



TOP END WOMEN'S LEGAL SERVICE INC.

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1 March 2019

Mr Peter Shoyer
Office of the Ombudsman NT
12th Floor, NT House
22 Mitchell Street
Darwin NT 0800

By email to nt.ombudsman@nt.gov.au

Dear Mr Shoyer,

Complaint – Third-Party Representative – Complaint on behalf of women incarcerated in the Darwin Correctional Centre – Inadequate access to health services – Top End Women's Legal Service Inc.

The Top End Women's Legal Service Inc. (**TEWLS**) writes in a representative capacity to make complaint of failures by the Northern Territory (**NT**) Departments of the Attorney General and Justice (specifically, NT Correctional Services) and Health to provide equal or adequate access to health services to women incarcerated in the Darwin Correctional Centre (**DCC**).

With reference to this complaint, TEWLS confirms that we have positive connectivity with NT Correctional Services staff, who have previously indicated that they would welcome and facilitate additional services and programs for incarcerated women. In addition, TEWLS acknowledges DCC resource realities and constraints.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, TEWLS is funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet. TEWLS' team of six provide high quality, responsive and culturally appropriate legal advice, casework, community legal education and advocacy in civil and family law areas to women living in the Greater Darwin region.

TEWLS offers holistic legal services in Darwin, Palmerston, at the Royal Darwin Hospital, at Dawn House Women's Shelter, on six Indigenous communities in the Greater Darwin Region, at Adult Migrant English Programs, and within DCC. The most frequently requested areas of assistance include family law, domestic and family violence, housing and tenancy, consumer law, debts, fines and welfare rights, sexual assault, discrimination, compensation for victims of crime, and complaint matters.

TEWLS is presently the only scheduled legal service providing a civil and family law advice and representation service to women at the DCC. With strong connectivity established over many years, a TEWLS Solicitor and TEWLS Indigenous Community and Project Officer currently attend Sector 4 (the Women's Sector) of the DCC every third Thursday, in line with available resources. Where capacity exists, community legal education presentations are provided on salient topics including domestic and family violence and domestic violence orders, family law and child protection, victims of crime applications, fines, consumer, and contract law.

The Third-Party Representative Complaint

I Jurisdiction

The Office of the Ombudsman NT (**Ombudsman NT**) has jurisdiction over administrative actions of public authorities. The definition of public authority includes an agency or another entity that is constituted or established for a public purpose by or under a law of the Territory.¹ An administrative action is any action involving a matter of administration, and includes any decision, recommendation, action or inaction by a public authority.²

II Standing

TEWLS confirms that we have standing to make this complaint as a third-party representative.³ We raise a substantive issue and possess first-hand evidence of the issues that are the subject of this complaint, per legislative requirements.⁴

III Complaint

TEWLS makes complaint that the Departments of the Attorney-General and Justice and Health are failing to provide equal or adequate access to health services to women incarcerated in the DCC.

Specifically, TEWLS makes complaint that:

- Incarcerated women at DCC do not have equal or adequate access to health services compared with non-incarcerated women and consequently, are not receiving health services per requisite standards under international, national and NT laws; and
- There has been a continued failure on behalf of the relevant government departments to incorporate the recommendations of multiple investigations and reports relating to service provision within the DCC.

It is our view that the lack of primary and preventative medical, support, therapeutic and related services compounds the social disadvantage of our clients, whilst exacerbating issues foundational to incarceration and recidivism rates. In some cases, inadequate and unequal access to health services can cause deterioration in existing mental and other health conditions and trauma flowing from a history of sexual, physical, emotional and/or psychological abuse.

A Background

In the most recent report of NT Correctional Services,⁵ the daily number of prisoners held in adult correctional institutions in 2016-2017 was 1,637, where 84 per cent identified as Indigenous. Further, during 2016-2017, there were 287 sentenced female receptions, representing a 4 per cent increase from the previous year.⁶ Incarceration rates of Indigenous women are of particular concern, where the Australian Law Reform Commission's "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" report found that Indigenous

¹ *Ombudsman Act 2009* (NT) ss 5 (a), (e).

² *Ibid*, s 6.

³ *Ibid*, s 21(1)(c).

⁴ *Ibid*, ss 21(3)(a), (b).

⁵ Northern Territory Correctional Services, Annual Statistics 2016 – 2017, Northern Territory Government 2018, Northern Territory.

