



LARRAKIA NATION ABORIGINAL CORPORATION

Background

This is a joint submission between the North Australian Aboriginal Justice Agency (NAAJA) and the Larrakia Nation Aboriginal Corporation (LNAC).

NAAJA is a non-profit private company established on 1 February 2006. It involved the merger of three existing Aboriginal Legal Services in Darwin, Nhulunbuy and Katherine from community council based organisations into a single entity company called NAAJA. We have offices in Darwin, Katherine and Nhulunbuy and employ a staff of 71 including 38 lawyers, with 46 per cent of our staff being Aboriginal. We provide high quality and culturally appropriate legal aid services for Aboriginal people in the Northern region of the Northern Territory in the areas of criminal, civil and family Law.

Our company has a dynamic and talented team of lawyers and staff that aim to work towards gaining justice for Aboriginal people and keeping their culture, tradition and law strong. We frequently have clients who are living in the Long Grass. Our priority is the provision of legal representation and advice to Aboriginal people and, in providing this service, we are also fully engaged in pursuing the rights of Aboriginal people through law and policy reform. NAAJA also has a separately funded advocacy program, community legal education program, research project and mediation project.

The Larrakia Nation is the peak body that represents the Larrakia people; the traditional owners of the greater Darwin land and sea area. The Larrakia have a responsibility to care for visitors when they are on country. They expect that visitors will meet their obligations of respect to the cultural authority when on country. This expectation has become increasingly difficult for Indigenous visitors to meet. The capacity of the Larrakia to take responsibility for the care of visitors on country has also been stretched, particularly over the past 12 months.

The Larrakia Nation has a suite of critical care frontline programs, funded by the Northern Territory Government, which are provided to Indigenous visitors who staying on country (without shelter). This is known locally as living in the Long Grass although this type of habitation has been categorised as primary homelessness by the Australian government. Key programs and services include: Proof of Identification; Return to Country; Connect to Country; Personal Support Program; Outreach and Case Management; Larrakia Intervention Transport Service (LITS); and the newly established Night Patrol; and the Healthy Engagement in the Long Grass Program (HEAL). The LNAC also have an active Research Division with specialist expertise on 'being houseless and homeless in Darwin'.

Qualification to this Submission

This submission is prefaced with a statement that both NAAJA and Larrakia Nation only learned of this inquiry by chance and only a matter of days before the close of submissions. We therefore sought an extension and were given until 21 August 2009 to make our submission. However, this time frame necessarily means that our submission has been substantially reduced in both content and depth.

We state and wish to put on the record our deep concern that in relation to an Inquiry of this significance, the main organisations assisting Aboriginal people suffering homelessness and assisting Aboriginal people with legal problems intersecting with homelessness were not advised or notified of the Inquiry.

Submission to the Inquiry

Northern Territory Context

Statistics from the 2006 Census of Population and Housing¹ show that the Northern Territory has by far the highest rate of homelessness in the country (248 per 10,000 of the population). This rate is staggering when compared with the rate of homelessness in the southern states, which is around 40 to 50 per 10,000 of the population.

Making matters significantly worse, the Northern Territory has a massive proportion of its homeless population who sleep rough, or in the 'Long Grass' as it is colloquially known in the Top End. In 2006, the percentage of homeless people in the NT living in the Long Grass was 33%. This was almost double that of the state with the closest percentage to this, which was Queensland with 19%.

Other Preliminary Matters

As noted in Larrakia Nation's submission to the Northern Territory Emergency Response Review², "In the Long Grass, individual's health and life quality rapidly

¹ See at

[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/57393A13387C425DCA2574B900162DF0/\\$FILE/20500-2008Reissue.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/57393A13387C425DCA2574B900162DF0/$FILE/20500-2008Reissue.pdf)

² See at

http://www.terreview.gov.au/subs/nter_review_report/135_larrakia_nation/135_Larrakia_Nation_1.htm

declines as they move into chronic homelessness and many will experience periods of crisis within this context.”

Larrakia Nation undertook a research study in 2007³ considering the impact of the Northern Territory Emergency Response on the Long Grass population in Darwin. This inquiry confirmed an increase in primary homelessness in Darwin between July and August, 2007. A conservative estimate revealed that the new Indigenous population staying in the Long Grass exceeded 150 people, increasing the base-line population by around 40%. Given that the Northern Territory already had the highest rates of homelessness in the country, the extent of growth of abject poverty, in such a short period, concentrated in Darwin was (and remains) deplorable. An increase in Darwin’s Long Grass population signals a proliferation of new informal camps that without thoughtful action will likely become highly dysfunctional.

