

The Inspector's Overview

ALBANY REGIONAL PRISON: A PROVEN PERFORMER IN NEED OF CONTINUING INVESTMENT AND A CASE STUDY OF WESTERN AUSTRALIA'S MANAGEMENT OF INDONESIAN PRISONERS

INTRODUCTION

This is the report of an announced inspection of Albany Regional Prison ('Albany') conducted in November 2011.ⁱ Previous inspections conducted in 2002, 2005 and 2008 have consistently praised Albany as one of the state's best performing prisons.ⁱⁱ This report confirms that it remains a high performer but makes recommendations designed to ensure that performance does not slip and that the prison has adequate infrastructure to meet the needs of its growing number of prisoners, its complex prisoner profile and its committed staff.

Our process of continuous inspection, under which we regularly visit and monitor all prisons, meant that we were very confident prior to this formal inspection that we would again find Albany to be one of the best-run and highest functioning prisons. The inspection therefore provided an opportunity to reflect more broadly on why Albany has so consistently performed to a high standard. When asked about Albany's proud record, some people use phrases such as 'that's just Albany for you' or 'that's the Albany way'. But such phrases do not do justice to the effort, planning, commitment and professionalism required to achieve consistently good performance. Importantly, Albany should also offer lessons of more general application.

The positive findings of this report should not obscure the fact that the prison faces some serious challenges. The most obvious of these is that it has been required to 'do more with less' over recent years. The number of prisoners housed at Albany has increased significantly, and a new unit was recently opened,ⁱⁱⁱ but vital supporting infrastructure, some of which has needed attention for many years, has not been replaced, renovated or expanded.

This inspection also provided an opportunity to examine in some detail the management of Indonesian prisoners, more than fifty of whom were being held at Albany, the vast majority having been charged with 'people smuggling' offences.^{iv} As well as making some positive findings, the report raises some significant issues with respect to the treatment of these prisoners. Developments with respect to Indonesian prisoners since the inspection also make it necessary to provide updated comment in this Overview.

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- i Publication of this report has taken longer than I would have hoped. This is largely due to the need to seek clarification from the Department of Corrective Services (DCS) with respect to their initial responses to the report's recommendations.
- ii OICS, *Report of an Announced Inspection of Albany Regional Prison*, Report No. 18 (September 2002); *Report of an Announced Inspection of Albany Regional Prison*, Report No. 38 (November 2006); *Report of an Announced Inspection of Albany Regional Prison*, Report No. 60 (April 2008).
- iii Unit Four opened on 24 February 2012. At the same time, Unit Three was closed.
- iv I have used the term 'charged' rather than 'convicted' because a number of these prisoners were on remand awaiting the outcome of their cases.

THE INGREDIENTS OF SUCCESS

By and large, the 'Albany Way' is implicit rather than explicit. Local management, staff and prisoners refer to it, and it informs daily life at the prison but it has not been formally analysed or articulated. Six key ingredients are set out below. The recipe includes some system-wide learning opportunities:

- (i) **Shared positive values** are evident throughout the prison. Whilst there is always room for improvement, and whilst some staff debate the merits of certain practices, they know, understand and apply the core values of the prison. These include a strong focus on decency and respect.
- (ii) **Staff culture.** The overwhelming majority of staff have a pragmatic 'can do' attitude. They also have a more positive attitude to the job and to the management team than is the case at many prisons.
- (iii) **Management culture.** The management team is stable but not stale. It is an experienced team and the prison has benefited from strong succession at the Superintendent level. When the Superintendent or other senior managers are on leave or acting in other positions, there is consistent and experienced coverage. There also appear to be sound processes to allow staff to 'act up' into higher positions at the prison when opportunities arise.

One of the most striking and important features of Albany is that the management team is visible in the prison itself and is known to and connected with staff and prisoners. At many prisons, management now lack such visibility. At many other prisons, Superintendents say that the demands from above (head office) and from below (the prison) are such that they have no time to get 'out and about'. However, Albany has managed to maintain a good balance between reporting up and managing locally. The benefits of this are clear, tangible and positive.
- (iv) **Pro-social staff/prisoner culture.** Albany retains the positive staff/prisoner culture on which previous reports have also commented. A pro-social culture does not involve 'being soft' on prisoners; it involves treating people with dignity and respect, knowing the prisoners, knowing what is going on under the surface, and working through issues which might otherwise escalate. It is no surprise, then, that Albany has an enviable track record for the safe management of prisoners who have proved difficult to manage elsewhere in the system, a better case management system than other public prisons,^v and a positive approach to the management of foreign national prisoners.
- (v) **Innovation and responsiveness.** The report identifies several areas where Albany has been proactive and innovative. Examples include the use of Skype technology for the benefit of foreign national prisoners, the introduction of the Prison Forum as a means to connect better with prisoners, and an enterprising approach to developing the prison's Aboriginal Services Committee (PASC) and an Indigenous Employment program (IEP). The prison has also proved very responsive to our suggestions over the years.

v Acacia Prison, currently operated by Serco, also has better developed case management systems than other prisons: OICS, *Report of an Announced Inspection of Acacia Prison*, Report No. 71 (March 2011) 44–46.

