

Preventative Detention & Alcohol Policy in the Northern Territory

Beth Morrisroe
Criminal Lawyer

Central Australian Aboriginal Legal Aid Service

23 June 2015

What is preventative detention

Detention of suspected terrorists

Indefinite detention of serious sex
offenders

Indefinite detention of serious violent
offenders

Alcohol Mandatory Treatment

What is the Alcohol Mandatory Treatment Legislation?

- Came into force in July 2013
- Northern Territory legislation
- Applies to those who have been placed into protective custody three times within a two month period
- The Alcohol Mandatory Treatment Tribunal then determines whether mandatory residential treatment is required or whether a community based order is appropriate or of course whether any orders at all are appropriate

Where do persons under orders go?

- In Alice Springs, to the Central Australian Aboriginal Alcohol Programs Unit (CAAAPU)

What is the point of the AMT regime?

- Helping serious alcoholics deal with their issues
- Protecting people from themselves
- Allowing people to take part in constructive rehabilitation
- Empowering people to take control of their lives

Who is RP?

- A 30+ year old woman from a remote WA border community
- RP presented as a person of limited education, limited English skills, and very limited literacy skills

How did CAALAS come to act for RP?

- RP was in custody for the offence of absconding from mandatory rehabilitation
- One of the main functions of our criminal practice is to deal with fresh in custody matters each morning as the “duty list”
- I was a duty lawyer the morning that RP appeared before the court

How did the appeal come to fruition?

- Upon obtaining the recording of the tribunal proceedings issues of natural justice were identified
- RP had absconded three times within the 28 day appeal period so the appeal was still in time

But there is no right to legal representation?

- There is no right to legal representation in tribunal proceedings as a matter of course (supported by administrative law precedent)
- However, we argued that RP suffered from a special disadvantage

What was the special disadvantage?

- RP's limited education and English skills
- The failure to provide an interpreter
- The significant impact of the proceedings on her liberty and welfare
- The complexity of the issues raised in the tribunal proceedings
- The absence of a merits review mechanism where the Tribunal makes an error of fact

Decision?

- Paraphrasing – without an advocate RP was effectively not being heard on factors crucial to the Tribunal's determination and as such the failure to appoint an advocate was a denial of natural justice.
- This failure is an error of law that vitiates the Tribunal's decision

Alcohol Protection Orders

- Issued following the commission of an offence that the police believe was related to alcohol
- Drink Driving, Assault, Stealing etc.
- Discrimination?
- Munkara v Bencsevich – NAAJA

Curing Injustice?

- Review of AMTT regime
- Repeal of criminal penalties
- Repeal of exclusion of persons charged with criminal offences

The Royal Commission

28 years on, our indigenous imprisonment rates are extraordinary

86% of adults

98% of youths

Increased punitive sentencing for breaching an APO

The forgotten jurisdiction?

- How many people here are from outside of the NT?
- And of you, how many of you knew that this regime was operational or what the issues involved were?

Discussion points

- The criminalisation of alcoholism
- The discriminatory effect on indigenous people
- Lack of national discussion of draconian measures often taken in the NT