In the 2007 study, participants experienced problems, stressors and worries in the Long Grass. In addition to a perceived loss or violation of rights, access to water, food and blankets were consistently raised as being problematic and few individuals had used the services set up to assist this population. This study concluded that the Government’s interventions have inadvertently displaced Aboriginal peoples. In doing so, the socio-cultural and poverty issues for many had only deepened and shifted location, while the challenges for service providers in Darwin had escalated.

Following from the 2007 study, Larrakia Nation developed a more detailed study,⁴ asking *What do Indigenous people staying in Darwin’s Long Grass require to attain an acceptable level of health and life quality and to be law abiding citizens?*

This study has been completed and is shortly to be published. However, key preliminary findings reported to the NTER Review Board included:

- There has been a doubling of service delivery across Larrakia Nation programs and services provided to Indigenous people who are experiencing primary homelessness in Darwin and Palmerston.
- The unmet demand for Larrakia services has grown exponentially over the past 12 months. This indicates there is a significant population who has stopped asking for assistance, particularly in seeking accommodation support.
- The number of Proof of Identity cards issued by Larrakia Nation has seen a dramatic growth since July, 2007. A significant number of cards have been issued to new clients. This suggests many clients are coming to Darwin for the first time in their adult lives or are staying for significantly longer than they have previously needed to. This data confirms a steady growth in displaced peoples from home communities to Darwin’s Long Grass.
- More than 70% of study participants were over 40 years of age. (Our recruitment strategy has meant that we had a representative sample in our study of the whole population). This finding points to an aged homeless population (in terms of Indigenous mortality) and has significant implications

³ *Preliminary Inquiry into the Recent Influx of Indigenous Visitors to Darwin from Remote Communities*, Holmes C, Ahmat S, Henry A, Manhire J, Mow M, Shepherd J and Williams G, 2007, Larrakia National Aboriginal Corporation, Darwin, Northern Territory.

⁴ *Being Undesirable: Law, Health and Life in Darwin’s Long Grass*, Holmes C, McRae-Williams E, In press, National Drug Law Enforcement Research Fund Tasmania.

for the type of service needs of this population that extend beyond crisis services. Further, it raises the question of the appropriateness of the eligibility criteria for this population in terms of access to the aged pension and other aged-care services.

- The above finding also raises the imperative of appropriate aged care support and services within communities. This study has found that many participants chose to be homeless in Darwin's Long Grass rather than continue to endure abuse, violent attacks and theft of income perpetrated by youth in their community. This behaviour was most commonly associated with youth wanting and using marijuana. Some individuals had in fact been displaced in their community before coming to Darwin.
- In home communities, escalating violence and family problems were identified by participants as the key reason for study participants leaving home.
- Unlike the study undertaken in 2007, the majority of the participants in this study did not specifically attribute their move to Darwin to the Government's intervention. The reason/s for this is unclear. It may be because participants in this study were disenfranchised in their home community and were not part of community discussions relating to the intervention. It may be because of low English literacy rates or lack of access to radio, TV or newspaper by this population. It appears that this particular population are 'rolling with the policy punches'.
- In the Long Grass, violence was a concern for nearly all study participants. People had left home to escape violence and were highly frustrated that they had to continue to negotiate it in Darwin.
- The experience of people in the Long Grass was that the perpetrators of violence were both within family groups and people external to their family. Many people reported violent attacks from 'cheeky' teenagers (believed to be generally non-Indigenous).
- Study participants reported that violence within families had led to family breakdown in Darwin, with larger groups dividing into smaller, sometimes more vulnerable groups. People were concerned about the pressure placed on the cultural fabric of their society when in the Long Grass.
- Violence in the Long Grass was a catalyst for localised mobility as participants attempted to avoid trouble.
- While violence may have been experienced on a regular basis by this population, the overwhelming majority of participants considered it undesirable.
- Study participants were forced into localised mobility by police and council. (The new First Response program has added to this mobility in a significant way).
- High levels of forced mobility meant that it was increasingly difficult for individuals to use critical care services effectively. The evidence tells us that these barriers to services reinforce social distance and cause individuals to accept poor physical and mental health. Individuals feel powerless and turn to self-medication, typically using alcohol and marijuana. Self-medication results in an increased sense of control in individuals' lives.
- The majority of the study participants used the Larrakia services, in particular the Larrakia Intervention Transport Service. To a lesser extent, Vinnies was used. Rarely was the use of other services mentioned.