⁶ *Ibid*, 7.

women are 21.2 times more likely to be incarcerated than non-Indigenous women.⁷ In addition, the rate of imprisonment for Aboriginal and Torres Strait Islander women exceeded that of non-Indigenous men.⁸ Concerningly, women represent the fastest growing group of incarcerated persons in the country.⁹

Under Commonwealth legislation, incarcerated persons and young people in detention are excluded from receiving Medicare and Pharmaceutical Benefit Scheme subsidies.¹⁰ It is understood that this exclusion was designed to avoid duplication of services, as state and territory governments are expected to fund prison-based health services. Of note, prison-based health services have an opportunity to provide primary and preventative medical, support, therapeutic and related services.

In the NT, there are two government funded health services who provide assistance to incarcerated clients. The Prison Health Service (**PHS**) provides medical assistance, while the Forensic Mental Health Service (**FMHS**) provides at-risk assessments and temporary case management of persons who enter the DCC mentally unwell. The FMHS also provides case management of persons in custody who are subject to criminal responsibility provisions of the *Criminal Code Act 1983* (NT). Private providers and primary health services *may* also provide specialist mental health services to prisoners in the Northern Territory,¹¹ where an example is the introduction of Ruby Gaea to the DCC. In 2016, TEWLS facilitated Ruby Gaea's commencement of services to women incarcerated in the DCC after identifying high-levels of sexual assault disclosures and associated trauma.

While some services are available to women incarcerated in the DCC, it is our experience that clients are continuing to present at the TEWLS DCC legal clinic with untreated psychological and physical injuries. In our experience, while some clients' issues are in respect of responses and response timeframes following the completion of a medical request form (**MRF**), other clients' issues are in respect of the lack of domestic and family violence related services available within the DCC.

We include a selection of recent anonymised client stories which demonstrate the shortfalls in the provision of health services to women at the DCC. The stories also reflect the extent to which women at DCC have experienced significant family and domestic violence and are now experiencing the associated trauma which has flowed from past events.

Josie's story

Josie is young woman who was in a relationship with Peter for three years. During their relationship, Josie was physically, sexually and psychologically abused by Peter, and sought to escape the relationship on multiple occasions.

While Josie's past experiences meant that a referral to Ruby Gaea for counselling services was possible, Josie has been unable to access counselling and related support services in respect of her domestic and family violence related experiences. When being sentenced in respect of her criminal matters, the judge indicated that Josie's past trauma from domestic and family violence was a contributing factor to her offending and that in order to break the cycle of recidivism, Josie should seek specialist assistance.

⁷ Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017).

⁸ *Ibid*, Ch 3.

⁹ Australian Bureau of Statistics, *Corrective Services, Australia*, September Quarter 2018, Cat No 4512.0, ABS, Canberra.

¹⁰ *Health Insurance Act 1973* (Cth) s 19(2).

¹¹ Queensland Centre for Mental Health Research, *Prison Mental Health Services: A Comparison of Australian Jurisdictions* (April 2018), 20.

Isabelle's story

Isabelle is a woman who was incarcerated with a pre-existing medical condition. During her incarceration, Isabelle lodged a MRF to attend a doctor or nurse in respect of her condition. After multiple requests, Isabelle was able to attend a doctor more than five (5) weeks after lodging her initial MRF. Isabelle instructs that during the interim period, she was in pain and was unable to focus because of her medical condition.

Rebecca's story

Rebecca is an Indigenous woman who has been in an on/off relationship with Tony for over a decade. During their relationship, Rebecca instructs that she would intentionally offend so that she could return to the DCC where she knew she would be safe. Rebecca has a long history of incarceration and is often unable to connect with domestic and family violence services on the outside because of Tony.

Rebecca has expressed to TEWLS that she would appreciate meeting with a specialist domestic and family violence counsellor while incarcerated at the DCC. Rebecca instructs that she is "more ready" to understand cycles of domestic and family violence and trauma when she is incarcerated.

In contrast to the lack of medical services available to our clients, TEWLS is confident that each of their experiences would have been different had they presented with similar issues outside of DCC. It is our view that the presentations would have been met with the timely provision of health services, including holistic health services for immediate and ongoing domestic and family violence related mental health support.

B Legislative and regulatory framework

Fundamentally, the obligation for prisoners to have access to the same standard of health care as the general community is reflected in NT, Commonwealth and International legislation, regulations and guidelines.

