Preventative Detention & Alcohol Policy in the Northern Territory

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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
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