- The vast majority of participants indicated they wanted to stop drinking. There was a preference for doing this at home, out bush or at an outstation.
- The vast majority of participants understood 'stop drinking' as a temporary break or rest. Generally, individuals wanted to get fat or strong enough so that they could return to drinking. This has implications for discourse around rehabilitation. More than half of participants had been to rehabilitation in Darwin previously and had used the services for respite or to recover from drinking related illness.
- In addition to violence, key problems in the Long Grass identified by participants included loss of rights and autonomy (related to police and council harassment), the need for a blanket and a lack of food and water. This finding is consistent with those reported in the 2007 study.
- Participants consistently raised their concern for family they had left behind in their home community.
- Participants did come to Darwin to access alcohol. However, as noted, the primary reason was to escape violence and family trouble. Alcohol was often used as part of grief and pain management. About 25% of participants had left home to be with family already in the Long Grass.
- Other reasons for leaving home included a lack of housing and the need to access medical services.

The widespread incidence of trauma and trauma-related illness in this homeless Long Grass context has not yet been integrated into social and health policy. Nor has it been specifically addressed through service provision.

Terms of Reference

1. The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness

(a) A Paradigm Shift

Before considering the applicable principles, we consider that this Inquiry must re-consider the 'problem'. The problem about homelessness for housed Australians appears to be the foundation for this Inquiry. This may lead to solutions that have little meaning or impact and which do little to bring about the desired changes sought by the individuals and families concerned. Re-conceptualising the problem will provide opportunities for creative new solutions. The 'problem' must be explored from a range of perspectives. And the perspectives heard must include homeless people themselves if real solutions can be developed.

Exploring what 'home' is in its many facets may assist policy makers to begin to understand what has been lost. Returning individuals home (for example those who have been the victims of violence) may not be such a good idea after all.

It is also critical that when considering applicable principles, the experience of multiple and profound traumatic events must be highlighted. While this experience is common among Indigenous and non-Indigenous homeless and houseless Australians,

for Indigenous Australians the intergenerational trauma associated with colonisation and abject poverty is yet another layer. The research undertaken by Larrakia Nation and the research of others on this issue points to trauma as being one of the most profound dimensions of the homeless experience. The stigmatising processes of mainstream society are equally experienced as a key dimension to the homeless experience. Acknowledging homeless people simply as socially excluded does little to overcome the interacting impacts of trauma and stigma that shape the culture or everyday life worlds for this population. It is not quantitative data that will help governments understand how these dimensions function, but good solid qualitative inquiry.⁵

(b) Multi-Pronged and Properly Resourced

The applicable principles must, in our view, include recognition that a multi-pronged approach is necessary; one which challenges the assumptions and negative stereotypes mainstream society members have about houseless, homeless and Aboriginal people. What is called for is an ideological shift in our dominant institutions, in particular, if we are to bring about improvements in life for Aboriginal homeless and houseless Australians. This will not be easy as curiously, research has shown that homeless people do not engender a sense of compassion among housed people, but rather they elicit hostility, fear and rage. This attitude is overt in Darwin among many housed people.

Furthermore, a multi-pronged approach clearly needs to be properly resourced and re-developed for delivery so that it integrates all layers and sectors of government. The foundation, to which policy has been developed, however, remains shaky, particularly where Indigenous Australians are concerned. We reiterate the issues around stigma and stress that are barriers for homeless and/or houseless individuals to accessing mainstream services are multiple and real. By placing homeless services in the mainstream, we will create more barriers for homeless people. In doing so, the role of the non-government sector in facilitating access to ordinary services will increase exponentially – yet we feel confident that funding will not increase accordingly. This approach makes a mockery of the notion of social inclusion for homeless people.

(c) Safe, Accessible and Non-Judgmental

Against this background, underpinning the provision of services to the homeless or those at risk of homelessness is a requirement that services be safe, accessible and non-judgmental. It is critical that service providers do not add to the alienation and stress felt by people living in the Long Grass.

Staff and volunteers of such services should be required to meet competencies and possess special skills around the culture of poverty and in relation to power issues. And aligned with this, staff possessing these skills and expertise should be valued and remunerated appropriately.

(d) Model of Trauma Informed Care

⁵ See generally, *Between the Long Grass and the Housed; A Qualitative Inquiry into the Experience of Homelessness in Darwin*, Holmes C, Doctoral Thesis, University of Western Sydney, 2007.

