidivism rates).

- Rehabilitation is the most important objective of the prison system because incapacitation only provides short-term protection to the community. In contrast, rehabilitation can provide long-term and permanent community protection by ensuring that offenders do not reoffend once released.
- ALSWA considers that the overriding objective of the prison system should be 'community safety' because this broader concept enables the prison system to accommodate and respond to issues that impact on the wellbeing of the prisoner, his or her family and community.
- There should be greater resources for Aboriginal specific and culturally appropriate treatment, education and training programs in Western Australian prisons, especially in regional and remote areas. Furthermore, existing and future prison programs must be subject to rigorous and independent evaluations.
- The prison system must take into account the unique health needs of Aboriginal prisoners and prison health services must be culturally appropriate and work collaboratively with the prisoner's family and community (ideally prison health services should be delivered by Aboriginal-controlled service providers).
- In order to ensure that Aboriginal prisoners are able to effectively access and participate in rehabilitation programs, health care services and other services within prison, Aboriginal language interpreters must be available. To this end, ALSWA emphasised the need for a properly resourced state-wide Aboriginal interpreter service.
- The prison policy in regard to funeral attendance should be revised to enable consideration of a broader range of kin relationships for Aboriginal prisoners in recognition of the reality that attendance at funerals of important kin is not only in the best interests of the prisoner but also the prisoner's extended family and community.

## **ALSWA SUBMISSION TO THE INQUIRY'S DRAFT REPORT**

The Terms of Reference direct the Authority to undertake an inquiry into options to improve the efficiency and performance of public and private prisons. The Terms of Reference further provide that the Authority is to provide its advice based 'upon economic, market and regulatory principles and will include advice on the design of appropriate performance standards, incentives and performance monitoring processes for the prisons system'. Furthermore, a key deliverable of the inquiry 'will be the development and calculation of a set of benchmarks to allow comparisons of the performance of individual prisons in WA'.

The Authority published its Draft Report on 9 July 2015 and submissions are due by 21 August 2015. The Draft Report makes a total of 33 recommendations covering a range of issues concerning the performance and efficiency of the Western Australian prison system. ALSWA does not intend to address every recommendation in the Draft Report because a significant proportion of these recommendations concern issues in regard to prison governance, management and administration. These are areas outside the expertise and experience of ALSWA. However, ALSWA makes submissions in relation to particular aspects of the Draft Report and the inquiry below:

### **The limitations of the terms of reference**

In his Foreword, the Chair of the Authority acknowledges that imprisonment is very expensive (costing Western Australia approximately \$608 million in 2013–2014) and that the rehabilitation of prisoners is crucial to reducing the cost burden of the continued re-imprisonment of recidivist prisoners in this state.<sup>1</sup>

In the Draft Report it is observed that:

A challenge in conducting this Inquiry is that many of the drivers and decisions that affect the cost and performance of the prison system involve parties outside the prison system, and are beyond the Terms of the Reference of this Inquiry.

In particular, the prison system is affected by decisions made by the broader justice and human services systems. These include, for example, decisions on justice policy, policing and sentencing, and decisions on the delivery of human services (including health and mental health, education, child protection and disability services). Combined, these decisions influence the size of, and growth in, the prison population, the type of prisoner in the system, and the complexity of prisoner needs.<sup>2</sup>

The Authority has concluded that it is beyond the Terms of Reference ‘to address the external factors that affect the prison system (such as the high rate of indigenous incarceration and growth in the prison population).<sup>3</sup> Despite this, the Authority has endeavoured to consider the broad costs to the community of imprisonment rather than just the direct cost of delivering the prison system. In doing so, the Authority recognises the importance of prisons that focus on rehabilitation and that ‘a more sophisticated approach to managing offenders is likely to represent the best value for money to the Government (and hence taxpayers)’.<sup>4</sup>

More specifically, the Authority has concluded that it is within the scope of the Terms of Reference to ‘make recommendations for the prison system that will alleviate cost pressures on the justice and human services systems’. However, it does not consider that the Terms of Reference enable

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1 Economic Regulation Authority Western Australia, *Inquiry into the Efficiency and Performance of Western Australian Prisons*, Draft Report (9 July 2015) 1.