1 Northern Territory

In the NT, legislation mandates that prisoners must be "provided with access to health care that is comparable with that available to persons in the general community in the same part of the Territory".¹² The Commissioner is required to arrange for the provision of appropriate health care for prisoners including mental health, community health and the welfare services necessary to implement those services.¹³

2 Commonwealth

The Standard Guidelines for Corrections in Australia, including the Guiding Principles for Community Corrections (**the Standard Guidelines**),¹⁴ constitute "outcomes or goals to be achieved by correctional services". They "represent a statement of national intent" from which the NT "must continue to develop its own range of relevant legislative, policy and performance

¹² *Correctional Services Act 2014* (NT), s 82(2); This is also acknowledged on the NT Department of Correction Website <<https://nt.gov.au/law/prisons/prisoners-rights>>, page updated 3 June 2015, accessed 22 Jan 2019. "Prisoners' rights" NT Gov.

¹³ *Correctional Services Act 2014* (NT), s 82(1); see *Health Practitioner Regulation National Law Act 2009* (Qld) s 5.

¹⁴ Standard Guidelines for Corrections in Australia (Revised 2012).

standards”.¹⁵ Although TEWLS acknowledges that the Standard Guidelines are not a set of absolute standards or laws to be enforced, we are of the view that they advocate for a standard that both the PHS and FMHS should meet.

The Standard Guidelines also advocate for a standard of health services to be provided that is comparable with the general community.¹⁶ Such health care services include preventative services, counselling services, specialist services and promoting continuity with external health services upon release.¹⁷ This includes when a prisoner enters or is released from prison and is under medical or psychiatric treatment.¹⁸

3 *International*

Internationally, both the United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**the Bangkok Rules**) and the UN Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**) set out a series of rules that Australia must meet to fulfil its human rights obligations in relation to prisoners.¹⁹ Specifically, both the Bangkok and Nelson Mandela Rules require that prisoners receive and have access to appropriate health care standards. It is TEWLS’ view that these standards are not currently being met for women incarcerated at DCC.

C Previous Investigations and Reports of Service Provision within the DCC

Over the past decade, service delivery within the DCC has been the subject of numerous reviews and recommendations. Despite this, incarcerated persons and particularly incarcerated women continue to receive an inadequate standard of care compared to non-incarcerated persons.

Below is a selection of the key findings and recommendations made in those investigations and reports most relevant to this complaint.

1 *The Women in Prison Report*

In 2008, the Ombudsman NT released *Women in Prison – Northern Territory: Report of the investigation into complaints from women prisoners at the Darwin Correctional Centre (the Women in Prison Report)*.²⁰ The Women in Prison Report found:

“..a number of positive recent initiatives and considerable momentum and enthusiasm for change among staff and management. It also found a lack of resources, poor planning, outdated and inappropriate procedures and a failure to consider women as a distinct group with specific needs. This had resulted in a profound lack of services, discriminatory practices, inadequate safeguards against abuse and very little in the way of opportunities to assist women to escape cycles of crime, poverty, substance abuse and family violence.”²¹

¹⁵ Ibid, 3.

¹⁶ Ibid, 27.

¹⁷ Ibid, 15, 26-28.

¹⁸ Ibid, 28.

¹⁹ UN Bangkok Rules on Women Offenders and Prisoners: In December 2010, this gap was filled when the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, known as the Bangkok Rules, were adopted by the UN General Assembly (Resolution A/RES/65/229) (United Nations Office on Drugs and Crime. United Nations Standard Minimum Rules for the Treatment of Prisoners: The Nelson Mandela Rules. General Assembly resolution 70/175 annex, adopted 17 December 2015, A/RES/70/175).

²⁰ *Women in Prison – Northern Territory: Report of the Investigation into complaints from women prisoners at Darwin Correctional Centre* Office of the Ombudsman Northern Territory (April 2008).

²¹ Ibid, 4.

The Women in Prison Report acknowledged that it “is well established” that “the prevalence of mental health problems among prisoners is significantly higher than in the community” and identified that the “NT Government recognises that prison is “an environment already known to exacerbate symptoms of mental health.””²²

The Women in Prison Report included clinical and non-clinical solutions, including female prisoners being informed of their right to request individual counselling sessions, as well as a continuum of care, including medical and psychiatric throughcare, being provided. In addition, the Women in Prison Report recommended that a joint report be furnished by the then NT Department of Health and Community Services, NT Correctional Services and the Ombudsman, which would include report as to progress in mental health and disability care for women prisoners. TEWLS notes that the latter joint report is not publicly available.