Services should use a model of trauma informed care. As noted above, people living in the Long Grass have frequently experienced multiple and profound traumatic events, including physical and sexual abuse and other types of trauma-inducing experiences. These have often led to mental health and other issues such as health problems, substance abuse problems, and contact with the criminal justice system.

When service providers become trauma-informed, every part of their service delivery is assessed and potentially modified to include a basic understanding of how trauma impacts the life of an individual seeking services and on an understanding of the triggers of trauma survivors that traditional service delivery approaches may exacerbate.

(e) Specialised, not Mainstreamed

Following from the above, service providers need to be flexible and willing to adapt their services to reflect the realities of life of people living in the Long Grass. For example, how can Centrelink services most effectively be provided? Should a different model be utilised to provide such services that would be more informed by the needs of their client group and more culturally appropriate than existing mainstream Centrelink services which frequently alienate and re-traumatise?

We are strongly of the view that there needs to be Aboriginal-specific services that specialise in assisting the chronically homeless, that address the need for life-long rather than one-off support, and that do not require strict compliance with rigid bureaucratic requirements, but that also provide an integrated means for people to move from homelessness to social housing.

From NAAJA's point of view, the inappropriateness of existing mainstream services for our clients is an overwhelming problem. We frequently see instances of clients being placed on a path that they have no possible prospect of complying with. Whilst the courts try to assist, they are forced to work with services as they are. This appalling situation is purely and simply because the services that are there to assist our clients are patently inappropriate given the living circumstances of many of our clients.

Case Study 1 – Deon

Deon suffers from a mental illness and periodically lives between his home community and the Long Grass in Darwin. He is regularly before the criminal courts for relatively minor offences which usually occur when he's been smoking cannabis. When he was recently sentenced, the Magistrate gave Deon the opportunity of a suspended term of imprisonment. It required Deon not to commit any further offence for the next 12 months and to comply with all reasonable directions of Forensic Mental Health and Corrections.

What follows is part of the actual transcript from court proceedings when a consultant psychiatrist was specifically asked about Deon's ability to comply with the suspended sentence:

NAAJA Lawyer --- In terms of, briefly, the conditions of the suspended sentence that Mr B was on complying with reasonable directions of Forensic Mental Health and to treatment and examination, conditions as to reporting to corrections when directed, and listening to directions of them as to accommodation and matters of that nature, what is your assessment of Mr B's capacity to meet those conditions?

Consultant Psychiatrist---That will not happen.

(e) International Human Rights

The principles underpinning the provision of services to the homeless must be aligned with and informed by Australia's international human rights obligations, which include the Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

International human rights law recognises that every person has the right to an adequate standard of living. This right includes the right to adequate housing.⁶ As pointed out in the HREOC Report, *Homelessness is a Human Rights Issue*,

“As a party to the ICESCR, Australian governments at all levels are under an obligation to progressively implement the right to adequate housing. This requires ‘concrete’, ‘targeted’, ‘expeditious’ and ‘effective’ steps, including budgetary prioritisation.”⁷

In our view, this obligation means that public housing and other related services need to take account of the social and cultural world of people living in the Long Grass to design appropriate housing options that means their needs. Where, for example the only pathway for a person living in the Long Grass is to move to public housing where rigid and inflexible policies (ie. three strikes policy) frequently result in eviction, they need to ask whether they are creating more problems by providing the wrong services.

As well as the right to adequate housing, international human rights law also enshrines (amongst other rights):

- the right to enjoy the highest possible standard of health,⁸ which must reflect the fact that homelessness greatly reduces access to health services and that the fact of homelessness is intricately linked to health problems;
- the right to liberty and security of the person⁹, which must acknowledge the extreme vulnerability of the homeless to acts of violence;

⁶ See for example, Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR)

⁷ See at http://www.hreoc.gov.au/word/human_rights/Homelessness_2008.doc

⁸ Article 12 of the ICESCR

⁹ Article 9(1), ICESCR

- the right to protection against arbitrary or unlawful interference with their privacy¹⁰, such as police randomly arriving to check for alcohol
- the right to be treated equally by the law and to be free from discrimination¹¹, particularly in the context of the lack of any prohibition against discriminating against people on the grounds of homelessness in any Australian anti-discrimination law;

As a party to the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights, Australia is under legal and moral obligations to implement them. In our submission, this includes taking all steps necessary to establish a regulatory framework that will be followed by state and territory governments, as well as local councils. It is unfortunately the case that ratification of international human rights conventions has not protected homeless people on a local level from laws that ride roughshod over these rights.

