



Aboriginal Disability Justice Campaign

To: The SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS
Inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia

From: The Aboriginal Disability Justice Campaign, (ADJC)

Date: 29 April 2014

The following case study with supplementary comment is further to the ADJC presentation by Mr Patrick McGee at the Committee's sittings in Brisbane. This study relates to Ms Roseanne FULTON, submitted by her joint adult guardian, Ian McKinlay. It is hoped this study will be of assistance to this inquiry, but it is also presented with a view to maintaining awareness of her case in all available forums.

Her case highlights:

- generations of Indigenous children born with Foetal Alcohol brain damage (FASD)
- the short-fall in early childhood welfare intervention in the NT
- the indefinite detention of people with cognitive impairment as a cost saving alternative to welfare provisioning
- exploitation of Indigenous silence as possibly the institutional face of modern day racism.

History

Roseanne, now aged 26, was born prematurely in Alice Spring hospital to parents known to be chronic alcoholic fringe dwellers. During her infancy she was moved around various remote communities in the tri-state region of Central Australia. Her existence was marked by a cycle of rescue from, and return to, life-threatening neglect, while under the care of child welfare authorities. Despite the odds she survived, only to face sexual exploitation from age 5. Rejected, abused and exploited throughout her childhood, she was abandoned to a homeless 'riverbed' life-style in Alice Springs as a young adult.

Adult Guardianship – Referral to NT Health.

In late 2008 the Adult Guardianship Court found her to be under an intellectual disability, defined as *the inability to make informed decisions and reasonable judgements relevant to daily living*. She was placed under the guardianship of the NT Public Guardian (PG) who found her to be homeless, malnourished and living an impoverished existence, seeking inclusion in the riverbed drinking camps by offering her Centrelink income, alcohol or sexual usage. She was routinely driven off with violence when of no further value. Her assigned PG delegate referred her to NT Health Disability Services as needing full-time residential support.

Compromised Guardianship – Disability Service gap.

Prior to Roseanne's guardianship, an increasing number of similar cases had revealed high level needs greater than the capacity of existing welfare provisioning. Alice Springs PG delegates requested a meeting with the Health executive to discuss possible service planning. Their request, however, evoked a hostile response, with repeated warnings to maintain the official 'there is no unmet need' stance or risk dismissal.

This response highlighted the compromised structure of NT adult guardianship, in which Health Department interests demanded priority. This structural flaw is lack guardian independence in having the Health Minister in the role of Public Guardian and that office staffed by Health employees. This has one authority acting as both advocate for services and provider of those service, significant conflict of interest ensued.

Two Alice Springs PG delegates were obliged to choose between complying with their Health employer's demand to cease client advocacy and their statutory duty under the Act. At this time it was clear that the growing number of Health clients in Roseanne's category of need were being left without services until they defaulted to the Criminal Justice System and prison 'solutions'. This practice ignored repeated warnings about the potential harm that could come to clients or co-laterally to others while Health waited for clients offending to make them eligible for prison. PG delegates had little choice other than to continue to advocate in their clients' interest and accept the consequences.

Additionally in 2010, in the face of a deepening repudiation of client advocacy, two guardians moved to set up an independent voice for clients, the Aboriginal Disability Justice Campaign. Although originally intended to represent high need NT Health clients, the demand for wider help grew exponentially.

Indefinite NT Prison-Based Supervision

In 2002 the NT Criminal Code was amended to provide 'fitness to be tried' provisions, including fitness to plead. These appeared to be welcomed by Health in that the Court was compelled in the absence of suitable disability services to make indefinite prison-based supervision orders. These orders were subject to only one mandatory review and were potentially life-long. The initiating offences in some cases were relatively minor, warranting short sentences had the person been fit to plead. Prison, supposedly meant to be a last resort measure for cases of extreme risk, was being used for the supervision of persons whose needs fell within the management capacity of modern disability and behavioural methodology.

Later criticism by the judiciary, guardian advocacy, and a high risk audit led to a Cabinet decision to commission the building of secure care facilities in Darwin and Alice Springs, each meant to cater for 7 children and 7 adults. Later this was reduced to an Alice Springs facility only. In addition to offering an alternative to prison-based supervision, this facility was promoted as offering Health the capacity to intervene in high risk cases before they escalated to a forensic level. Related legislation allowed for mandatory treatment orders.