- (vi) ***Community support and re-entry services.*** Albany Prison is located out of town and is not on a main access road. As a maximum security facility, there are also very limited opportunities for community based work by its prisoners. However, it is not a case of 'out of sight, out of mind'. The local community and representatives at all levels of government are actively interested in and supportive of the prison, and community based agencies are providing positive, proactive and well-coordinated re-entry services.

AREAS OF CHALLENGE/IMPROVEMENT

The positive findings and comments contained in this report should not mask the fact that further investment is required at Albany. To that end, we have made 16 recommendations. These are compiled in Appendix One, along with the responses of the Department of Corrective Services ('DCS').

It will be seen that the vast majority of our recommendations require investment in the physical infrastructure of the prison and/or in additional human resources in key service areas. Focal points of the recommendations include health services, education and employment opportunities for prisoners. None of these areas has kept pace with expanded prisoner numbers and many areas, including the health centre and the education centre, were in need of rebuilding or refurbishment even before the number of prisoners increased.

Prisons are far more than beds, bricks and mortar; they are a living interactive environment. But there is a limit on the extent to which staff, however resourceful they may be, can continue to make do. In particular, the prison suffers from prisoner unemployment and under-employment, and from inadequate and under-staffed health facilities and services.

ABORIGINAL PRISONERS

Few Aboriginal prisoners at Albany are currently accessing staged re-entry through placement at a minimum security prison or a work camp. There are also limited opportunities for skill development at Albany itself. No fewer than six recommendations in this report are therefore directed in whole or in large part at improving Aboriginal prisoners' prospects of a safe and crime free re-entry to the community.

Disappointingly, DCS has only fully supported two of these recommendations (Recommendation 7 regarding Aboriginal prisoners from other parts of the state who are being held 'out of country' at Albany, and recommendation 11 regarding the appointment of an Aboriginal Health Worker). It has either not supported or has given only equivocal and non-committal support to the recommendations which targeted improved employment, skilling and re-entry processes for Aboriginal men from the south west (Recommendations 4 and 5). This does not augur well: this group has high re-entry needs and should be a higher priority for departmental planning, initiatives and measurably improved outcomes.

FOREIGN NATIONAL AND CULTURALLY/LINGUISTICALLY DIVERSE PRISONERS

At the time of the inspection, around 90 of Albany's prisoners, close to 30 per cent of its population, were classified as foreign nationals. Fifty seven of them were Indonesian nationals who had been charged with 'people smuggling' offences.

Even leaving to one side the Indonesian prisoners, the number of foreign nationals in Western Australia's jails has been increasing in recent years, as has the cultural and linguistic diversity of the prisoner population. Albany has taken a positive and proactive approach to managing these groups but more comprehensive system-wide policies are needed to promote, support and embed good practice. Unfortunately, DCS has not yet produced such policies despite having committed to do so more than two years ago.^{vi}

INDONESIAN PRISONERS

General Treatment

The Federal government does not have prisons of its own but relies on the states and territories to house people who have been convicted of offences against commonwealth law, such as drug importers and social security offenders. The most discussed cohort of 'commonwealth prisoners' in recent years is people charged with 'people smuggling' offences, almost all of whom are Indonesian citizens by origin and fishermen by trade.

On the positive side, this report shows that the state government, the federal government and the Indonesian government can be satisfied that Albany Regional Prison has generally managed Indonesian prisoners well, especially given the overcrowding pressures faced over the past three years. However, there are two areas of serious continuing concern: the inability of Indonesian people charged with 'people smuggling' offences to send money home to their families during their lengthy time in custody and the detention of Indonesian minors in our jails.

Indonesian Prisoners' Earnings: Discrimination, Confusion and Illogicality

Prisoners are able to earn 'gratuities' when they work in prison. In Australian terms the amounts are quite low, ranging from around less than \$3 ('level six') to \$8.90 ('level one') per day. Gratuities are necessary because prisoners must undertake work which is essential to core operations in areas such as the kitchens, gardens, laundries and general maintenance. Gratuities are also desirable as they offer an incentive to good behaviour. The general principle is that prisoner can 'work up' to higher gratuity levels over time.