2 *The Hamburger Report*

In 2016, the report, *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services (the Hamburger Report)*,²³ made a series of findings and recommendations about Correctional facilities in the NT. The review team specifically reported being told of difficulties for female prisoners in accessing medical services.²⁴

The Hamburger Report made notable findings and recommendations in relation to clinical support and counselling services, including:

Finding 24: That as NTDCS [**Northern Territory Department of Correctional Services**] clinical staff do not carry responsibility for the day to day counselling or support of prisoners with ad hoc needs, given their focus on the delivery of programs, both the FMHS and the correctional service have identified a gap in the provision of general counselling and support for prisoners with such presentations as:

- Grief and loss problems
- Adjustment to custody difficulties
- Relationship or family breakdown, and
- Presentations involving anxiety and depression.

Finding 57: That NTDCS and the Operations Manager, FMHS, Department of Health develop a service delivery model to manage the day-to-day ad hoc needs of prisoners accommodated at the Darwin and Alice Springs Correctional Centres.

A further finding of the Hamburger Report in relation to female prisoners was that NTDCS has not yet been able to address the particular needs of female inmates to the extent achieved by other jurisdictions.²⁵

3 *Investigation of the Health and Community Services Complaints Commissioner*

In February 2016, the Health and Community Services Complaints Commission (**HCSCC**) published a final report following an investigation into the PHS at DCC.²⁶ The HCSCC’s report demonstrated a continued failure by the PHS to meet the needs of incarcerated women, where

²² Ibid, 137, 142.

²³ Department of the Attorney-General and Justice, *A Safer Northern Territory through Correctional Interventions: Report of the review of the Northern Territory Department of Correctional Services* (31 July 2016).

²⁴ Ibid, 109.

²⁵ Ibid, 110.

²⁶ *Final Investigation Report: Investigation into the Prison Health Service at Darwin Correctional Centre*, Health and Community Services Complaints Commission (2016).

recommendations included improvement in the assessment of health needs. It is TEWLS' view that in spite of the detailed supporting investigation, accessibility to health services continues to be a lived experience by women incarcerated in the DCC.

4 *Women in Prison II Report*

In August 2017, the Ombudsman NT's report relating to conditions faced by women in the Alice Springs Women's Correctional Facility was tabled in the Legislative Assembly (**the Women in Prison II Report**).²⁷ This Report revisits similar issues to those discussed in the first Women in Prison Report, including gender-specific culturally appropriate access to health care services. The Women in Prison II Report also made recommendations based on its conclusion that the fundamental purpose of the correctional system should be rehabilitation.²⁸

Although the Women in Prison II Report was focused on women incarcerated in the Alice Springs Correctional Facility, it makes two relevant recommendations for the purposes of this complaint. Firstly, it recommended that the NT Government, specifically the Department of Attorney-General and Justice acknowledge the importance of differentiating between the needs and characteristics of female prisoners in facility, policy and program development, as well as the importance of addressing the needs and characteristics of individual prisoners.²⁹ The Report also recommended that NT Correctional Services develop, in consultation with the Ombudsman NT, a detailed plan which would include responses, proposed actions to address the relevant issue and a timeline (amongst other logistical details).³⁰ Relevantly, one of the proposed topics was health care.

Although the Women in Prison II Report acknowledges that health care issues are predominantly addressed by the HCSCC,³¹ it noted that "[t]ime in custody should be fully utilised to address mental and other health issues, disabilities, alcohol and other drug dependency and a raft of other hurdles that may limit the capacity and willingness of the offender to reintegrate."³² The Report also identifies that "[p]utting additional resources and effort into health promotion, identifying health issues and treatment has the potential to ... increase the longer term prospects for recovery and rehabilitation."³³

In tabling the report, the Chief Minister noted work to support Aboriginal women through the Aboriginal Justice Agreement (which is still in development) and remarked:

I am pleased to report to the Assembly that addressing this report's recommendations will be included in the work this government is already undertaking on justice reform. I have outlined a number of activities and projects are already under way as part of that reform. This work will ensure that ongoing statements to justice and Correctional Services meet the specific needs of women who unfortunately come into contact with our justice system so that our services support their rehabilitation and effective reintegration back to the communities where they belong.³⁴

²⁷ *Women in Prison II: Alice Springs Women's Correctional Facility*, Office of the Ombudsman Northern Territory (2017).

²⁸ *Ibid*, 1.

²⁹ *Ibid*, 7.

³⁰ *Ibid*, 8.

³¹ *Ibid*, 61.

³² *Ibid*, 4.

³³ *Ibid*, 62.