Although critical of the design of this facility, the guardian welcomed it as a means of transitioning clients from prison supervision into the Health domain, in the expectation that ongoing support guided by modern disability practice and standards would be provided.

Roseanne a prime secure care candidate.

Meanwhile, between 2009 - 2011 Roseanne continued to live a perilous existence in the riverbed and hills surrounding Alice Springs. Several tokenistic efforts to provide support failed and guardian advocacy was deflected by constant assurances she would be a prime candidate for secure care when available. Her case was promoted as an example of the intended clientele.

At the same time, the number of critical instances and terms of imprisonment were escalating, resulting from Roseanne's patterned behaviours. Property damage and minor assaults often related to her perceptions of relationship betrayals and disability pension entitlement.

In June 2012, with increasing risk to her safety, and following a successful period on a remote WA outstation organised by guardians to recover from burn injuries, Health on two occasions moved her to the same outstation for respite, pending the completion of the secure care facility.

Indefinite WA Prison-Based Supervision.

Several months later she was either enticed or abducted from the outstation by a gang of youths, to be prostituted in the larger centres. She ended up taking and crashing a car, was found unfit to plead and placed under indefinite prison-based supervision in Kalgoorlie WA.

For the following 18 months extensive advocacy continued, seeking her return to the NT and the promised secure care. Her eligibility and assurance of a placement was repeatedly confirmed by the Minister and senior Health staff pending the completion of the facility.

However in February 2014, with the facility finally available, the NT withdrew the offer of a placement. Assumedly, the prospect of her being left in WA had become irresistible.

Last Resort Action

As demonstrated from cases in the years preceding Roseanne's, it was clear she would likely end up under indefinite prison-based supervision. Support for this prediction was found in the repudiation of all guardian appeals for service planning, the rejection of proven support models and an unwillingness to consider the flawed economics in the long-term use of prisons for welfare need.

Advocacy based on justice, human rights values or compassion proved equally fruitless, as did the accounts of the inhumane treatment of mentally impaired Health clients under prisoner supervision, (including one of a client locked down for 23 hours a day). It became clear any reform would depend on aligning client need with political and bureaucratic career interest.

It was determined Roseanne's best support prospects were to be gained by assuring there was wide- spread awareness of her case, thereby making it harder for Health to exploit the usual political silence around this area of need which allowed recourse to prison solutions. Her case was raised, identity protected, in numerous national forums and parliamentary hearings, and discussed with peak welfare bodies and with sympathetic Commonwealth Parliamentarians.

Later when it became certain NT Health had closed her case in favour of WA imprisonment, the guardian decision was made to reveal her identity. (This was with her consent to the extent of her understanding). The aim was to take advantage of the established case awareness, in the hope of gaining sufficient media and public attention to get the NT to respond to WA's overtures to return her to support in Alice Springs.

Although this action was supported by the assigned co-guardian PG delegate in Alice Springs (without active involvement), senior PG delegates moved to align with Health's feigned outrage over Roseanne's right to privacy being breached.

The media response and public petition exceeded expectations. The initial ABC Lifeline presentation was picked up by numerous radio interviews and newspaper articles.

Return to the NT

In July 2015, after 22 months in Kalgoorlie prison, with the agreement of the NT Health Minister/ Attorney General, Roseanne was returned to Alice Springs into the care of NT Health. However, the long espoused transitional model via secure care was by then fully rejected in favour of daytime support in an urban house.

Guardians were of the view Roseanne's support model was designed to fail, reflecting a deep resentment amongst Health factions over her and other clients having been forced back into Health's domain. The support model required her to *voluntarily* engage with the care offered, despite the extent of her FASD related cognitive impairment and in direct contradiction of earlier discussions favouring a transitional approach. This was previously seen as needed to initially allow therapies to ameliorate the effect of her alcohol dependency and early childhood trauma. This positive behaviour support methodology is based on relationship led empowerment to achieve (the often normal) goals and aspiration inappropriately sought through negative behaviour.

The support offered ignored the bulk of the psychiatric and psychological information and the Adult Guardianship Court finding in regard to her ability to make informed decisions and reasonable judgements. Astonishingly, it was determined her personal safety could be secured by keeping her in 'line of sight,' a

practical impossibility. It was further determined that her further involvement in the Criminal Justice System would be of therapeutic benefit.

