

**Submission
from
Legal Aid of Western Australia, Pilbara Regional Office and
Aboriginal Legal Service of Western Australia, South Hedland Office
to the
Standing Committee on Public Administration
for the
Inquiry into the transport of Prisoners in custody in Western Australia**

March 2015

About Us and Our Clients

This submission is from the South Hedland Office of the Aboriginal Legal Service and the Pilbara Regional Office of Legal Aid WA (hereafter referred to as the 'Pilbara Criminal Law Services'). Our two offices provide criminal law services to the whole of the Pilbara region, including the townships of South Hedland, Roebourne, Karratha, Newman and Marble Bar and the Aboriginal Communities of Jigalong, Nullagine and Yandeyarra.

The majority of our clients are Aboriginal people from across the Pilbara. It is common that our clients are people who have been remanded-in-custody, or who are sentenced prisoners, primarily at either Roebourne Regional Prison or Banksia Hill Detention Centre. For numerous reasons our clients may have also been transferred to metropolitan prisons or Greenough Regional Prison.

Importance of the Issue of the Transport of Prisoners

It is generally recognised that when sentencing, or other significant decisions regarding a prisoner's liberty are being made, that a prisoner should be physically present. This is particularly so in regards to prisoners with mental illnesses, cognitive impairments or who are from culturally and linguistically diverse communities; which is the vast majority of prisoners in the North West.

The long distances that prisoners are required to travel in the Pilbara mean that prisoners often elect to have their matters dealt with by way of video-link rather than being brought up.

This is not only concerning in terms of access to justice, but in contrast to the instances where prisoners are brought up the issues of prison fatigue and pleas of guilty based on convenience and expediency become significant.

It is for these reasons that the issue of transport of prisoners is vitally important to the working of the justice system in Western Australia. The Pilbara Criminal Law Services therefore welcome this Inquiry of the Standing Committee.

This submission addresses each term of reference of the Inquiry in turn.

**a) Oversight and Management of the Court Security and Custodial Services
Contract by the Department of Corrective Services**

1. Serco Staffing Levels at South Hedland Magistrates Court

It is not uncommon to be told by Serco staff that certain services, such as the movement of prisoners in-and-out of non-contact rooms will be delayed due to being 'short-staffed'. The Pilbara Criminal Lawyers are of the view that the services provided by Serco at South Hedland Magistrates Court are services of an essential nature to the running of the court system and therefore should not be seen as negotiable on the basis of Serco not ensuring that staffing levels are appropriately maintained.

Recommendation One: The oversight of the contract include stringent requirements around the maintaining of appropriate staffing levels.

b) Scope of the Contract

2. Serco at Karratha, Newman and Roebourne Courts

As it currently stands for the above locations, Court Orderly services and security is managed by the local Police, with Serco only managing the transport to and from Roebourne Regional Prison (RRP).

Therefore, in reality, there is no security present at these court houses for victims, court staff, Police Prosecutors, lawyers and accused persons. It is unrealistic and impractical to expect that the Police Prosecutor, or the Police Officer acting as Orderly, provide security.

We are also of the view that it is inappropriate for Police to provide either Court Orderly services or court security services. For example, it is not uncommon that when an accused person arrives at court for their court appearance, the Police Officer acting as Court Orderly may have also been the arresting or interviewing officer in the very matter that the person is at court for. In the instances where the matter is listed for trial, the Court Orderly may then be called as a witness. There have also been instances where the Magistrate asks a question of the Prosecutor, only for the Police Orderly then to approach the Prosecutor to provide them with the information to be provided to the Magistrate, or in some instances for the Police Orderly to address the Magistrate directly.

Furthermore, at times when a person is sentenced to an immediate term of imprisonment, the Police Prosecutor will have to assist the Police Orderly to pat-down the now prisoner as they are taken into custody.

The inappropriateness of Police providing these services in the courts, is compounded when considering the historical distrust between Aboriginal people and Police. We are of the view that it is not only important for the court system to be independent from the Police, but that it must also be seen to be independent.

Recommendation Two: Karratha, Newman and Roebourne Court Houses be included in the Serco contract. We would submit that Karratha Court House requires urgent consideration given the security issues that have arisen there.

3. Transport to and from Aboriginal Community Courts

The Pilbara Criminal Law Services note that when prisoners are transported from RRP to Nullagine and Jigalong Courts they are transported by Serco. However when they are transported from those Courts it is done so by Police.

Police transportation of prisoners often means that those officers who charge and interview a prisoner are the same officers who transport them to RRP. We submit that this arrangement is unsuitable both for the prisoner and the officers.

Recommendation Three: Serco transport both to and from Jigalong and Nullagine Courts.

4. Movement of Prisoners by Serco to Court

We are regularly informed that the Serco contract does not allow for people to be brought to the Court/non-contact rooms before 9 am and that people can only be in Serco custody for 30 minutes. This can mean that lawyers are unable to see their prisoners in a timely manner, resulting in rushed interviews and incomplete instructions.

Recommendation Four: References to time be removed from the contract. These times do not reflect practice in the jurisdiction and do not make sense.

5. Provision of Food and Drink

We submit that the nature of our jurisdiction means that provision of food and beverages to prisoners being transported and in Serco custody must be accommodated for. Travel time from RRP to many of our Courts is lengthy.