In the Northern Territory, it remains the case that people living in the Long Grass face criminal sanctions merely by virtue of their homelessness. In NAAJA's experience, this criminalisation often leads to an escalating series of consequences once people living in the Long Grass are dragged into the criminal justice system.

Case Study 2 – Paul

Paul is a 32 year old man from a remote community located 600 kilometres from Darwin. From time to time, he travels to Darwin and lives in the Long Grass. On the occasion in question, he was in the Darwin City Centre with a group of friends, nearby to where he was camping. Paul's friends were involved in an altercation and police were called. When they arrived, they told Paul to move on, and when he did not, he was arrested for failing to cease to loiter. This is an offence under section 47A of the Summary Offences Act and carries a penalty of a \$2000 fine or 6 months imprisonment or both.

Paul pleaded not guilty to the charge. He was released on bail, and this meant that he had to travel from his remote community to Darwin, a 1200 kilometre round trip. Paul mixed up his court dates and because he didn't appear in court, a warrant was issued for his arrest. This was cancelled when he handed himself in the next day.

On the day of the hearing, and after Paul travelled to Darwin for a second time, Police withdrew the charge against him.

Of even greater concern, there is currently before the Alice Springs Councils a series of proposals¹² that include a power for local government rangers to dispose of property (which could include blankets hidden away during the day) that they believe

¹⁰ Article 17, ICESCR

¹¹ Article 26, International Covenant on Civil and Political Rights (ICCPR)

¹² See <http://abc.com.au/news/stories/2009/07/29/2639509.htm?site=local>

to have been abandoned, as well as fines for people found begging and banning people from camping in the dry Todd River bed, a place frequented by Aboriginal homeless people.

In our submission, these Northern Territory approaches to criminalising and ostracising those living in the Long Grass reveal an urgent need for the Federal Government to establish a regulatory framework that will be followed by state and territory governments as well as local councils, and to show the necessary leadership to persuade all Australian governments to make decisions in relation to homeless people that are in accord with Australia's human rights obligations. Not being able to have scant personal belongings contributes significantly to being stigmatised. It is well known and accepted that stigma impacts on both the physical and mental health and the well-being status of the stigmatised individual or group.

2. The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights.

As discussed in (e) above, we strenuously consider that the scope of any legislation with respect to related government initiatives must be directed and informed by the needs of homeless people. As we have also discussed above, it is the frequent experience of Larrakia Nation and NAAJA that government initiatives in the areas of social inclusion and rights fail to meet the needs of our client group.

Mainstreaming homeless services is the polar opposite of the proper approach to be taken. Mainstreaming serves only to further alienate and re-traumatise Aboriginal people living in the Long Grass. We are strongly of the view that there needs to be the particular needs of Aboriginal homeless people and the strategies in which these needs will be addressed in such legislation.

The Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights outline the framework of the key rights that need to be addressed for people living in the Long Grass. This includes matters such as the provision of food, water, essential facilities such as toilets and showers, and of a safe place which is not necessarily conventional housing.

We are strongly of the view that there needs to be specific provision for Aboriginal-specific services that provide safe, accessible, trusted and culturally-appropriate services that specialise in assisting the chronically as well as short-term homeless, that address the need for life-long rather than one-off support, and that do not require strict compliance with rigid bureaucratic requirements.

3. The role of legislation in improving the quality of services for people who are homeless or at risk of homelessness.

We believe that it is imperative that strong legislative protections be in place to improve the quality of life for people who are homeless. However, legislation alone is

not enough – it is only if the principles underpinning such legislation adequately address the needs of homeless people that the legislation will be of any practical benefit.