An urgent meeting was sought by the guardian with the Health Minister (Public Guardian) and Health CE to express concern over the support offered and to advocate for a transitional approach. This appeal was rejected, with the advice the care offered was a take it or leave it proposition, and that guardian action had deprived other needy cases of support. The guardian was left with no choice other than to support this model or risk further expression of concern being construed as a lack of guardian consent and all support ceasing.

Failed Support – renewed prison focus

Predictably, from the day of her return to the NT, Roseanne lapsed into her former pattern of behaviour, seeking alcohol to attach herself to a male whom she could regard as ‘husband.’

To date, 74% of the 22 months since her return to the NT has been under conviction for offences. 50% of this time has been spent in prison, (excluding time in police protective custody). At other times, her whereabouts were often unknown.

In early 2015, she had to be removed from the Public Housing property leased by Health due to alcohol-related behaviours. This was followed by a series of ad-hoc tourist accommodation arrangements. She is now in a small flat in an industrial area with her support cut to 3 hours per day, much of which is spent trying to locate her.

Roseanne’s prospects for renewed NT support are next to non-existent, especially in the context of Health’s current moves to divest itself of responsibility for other cases forced from prison into its domain. The current focus is the new Darwin prison and its high needs forensic facility.

There is little doubt the remaining support for Roseanne will soon dissipate in favour of imprisonment. She is now seen as a recidivist offender, having, (predictably) been found fit to plead in the NT. (The previous orientation toward prison-based supervision following an unfitness to plead finding, lost favour after the secure care facility became available, thereby returning responsibility for this clientele to Health). A related issue around determining fitness to plead is the need for independently appointed experts to assist the Court.

Systemic addiction to prison solutions

A 16 year endeavour securing or seeking the rescue of some 5 Indigenous adults from indefinite NT prison supervision has ended in complete failure, and in reality it may have only served to test and strengthen the NT’s resolve to continue this practice.

A renewed determination to restore the former ‘silence’ which allows prison-favouring neglect has led to further integrity compromise in seeking the removal of active guardians, or their clients, (including Roseanne) from guardianship orders, as well as motivating changes to the Act to mute further advocacy.

Appeal to the Commonwealth

Faced with the failure of Roseanne's NT support and in the absence of any will or capacity to meet her needs, a last resort appeal has been made to the Commonwealth, seeking some level of involvement.

Initially, this was for help in confirming her FASD diagnosis and to contract the needed expertise to develop a genuine support plan and train staff. Senator Nigel Scullion actively supported this initiative. The existence of FASD was however confirmed from existing documents, and complications in providing external expertise across existing Health structures blocked further support planning.

The central appeal for Commonwealth help via Minister Scullion's office was followed by an approach to the Prime Minister's Department for funding and action to:

- Purchase a suitable property providing for Roseanne's accommodation and care.
- Contract the needed expertise to devise a support model and to recruit and train staff for its implementation.
- Establish a mechanism to auspice funding and oversight the support, initially in conjunction with NT Health, suggesting the NDIS.

Throughout this time Minister Scullion used his best endeavours to encourage the NT Health Minister to act in Roseanne's interests, but to no avail.

The response from the Prime Minister's Office by Senator McGrath was dismissive, (as expected, given this case is primarily a Territory responsibility).

It was, however, noteworthy that the responses from the NT Health Minister to both parliamentarians, assumedly briefed by senior Health staff, was factually incorrect and contradictory, indicative of the contempt for any advocacy around this area of need.

Roseanne's future?

Roseanne's support needs are clearly beyond the present capacity of the NT Government. She has, over the past four years, come full circle, being largely abandoned to her former perilous life-style. In hindsight, this brings into question the wisdom of guardian action in seeking her return to the NT, with the frightening possibility it may have shortened her life.

Yet the fact remains, while she presents significant challenges, these are far from extreme and well within the remedial scope of proven behavioural methodology. However, they are beyond the will of any tier of government. One can speculate why this is the case in 2016? The overarching question remains: - if *she* is not deserving of justice and compassion, then who is?

A last ditch effort

The current prospects for Roseanne are dire; all that remains is to try to maintain some level of case profile in the hope she will not be overlooked should there be a shift for the better in the national conscience in time to help her. A biographical work has been commenced by a well published academic author, aimed at maintaining some level of case awareness in this hope. Otherwise, it will simply be a tribute to her existence and perhaps a historical marker of Australia's social values at the beginning of the 21st century.

Sincere thanks to the Committee for the opportunity to present this information.

Ian McKinlay
27th April 2016