2 Ibid 3.

3 Ibid 13.

4 Ibid.

recommendations to be made for 'the justice and human services systems to alleviate cost pressures on the prison system'.<sup>5</sup>

Furthermore, the Draft Report states that 'justice policies that are 'tough on crime' may not be effective on crime. In other words, these policies may lead to an increase in the prison population (with the consequent increased cost), without delivering benefits in the form of deterrence to criminal behaviour or preventing people from reoffending'.<sup>6</sup> ALSWA strongly agrees with this proposition.

ALSWA acknowledges that the Authority's Terms of Reference are restricted. However, in the absence of a broader inquiry that considers the multitude of factors across all government departments that drive increased prison numbers, any benefits to be gained from the Authority's inquiry are likely to be minimal. Prisons are expensive and the cost of imprisonment in Western Australia is increasing because of growing prison numbers. In addition, overcrowding impinges the effectiveness of rehabilitation strategies within prisons. The broader community needs to be informed that the prison system is not providing long term community protection and this failure comes at a very heavy financial and human cost. As the Office of the Inspector of Custodial Services has observed:

Recidivism means more crime, more victims and more financial costs to the state. It places enormous pressure on the prison system, increasing prison numbers, overcrowding, and costs.<sup>7</sup>

Assuming that the Authority would be unable at this stage of the inquiry to seek broader Terms of Reference, **ALSWA strongly urges the Authority to recommend that the Western Australian government undertake immediate reforms across all government departments to reduce the number of people entering prisons and to provide effective strategies to address the causes of offending behaviour.**

## **Overview of the prison system in Western Australia**

The Draft Report provides an overview of the current prison system in Western Australia including an outline of who is responsible for the various aspects of the administration of the system and important data in relation to the cost of imprisonment, prisoner numbers and demographics of prisoners.

It is stated that the cost of the prison system in 2013-2014 was \$608 million and, further, that the Authority estimates that the prison system as a whole may be spending approximately \$1 million per

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5 Ibid 17.

6 Ibid 19.

7 Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs* (September 2014) i.

day on prisoners who return to prison.<sup>8</sup> This equates to approximately \$365 million per year and 60% of the total cost of running the prison system. Further, the prison population is continually growing. The Draft Report notes that the average daily prison population has increased by 32.3% between 2007/08 to 2013/14 even though in the same period the general population growth was only 19.5%.<sup>9</sup>

The Draft Report also refers to the high level of Aboriginal imprisonment in Western Australia. It states that the 'only other state or territory with a higher representation of indigenous prisoners is the Northern Territory'.<sup>10</sup> While it is correct to state that the Northern Territory has a higher proportion of Aboriginal prisoners than Western Australia, ALSWA emphasises that Western Australia has the highest level of *overrepresentation* of Aboriginal people in prison in the entire nation.<sup>11</sup> The Authority should make this clear in its Final Report.

In regard to recidivism, the Draft Report highlights that 45% of all Western Australian prisoners return to corrective services within two years of release and 39% of prisoners return to prison within two years of release. It is further stated that the recidivism rate is higher for Aboriginal prisoners. The Office of the Inspector of Custodial Services has found that the recidivism rate for Aboriginal prisoners is '25 percentage points higher than the non-Aboriginal recidivism rate'.<sup>12</sup>

ALSWA supports effective governance arrangements for the prison system to ensure that appropriate decisions in regard to programs and services are made and agrees with the Authority that '[g]ood governance should establish processes that lead to optimal decisions and outcomes for the wider community, including efficient and responsible use of Government resources'.<sup>13</sup> However, ALSWA is far more concerned about whether there are sufficient and effective programs and services designed to reduce reoffending and facilitate rehabilitation. Responsibility might shift from a section of a Department to an individual prison operator; however, unless there is a whole-of-government approach to ensuring that prisons offer appropriate programs and services and a commitment from government to ensure the necessary resources, any shift in responsibility and/or changes to governance arrangements are unlikely to result in significant improvements.

## Programs and services

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8 Economic Regulation Authority Western Australia, *Inquiry into the Efficiency and Performance of Western Australian Prisons*, Draft Report (9 July 2015) 37 & 41.

9 Ibid 39.

10 Ibid 41.

11 ABS, *Prisoners in Australia 2014* – 4517.0. Approximately 32% of Northern Territory's population is Aboriginal in contrast to 3.8% of Western Australia's population.

12 Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs* (September 2014) ii.