In the Northern Territory, it is unfortunately our experience that the needs of homeless people are easily side-swept and given minimal priority. We consider that legislation can provide a crucial means of enshrining rights that are periodically ignored, and we speak in particular about Aboriginal people living in the Long Grass whose needs are grievously not addressed by mainstream service providers and that these people become non-citizens and that there are real and imagined barriers to accessing such services.¹³

Having said that, legislation should be enacted in protect basic rights that are regularly ignored but that every other Australian has. These include rights such as:

- to access showers, soap, public cooking facilities, taps, public toilets, lockers where valuable possessions can be safely stored
- all other environmental health services that are applicable in a homeless context
- to be homeless and not be assaulted (either physically, sexually or verbally)
- to access a supported shelter - something as simple as protection from the elements, but nevertheless a space where people can go, where the police can check on their welfare as opposed to checking if they are drinking or criminals in hiding.
- to culturally appropriate respite or rehabilitation services - somewhere to go if a person has a flu where they can recover (swine flu highlights the imperative of rolling this out immediately)
- for a community nurse and other allied health professionals to come to check on people living in the Long Grass and for appropriate and accessible outreach medical, health and other services
- supported accommodation to prevent homelessness for those with special needs

In relation to the latter, it is NAAJA's experience that people suffering from special needs (including mental illnesses, intellectual disabilities, acquired brain injuries) are often left to rot in jail due to the indifference of mainstream service providers and the abject failure of government to take responsibility for their needs.

Case Study 3 – Darren

Darren suffers a severe chronic psychotic disorder. He has spent 70% of the past 6 years in jail. His offending is consistent, and whilst reasonably serious, is not at the highest end of the scale. He requires structured and culturally appropriate support in the community but there is simply no supported accommodation available for him in the Northern Territory. When he is released from jail, Darren usually returns to the

¹³ See *Between the Long Grass and the Housed; A Qualitative Inquiry into the Experience of Homelessness in Darwin*, Holmes C, Doctoral Thesis, University of Western Sydney, 2007.

Long Grass. From there, not taking his medication and quickly succumbing to substance abuse, it is not long before he is back in police custody.

What follows is part of the transcript from court proceedings in December 2007 when a consultant psychiatrist was specifically asked about Darren's needs when released in the community:

NAAJA lawyer --- In terms of Darren's needs, what sort of treatment or services does he really require in the - - -

Consultant Psychiatrist---He needs care and control. He needs somebody to look after him, to make sure that he is eating, that he has shelter because people to die in this weather if they sleep rough, and he needs somebody to make sure that his basic physical health is okay. That he's not got pneumonia. That the cuts and scratches on his feet or these sand fly bits aren't going to cause septicaemia. So he needs all of that. He needs a bed. He needs somebody to make sure that he eats and the medication is given, and I wouldn't rely on medication in this case. But whatever medication he is given, he does actually get. So mostly it's care control supervision in a place of safety.

NAAJA lawyer --- And what services are available?---None.

Consultant Psychiatrist--- In – in long term, none.

At the time of being sentenced, Darren had been on remand in prison for several months. Those months in custody were already more than what the criminality of his behaviour warranted. The Magistrate therefore said:

HIS HONOUR --- At the end of the day nothing is being served by you being in prison; you're not learning anything from it, you're not being rehabilitated from it, the community is not being protected, all it's doing is delaying your inevitable release. And the better point that should be made here is that it is incumbent upon the state. If the state is serious about sentencing principles, as apparently it is given the extent of consideration given to that in the Sentencing Act, and if one of those sentencing principles and the main sentencing principle is the protection of the community, it is imperative that the state does something about people in your condition. Otherwise the state is just simply paying lip service to proper sentencing principles and is totally disregarding the need for the protection of the community.

If legislation is designed to reflect the critical principles that should underpin addressing the needs of the homeless, it will hopefully provide vital protections of fundamental rights. But it is also hoped that legislation can guide prioritisation for the allocation of resources in relation to realising such rights. As was apparent from the Magistrate's sentencing remarks in Darren's case, it is not only in Darren's interests but very much in the community's interests that Darren receive appropriate care, supervision and medical treatment.

In Darren's case, he was back before the courts in a matter of weeks. And he has since spent several stints, each of several months, in prison. In April 2009, once again after several months in custody, a psychiatric report was commissioned which noted:

“there is a recurring cycle of his causing disturbance in the community which may result in his being hospitalized or charged and imprisoned. Then there is a period where he is well nourished and properly medicated, with improvement in his psychotic symptoms, but once he is released in the community again, he promptly becomes lost to follow-up, he relapses into drug and alcohol abuse and his mental state deteriorates until he again comes to the attention because of unacceptable behaviour. The challenge is to usefully interrupt this cycle.”

The appalling failure in Darren’s case is that the relevant service agencies have failed on all fronts to provide for Darren’s needs. With no case worker and no-one to advocate on his behalf, it was only the lawyer representing him for his criminal matters who bothered to make simple enquiries on his behalf.

