



North Australian Aboriginal Justice Agency Ltd

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30 October 2013

Chief Minister
Hon Adam Graham Giles MLA
GPO Box 3146
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Dear Chief Minister,

Alcohol Protection Orders

I write on behalf of both the North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service in relation to the *Alcohol Protection Orders Bill 2013*, introduced into Parliament last week.

NAAJA and CAALAS have serious concerns with the Bill and the impact that it will have on Aboriginal people in the NT. We urge the Government not to proceed with the Bill. If Government is not prepared to reconsider the Bill, we urge that it is substantially modified and more carefully drafted.

Lack of consultation

At the outset we note our disappointment that legislation such as this was introduced without any consultation with our services. Both NAAJA and CAALAS have a good track record of engaging constructively with government in relation to law and policy issues, even in areas where we do not agree with the underlying policy. We are well-placed to provide input into laws such as this and urge the Government to show respect for the role that our agencies play in advocating for the rights of Aboriginal people. This is particularly so in relation to laws that will subject Aboriginal people to higher rates of arrest and incarceration.

Impact on Aboriginal people

This law will overwhelmingly impact upon Aboriginal people. You are no doubt aware that the central message of the Royal Commission into Aboriginal Deaths in Custody was that to reduce the number of Aboriginal people who die in custody, we need to lock up less Aboriginal people less often. We need to find ways to reduce Aboriginal people's contact with the police and with the criminal justice system. The Royal Commission made specific recommendations that drunkenness should be de-criminalised. This law does the opposite. Its effect is to criminalise drinking for people placed on an order.

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An alcoholic will not stop drinking because they are placed on an APO: that is the nature of alcoholism.

This law makes their addiction a crime. So while the law will not work, it will require much greater contact between police and Aboriginal people, and even greater numbers of Aboriginal people in police and prison cells. The over-incarceration of Aboriginal people in the Northern Territory is already a national shame.

We should not be making it worse.

We urge that the Bill is not passed.

Application of Alcohol Protection Orders

In the event that the Government is not prepared to reconsider the Bill, much closer attention must be given to its drafting and practical operation. The legislation as currently drafted is, in our view, unnecessarily wide and is likely to operate in a way that unfair and unreasonable.

First, we note the regime is engaged for almost all criminal offending: it is not limited to 'serious offences'. Qualifying offences are those punishable by imprisonment for 6 month or more (s 3). This includes offences such as loitering and disorderly behavior in a public place. These are not 'serious offences'.

The regime also applies where a police officer believes the person was 'affected by alcohol' at the time of the alleged offence (s 6(b)). 'Affected by alcohol' sets a very low threshold – is a person who has had a few drinks 'affected by alcohol'? Moreover, it is not necessary for the offence to be related to the fact that the person is affected by alcohol.

The basis upon which an APO can be issued is also exceptionally broad (s 6). An officer need not, for example, form the reasonable belief that an APO is necessary or appropriate to prevent further offending. The discretion to impose a restriction that has such serious consequences should be clearly defined.

We also note that an alcohol protection order is issued in writing (s 5). There is no requirement to ensure that a person can understand the notice or that it is explained to them in a language or in terms that they can understand. Given that breaching a notice is a criminal offence, this has the potential to operate very unfairly. This is particularly the case for Aboriginal people, many of whom will not be able to read the notice.

Powers of search

The power given to police to search people who are the subject of an APO is much too broad.

Section 19 currently allows for a police officer who reasonable believes that an adult is subject to an APO to search the person without a warrant. There is no requirement that the police officer has a reasonable belief that the person has breached their order. They can simply search them because they are on an order, for no other reason. This is an unacceptably broad power.

It can be contrasted with the power in s 18 to require a person to submit to a breath test. This power requires a police officer to reasonably believe that an adult 'has recently consumed alcohol'. The power to search has no such (appropriate) requirement.

Right of review

The provisions allowing for a reconsideration and review of decisions in relation to an APO are inadequate. They should be substantially amended to ensure that the regime is fair and allows people to challenge a decision to place them on an APO.

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The timeframe of 3 days to make an application for reconsideration by a senior officer is unnecessarily restrictive, particularly given that the application must be made in writing (s 10). For many people who are homeless, illiterate, have no transport and/or live remotely (conditions that face many Aboriginal people), this makes the ability to seek a reconsideration meaningless.

A person can only seek a review from the Local Court if they have first sought reconsideration by a senior officer (s 11(1)). Therefore a person who misses the 3-day deadline is also denied access to the Local Court. There is no apparent reason for this restriction. The application must be made within 7 days (s 11(2)). There is also no apparent reason for this restriction.

Given the completely unstructured discretion to issue an APO, discussed above, it is also not clear the basis upon which a person is able to seek a review. This highlights the arbitrary nature of the power to issue an APO.

Conclusion

We have set out in this letter some of our most significant concerns with the Bill. Given more time, we would be able to provide a more detailed and considered response and would be pleased to meet with you or your Department to discuss the Bill.

The Government may also wish to consider referring this Bill to the Law Reform Committee. Given the significance of the legislation it would be appropriate for it to be independently reviewed.

We have sent a copy of this letter to Minister Price, the Members for Namatjira, Arafura and Arnhem, the Leader of the Opposition and the Member for Nelson so that they are aware of our concerns.

Yours faithfully,

Priscilla Collins
Chief Executive Officer



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