13 Ibid 45.



ALSWA is of the view that the Draft Report has not devoted sufficient attention to the high rates of incarceration of Aboriginal people in Western Australia and the high recidivism rates of Aboriginal prisoners. Reducing the level of overrepresentation of Aboriginal people in custody requires a whole-of-government approach and a strong partnership between government, non-government agencies and Aboriginal communities and organisations. However, the prison system in Western Australia can be reformed and improved to facilitate reductions in recidivism rates by ensuring that there are effective and culturally appropriate programs, services and policies for Aboriginal people in custody.

In 2014, the Office of the Inspector of Custodial Services reported on the proportion of unmet treatment needs resulting from program unavailability for prisoners released in 2013. It was found that the 'five facilities with the highest proportion of unmet treatment needs due to program unavailability were all regional 'Aboriginal' prisons and it was recommended that the availability of treatment programs in the Aboriginal-dominated prisons of West Kimberley, Greenough, Eastern Goldfields and Roebourne should be increased to rectify the 'current state of inequity between Aboriginal and non-Aboriginal prisons'.<sup>14</sup>

The Draft Report observes that the Department's 'approach to allocating prisoners to rehabilitation programs is poor and unsophisticated'. It is further stated that:

Also, the Department does not adequately review the effectiveness of its rehabilitation programs, either for individual prisoners or at a whole-of-system level. The Department is aware of these issues and is progressing reforms.<sup>15</sup>

The Department currently does not have adequate information, processes and analysis to assess the effectiveness of its rehabilitation programs.<sup>16</sup>

The Authority acknowledges that the prison system in Western Australia is overcrowded and that overcrowding impacts on the prisoner's access to programs and services which, in turn, affects rehabilitation outcomes.<sup>17</sup>

The following recommendations are made:

- The Department of Corrective Services review the way it currently allocates prisoners to programs (including requirements such as a 6 month minimum stay to receive assessment) and improve this process to optimise the number of prisoners receiving programs.

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14 Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs* (September 2014) 28-29.

15 Economic Regulation Authority Western Australia, *Inquiry into the Efficiency and Performance of Western Australian Prisons*, Draft Report (9 July 2015) 52.

16 Ibid.

17 Ibid 54.

- The Department of Corrective Services review the type and timing of programs currently delivered to ensure they adequately address prisoners' practical needs for education and life skills, and capitalise on opportunities to deliver short-course programs to prisoners on remand.
- The Department of Corrective Services develop a module for the Total Offender Management System to improve monitoring of prisoner risks and needs to support early intervention.
- The Department of Corrective Services require all major operational and strategic proposals to incorporate relevant analytical findings, including an assessment of how the proposal is likely to affect prisoner outcomes, before a decision is made and approved.
- The Department of Corrective Services partner with the Department of Health's cross-sector Data Linkage WA project to obtain information about prisoner outcomes beyond the prison system.
- The Department of Corrective Services establish a research partnership framework to actively seek out and engage in projects with universities, to gain a deeper understanding of specific issues within the prison system.<sup>18</sup>

While ALSWA supports these recommendations, it **strongly urges the Authority to make specific recommendations in regard to the provision of programs and services for Aboriginal prisoners. These recommendations should include that the prison system must ensure that there are culturally appropriate programs, services and policies for Aboriginal prisoners and that resources must be provided for the provision of Aboriginal language interpreters.** Furthermore, any reforms to the manner in which prison programs and services are provided must ensure that the tendering and commissioning procedures enable Aboriginal-controlled organisations to compete effectively with larger non-government organisations.

## **Transparency and accountability**

A number of the recommendations in the Draft Report are underpinned by the need for transparency and accountability. For example, Recommendations 1 and 2 refer to Service Level Agreements and stipulate that these agreements should be publicly available and that the Department of Corrective Services should be required to report annually to Parliament on the performance of each prison.<sup>19</sup> ALSWA supports measures that increase transparency and accountability in regard to the performance of Western Australian prisons. In this regard it is also vital that the data and evaluations in regard to prisoners and prisoner programs and services are robust and publicly available. The OICS reported in 2014 that out of 21 treatment programs operating in the Department of Corrective Services, only eight had been evaluated by the Clinical Governance Unit and only one had been subject to a long term evaluation. Moreover, none of these evaluations had been made publicly

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18 Ibid 129.

19 Ibid 74.



available.<sup>20</sup> ALSWA supports the recommendations in the Draft Report in regard to improved data collection and sharing of data.



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<sup>20</sup> Office of the Inspector of Custodial Services, *Recidivism rates and the impact of treatment programs* (September 2014) 30.