Because of the mandatory minimum penalties that apply to 'people smuggling' offences, the Indonesian prisoners are generally serving relatively long sentences. They are also universally regarded as good workers. Consequently, many will reach gratuity levels one, two or three.

In some quarters, there is a view that because the gratuity amounts are quite large compared with what boat crew members would earn at home, they will not be deterred by the prospect of a prison sentence if they are allowed to remit money home. Because of their impoverished home circumstances and the high public profile of such offences, Indonesian boat crew

vi OICS, *Report of an Announced Inspection of Hakea Prison*, Report No. 63 (April 2010) 81.

(not only 'people smugglers' but also illegal fishermen) have therefore been made subject to rules relating to gratuities which are not applied to any other prisoners.

DCS policies permit prisoners convicted of 'people smuggling' offences and illegal fishermen to spend their gratuities through the prison canteen (on items such as food, cigarettes, soft drinks and sports shoes) but not to remit money home during their time in prison.^{vii} This practice is said to be based on a request from the Commonwealth Attorney General's Department with a view to the Department of Immigration and Citizenship (DIAC) issuing a notice to garnish such prisoners' earnings (a 'garnishee notice') to recoup some of the costs incurred by the Commonwealth in detaining them in immigration facilities prior to their transfer to prison.

The rules are discriminatory, illogical, distressing, confusing and counter-productive:

- Foreign nationals who are murderers, sex offenders or drug traffickers can remit money home.
- The policy is not expressly limited to Indonesians. But given that it is limited to people smugglers and illegal fishermen, its only practical impact is on Indonesian boat crew. As such, it is discriminatory.
- Although Western Australia was swift to actively embrace the Commonwealth's 'request', not all states and territories have done so.
- Even remand prisoners, a significant number of whom are ultimately found not guilty, are subject to the policy.
- The policy is creating palpable anxiety and distress. The Indonesian prisoners feel shame at being unable to provide for their dependents, and many told moving stories about their family circumstances. Whilst we cannot directly confirm the truth of those stories, they were plausible and consistent.
- The Commonwealth authorities are not backing up their 'request' to the state authorities by actually seeking to garnish people's earnings. For example, I understand that the young men who were recently repatriated were able to take money home. How much of this was due to diplomatic and media pressure can only be a matter of speculation.
- Common sense and humanity suggest it would be far preferable for prisoners to be able to provide some support to their families during their incarceration rather than taking a potentially large amount home at the end.

Recommendation 10 to this report proposes that all foreign national prisoners should be able to use their gratuity earnings during their time in prison to support their dependants. DCS has declined to express a view either way on this recommendation, stating only that it has been noted and that the Department is currently in discussions with DIAC and the Federal Government.

vii ACCO (Assistant Commissioner Custodial Operations) Notice 8/2011: Restricted Expenditure of Gratuities as amended by ACCO Notice 14/2011. ACCO Notice 8/2011 originally prevented the prisoners from purchasing anything other than 'consumables' through the canteen and caused a number of Indonesian prisoners at one of the state's prisons to threaten to withdraw their labour.

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The sooner this saga is brought to an end by DCS abandoning its current policy the better. Prisoners have a right to be treated equally and both prisoners and staff have a right to know where they stand. And the argument that special rules are necessary for Indonesian boat crew in order to maintain deterrence should be assigned to history unless its supporters can provide compelling concrete evidence. Far from being sanguine about imprisonment, many of the boat crew are pleading not guilty and/or challenging their detention on the basis of age. Their cultural respect for authority and their genuine appreciation for care shown by prison staff must not be construed to mean they would ever choose gratuities over freedom.

Age

The inspection strongly affirmed our view – and one that has been shared with other agencies – that some under-age Indonesian men have been held in the state's prisons. It is impossible to give precise numbers but during the inspection period, DIAC removed one young person from Albany and we encountered several other men who looked, acted, appeared and claimed to have been under 18 years of age at the time they were detained. Subsequently, some of them have been released.

This is not the place for detailed discussion of how this situation arose. Suffice it to say that it raises issues about the criminal justice system which lie outside the jurisdiction of either my office or of corrective services departments. These issues include the adequacy of age determination tests and some aspects of pre-trial and trial processes. These issues are currently the subject of detailed investigation by the Australian Human Rights Commission, and early indications are that their report will be a sobering read.^{viii}

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viii <http://www.humanrights.gov.au/ageassessment/index>