

# Challenges of Preventative Detention 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

# Who helps the AMTT make their decision

- The Senior Assessment Clinician
- Any advocate for the individual client

# 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 happened to be 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 effective 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

# Why should CLCs be concerned?

- Attitude of government to the appeal
- Some positive steps taken to rectify a portion of the issues identified
- Funding

# How does the case of RP apply to the broader issues faced by our organisations?

- This is what we are here for
- We fight for the most disadvantaged people in our various jurisdictions
- Innovation and lateral thinking are the lynchpin of our various organisations
- We all must work together to continue to fight the good fight

# 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