This extract from court proceedings in May 2009 speaks volumes for the disinterest and/or inflexibility of mainstream agencies:

NAAJA lawyer --- We've contacted the ... Disability Services, they provide supported accommodation, and they currently have 32 people on their waiting list. Some people have been waiting for five years; they expressed a very dim view of their ability for them to take Darren on in the future. There is consideration as to whether he would meet their definition of disability.

I contacted the executive office of the Adult Guardianship in February asking that Darren may be assessed and that's something that I notified Dr ... of. I haven't had any reply from that office at all.

Contact has been made with ..., the agency that provides mental health supported accommodation. There is a facility in Darwin ... that provides 24 hour supported accommodation, but I've been advised there, your Honour, that they have a very slow turnover and they are at full capacity. It was indicated to me that if we were able to secure funding from another government department to them, that they might be able to provide supported accommodation for Darren in the community... they asked myself to write to the Disability Co-ordination Team which is part of the Department of Health and Families.

All of Darren’s mental health records and reports and the like have been provided to all of these agencies, and what they’ve indicated is they have a question as to whether he fits within the definition of disability for their services. They wish to have material provided to them to prove that he has a disability and they're not in a position to carry out any assessments.

Darren’s is not an isolated case. NAAJA has numerous clients who are in his situation, whose ongoing offending is in large part due to the failure of mainstream agencies who are supposed to be addressing their underlying needs to actually provide such services. As with Darren, NAAJA repeatedly encounters services who advise that our clients do not meet their “definition,” or who say that they are not in a “position” to carry out assessments, that it is not their “role” to convene case conferences, or that if funding could be secured, they “might be able to assist.” The cruel irony is that the cost of providing Darren with supported accommodation –

which in turn would dramatically reduce the likelihood of his re-offending – would be far less than the cost of housing him in jail for 70% of the past 6 years.

What is clearly needed is a twofold approach: the introduction of legislation which protects fundamental rights and based on principles that require service providers to meet the needs of their individual clients. And secondly, that service providers work to the definition of the individual and not the other way around.

4. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas.

In Larrakia Nation's experience, existing legislation and regulations governing homelessness services are extremely ineffective. Larrakia Nation are the primary provider of services to people living in the Long Grass and the most specialised organisation working with the homeless Aboriginal population.¹⁴

In the Northern Territory context, Aboriginal people living in the Long Grass are at the extreme end of marginalisation and social exclusion. Their capacity to access services essential to their daily survival where those services are not provided in a culturally-appropriate, non-judgmental, multi-faceted and expert manner is almost non-existent. Similarly, their capacity to complain when essential services are delivered in an inappropriate or discriminatory manner is equally constricted in light of their position of powerlessness.

The homeless are unquestionably the most vulnerable segment of the population. It is extremely concerning to us that there are not clear and uniform provisions governing the provision of services in the Northern Territory to homeless people, particularly those living in the Long Grass, and most especially Aboriginal people living in the Long Grass whose situation of vulnerability and disadvantage is most acute.

We consider that it is vital for all levels of government to, as a matter of urgency:

- (a) commit to the full realisation of the right to adequate housing (including suitable, safe shelter for homeless that are highly mobile) and associated fundamental rights, including the rights to health, social security, non-discrimination and human dignity and respect
- (b) implement targeted legislation and regulations, budgetary allocations, as well benchmarks and performance measures towards the realisation of these rights.

5. The applicability of existing legislative and regulatory models used in other community service systems, such as disability services, aged care and child care, to the homelessness sector

¹⁴ It is interesting to note that while Larrakia Nation provides these services they do so without any funding under the existing homelessness legislation. This could be because Larrakia Nation are responding to the needs of the homeless population as opposed to the needs of Government administrators of the funds.

We consider that existing legislative and regulatory models used in other community service systems, such as disability services, aged care and child care, to the homelessness sector are critically deficient.

In relation to aged care services, Larrakia Nation's recently completed study¹⁵ highlighted the service needs of Aboriginal people living in the Long Grass. With more than 70% of study participants over 40 years of age, the aged homeless population has significant implications for the type of service needs of this population that extend beyond crisis services. As documented in the 2009 Productivity Report, *Overcoming Indigenous Disadvantage*, the rates of Aboriginal mortality are 2.1 times the rate of non-Aboriginal mortality.¹⁶ This marked discrepancy vividly emphasises the urgency and scale of these presently unmet needs.