Recommendation Five: Serco be permitted to provide both hot and cold drinks as well as food to prisoners.

c) Interaction Between Stakeholders

6. Responsibilities for Prisoners in Custody at South Hedland Magistrates Court

There appears to be uncertainty as to the division between Serco and the Police, as to which stakeholder is responsible for the prisoner while in custody at the South Hedland Magistrates Court. It is often the case that when prisoners are transported from RRP to the Court, South Hedland Police are of the view that the Police are only holding the prisoner, whilst Serco appear to be of the view that the prisoner is not their responsibility when being held at the Police Station.

In addition, in the South Hedland Courthouse, as with the other Courts in our jurisdiction, prisoners are brought from RRP to Court by Serco but are then processed through the Police station rather than through Serco holding cells. This design is not suitable as remand and sentenced prisoners should not have to go through Police stations or interact with the Police when coming to court.

Divisions such as these result in stakeholders being able to shift responsibility for the welfare of a prisoner.

One such example is where a remand prisoner was brought up to South Hedland from RRP to be sentenced in the District Court. This prisoner instructed that she was not provided with her blood pressure or diabetes medication that morning as she had left the prison too early to access medical services. Serco advised her lawyer that she was too unwell to appear in court. For some time, South Hedland Police and Serco debated who was responsible for the remanded prisoner, who had the authority to take her to the hospital and in what cells she should be held awaiting her appearance in court. Throughout this period the prisoner was moved between Police and Serco cells on a number of occasions. Ultimately Police transported the prisoner to Hedland Health Campus, however the prisoner was still not provided with her required medication although the Police were issued with a 'fitness to hold in custody' certificate. On the basis of this certificate, Serco further determined that the client was well enough to appear in court to be sentenced. Ultimately, the client did receive her required medication, some 7 hours and 40 minutes after she had left RRP.

Recommendation Six: The contract remove such uncertainty as to which stakeholder is responsible for the prisoner's welfare when being transported, and when such responsibility begins and ends.

Recommendation Seven: The practice whereby remand and sentenced prisoners have to be processed through Police cells be eliminated wherever possible.

The Pilbara Criminal Law Services also note that there seems to be limited communication with regards to prisoner welfare. Given the distances involved, prisoners are often transported from RRP in the early hours of the morning. This means that health and other services are not open when prisoners are leaving, so prisoners have no opportunity to have their health concerns attended to. The case study above is illustrative of the concerns that can arise when access to these services is limited.

Recommendation Eight: Services be opened and made available to prisoners at RRP prior to commencing their travel each day.

d) Implications for the Department on Regional Transportation of Prisoners and Contract Scope

7. Transport Options Program – Release of Sentenced Prisoners

The Pilbara Criminal Law Services note that the Transport Options Program (TOP) only provides services to those who have been remanded-in-custody or have received bail. The TOP does not assist in the transportation of people who are returning to their communities after having been released from serving a term of imprisonment.

While travel from Perth prisons to the North West is meant to be provided, this is not always the case where prisoners are regularly left to organise transportation themselves. We are also concerned that due to barriers of language, culture as well as mental illness and cognitive impairment, prisoners may not be in a position to provide a clear indication on where they wish to be returned to. This can mean that due to a lack of supports and

other protective factors, prisoners may re-offend to facilitate their return to their community.

Recommendation Nine: Each prisoner released from custody have their travel arrangements made upon being released on parole and that this process include making contact with family or other supports who may assist in this process.

8. Transport Options Program – Inter-Region versus Intra-Region Movements

We are also concerned about the limitations on the scope of the TOP when it comes to transporting prisoners inter-regionally. For example, a recent South Hedland client was moved from RRP to Casuarina Prison. Upon appearing in Court by way of video-link for a bail application, the bail application was adjourned for four days, with a bring up order made, as the presiding Magistrate was not willing to have the remanded prisoner released to bail when in Perth with no arrangements in place for transportation back to South Hedland. The TOP was unable to assist in transporting the prisoner back to South Hedland as it would have involved inter-regional transport. Therefore, the client was effectively held in custody for a further 4 nights after it was decided that bail was appropriate, and furthermore the transport of the prisoner back to South Hedland came with considerable costs as the prisoner had to be transported under guard.

Recommendation Ten: The distinction between inter-regional and intra-regional travel for the purposes of the TOP be removed.

9. Transport Options Program - Discrepancies between Video-link and Bring up Orders

The Pilbara Criminal Law Services also raise concern with the discrepancies between prisoners who appear in Court by way of video-link as opposed to those who appear on a bring up order. When prisoners are brought up in person and granted bail they are not given access to transport back to their community. Those who appear by way of video-link and are granted bail do have access to transport through TOP.

We understand that the concern raised by the Department in this scenario is that when prisoners are brought up and they receive bail there is no remand warrant and therefore the Department has no authority. This can be juxtaposed with those prisoners who are often asked to stay at RRP for a number of days after the end of their sentence or after being granted bail after a video-link appearance, while transport is organised.

Attempts to include the TOP transport as a condition of bail have not been well received.

Recommendation Eleven: The TOP provide transport as an option to prisoners when they have been granted bail, regardless of whether they have been brought up or are appearing via video-link.


Other Concerns

The Pilbara Criminal Law Services also wish to take this opportunity to raise the considerable distances juveniles who have been remanded in custody must travel. That these young people are transported all the way to Perth from the North West, particularly when they may only be remanded for one week, is unacceptable and inappropriate.



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