³⁴ Office of the Ombudsman Northern Territory, *Annual Report 2016/2017*, 20.

5 Summary of reports and investigations

Despite numerous reports, investigations and recommendations, health care services provided to women at DCC continue to fall below the standard of care these women would otherwise receive were they not incarcerated.

Concerningly, TEWLS is not confident that the recommendations made in the Women in Prison Report II will be put into place due to the reasons given for the lack of progress since the release of the first Women in Prison Report.³⁵ Such reasons include resourcing requirements and growth in prisoner numbers. This is especially concerning given that the latest Report identifies that NT Correctional Services was supportive of the first set out recommendations, including increased access to health care services, and advised DHCS of their support in March 2009.

D Outcomes sought

In light of the above, it is TEWLS' view that the provision of adequate health care services should be a priority agenda item for women incarcerated at the DCC. This provision should include timely responses to requests for assistance, as well as the provision of services not currently available and/or accessible within the DCC.

1 Domestic and family violence counsellor

Noting our experience that a large portion of women incarcerated at DCC would benefit greatly from increased access to non-forensic psychological services, TEWLS strongly advocates for all women to have access to an independent external mental health specialist/counsellor. Given the high rates of family and domestic violence and associated trauma experienced by the women at DCC it would be important that any specialist in this position has extensive knowledge in assisting women in these areas. Further, due to the over-representation of Indigenous women at DCC, TEWLS submits that the specialist should have particular experience in working with Indigenous women.

An essential component of this recommendation is independence – it is TEWLS' view that per previous recommendations, the newly created position would need to be an independent service provider delivering mental health services and counselling to women incarcerated at DCC. Indeed, an external expert, independent of the DCC and respective Departments, is required to ensure a robust, best-practise, therapeutic framework that permits connectivity post-release. In support of this outcome, TEWLS has identified an appropriate expert in Darwin who is available to respond to the needs of women at DCC on a contract or Medicare service-provider rebate basis.

TEWLS proposes two ways in which such a position could be funded:

- Funding by the Department of Health – rather than this position being exclusively located at DCC, we submit that the specialist should be housed at a non-government organisation, such as Dawn House Women's Shelter or Ruby Gaea, who have existing counselling positions for professional connectivity and support. It is our view that possible initiatives at DCC could include group work and individual counselling sessions with incarcerated women; or
- Funding by Medicare (Commonwealth) – while women at the DCC are excluded from receiving Medicare benefits under Commonwealth legislation,³⁶ an alternate avenue that could provide the necessary funding is via petitioning the Federal Health Minister to direct that Medicare benefits be payable in respect of professional services rendered at DCC,

³⁵ Above n 30, 5.

³⁶ *Health Insurance Act 1973* (Cth) s 19(2).

pursuant to the relevant exemption.³⁷ Relevantly, in the Second Reading speech for the legislation, it was “considered important that the Minister should have this power of direction to ensure that individuals are not disadvantaged in any circumstances.”³⁸ TEWLS submits that given this intent and the high rate of incarcerated Indigenous clients at DCC, the Health Minister should exercise discretion in relation to health services provided at DCC. TEWLS draws your attention to the fact that this discretion has previously been exercised to allow for additional and culturally specific Aboriginal health services as a result of the high rate of poor health among Aboriginal people in community.³⁹

Further to the above, TEWLS has commenced informal discussions with organisations who have indicated a willingness to provide professional support to the person undertaking this position. This professional relationship would benefit both the women incarcerated and the mental health specialist. Professionally, it would provide ongoing peer-support relationship through which that person could seek advice, clarification and referrals. For clients, it may assist in their rehabilitation and reparation by providing a support avenue for them post-release.⁴⁰

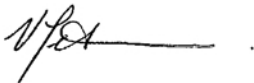
Conclusion

TEWLS appreciates the opportunity to make this complaint and support ongoing service provision for women incarcerated at DCC.

We thank you for your consideration of the above and look forward to being updated of the outcome. We would be pleased to be contacted by phone on (08) 8982 3000 or email to admin@tewls.org.au (contact person Vanessa Lethlean).

Yours faithfully,

TOP END WOMEN’S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

³⁷ Ibid.

³⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 May 1976, 2351 (Ralph Hunt, Minister for Health).

³⁹ Cumming, C, Kinner, S.A., Preen, D.B., Larsen, A. (2018) In sickness and in prison: the case for removing the Medicare exclusion for Australian prisoners, *Journal of Law and Medicine*, 26(1), 140.

⁴⁰ Above n 14, 6.