Larrakia Nation's recently completed study also raised the question of the appropriateness of the eligibility criteria for Aboriginal people living in the Long Grass in terms of access to the aged pension and other aged-care services as well as the imperative of appropriate aged care support and services within communities. It is our firm view that the appropriateness and accessibility of aged care services must be determined according to the needs of the individual rather than the parameters of mainstream service providers. There is urgent need for significantly improved access to aged care services at a much earlier age for Aboriginal people living in the Long Grass and existing legislative and regulatory models are entirely failing to address these needs.

In relation to disability services, the failings of mainstream services to provide for the needs of Aboriginal people living in the Long Grass are just as apparent. Both Larrakia Nation and NAAJA frequently see these, and without acknowledgement and although it is outside of our mandates, try to provide whatever services and assistance (for example, transport, advocacy) we can to assist people in this situation.

NAAJA regularly act for clients with intellectual disabilities who are in need of a guardian. The number of people under guardianship orders in the Northern Territory is higher per capita than anywhere else in Australia. And these figures are increasing. At present, in the Northern Territory, there are around 200 people under guardianship orders with 65% of these Aboriginal.¹⁷

In our experience, a number of critical issues surrounding homelessness arise for our clients. These include the lack of access to support services for people with intellectual disabilities and the lack of any appropriate accommodation for people with intellectual disabilities and high-level care needs. And further, the inadequacy of the present departmental structure for the Office of the Public Guardian, given that this Office sits under the Department of Health and Community Services. The Public Guardian, though advocating for accommodation and support, are not independent from the Department of Health, and this presents a perceived or actual conflict.

¹⁵ *Being Undesirable; Law, Health and Life in Darwin's Long Grass*, Holmes C, McRae-Williams E, In press, National Drug Law Enforcement Research Fund Tasmania.

¹⁶ See the Productivity Commission Report (2009), *Overcoming Indigenous Disadvantage* at: http://www.pc.gov.au/data/assets/pdf_file/0019/90136/06-chapter4-only.pdf

¹⁷ These figures were provided to NAAJA in a meeting with the Adult Guardianship Office on 3 April 2009.

Case Study 4 - Andrew

Andrew was admitted to Royal Darwin Hospital (RDH) following an incident where he was stabbed. As a consequence of his injuries, he was considered to be in a persistent vegetative state. Andrew received nutrition through a gastrostomy tube, received full nursing support, but he was otherwise described by medical staff as being 'pretty healthy'. He had no means of communication and his cognitive function was greatly impaired.

In 2005, an Adult Guardianship order was made, appointing guardians to make decisions and to act in Andrew's best interests. In the period from November 2005 to Andrew's death in October 2008, he remained a resident in the trauma and burns ward of RDH. Despite repeated attempts by the Public Guardian advocating to the Department of Health and Community Services for the provision of appropriate accommodation, alternative accommodation was not provided.


The only available option for Andrew was to be housed in an Aged Care facility in Darwin. This was objected to by family members and the Public Guardian due to Andrew's age (he was in his late 30's at the time of the accident), and their concerns that Aged Care is not an appropriate place for a young person. A further alternative, housing Andrew in Katherine Hospital, was objected to by family as it was consider too far to travel and to visit him. Andrew's family are from a remote community, and reside between that community and Darwin.

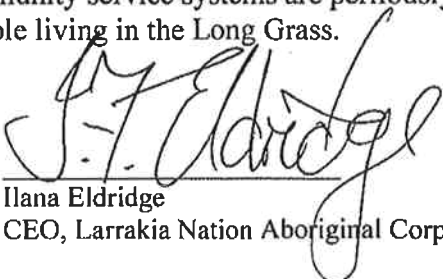
Andrew was ineligible for support through mainstream community disability funding. It was decided by the Public Guardian to utilise Andrew's savings to fund a weekly carer to take him outside the hospital ward to experience fresh air and the sun. This was the only activity or support that Andrew received. Our concern is that for the duration of his accommodation at RDH, Andrew was not provided with adequate access to appropriate accommodation, support and culture.

It is crucial that there be clear and express legislative standards for the care and support of people with intellectual disabilities, especially the young, those from remote Aboriginal communities, and those living in the Long Grass. This case study also raises the necessity for the Public Guardian to be independent from the relevant Department if systemic issues can be properly addressed.

As demonstrated from the above case study and the Larrakia Nation preliminary findings as regards aged care services, we consider that existing legislative and regulatory models used in other community service systems are perilously failing in meeting the needs of Aboriginal people living in the Long Grass.

Signed:


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Dated: 21 August 2009