

North Australian Aboriginal Justice Agency

Priscilla Atkins

Panel 2: Client-Centered lawyering

I would like to thank you for giving me the opportunity to present at the 2018 International Forum on Legal Aid.

My name is Priscilla Atkins and I am the CEO of the North Australian Aboriginal Justice Agency in the Northern Territory in Australia.

I am an Aboriginal Eastern Arrernte women from Alice Springs, Australia and a mother of 10 children and I have 8 grandchildren.

Aboriginal people in the Northern Territory face a number of issues with the justice system.

The Northern Territory continues to incarcerate people at a rate far in excess of anywhere else in Australia. The NT's incarceration rate in 2016 was 880 per 100,000 people – over three times that of its closest rival Western Australia, and almost five times the national average.¹ The number of prisoners is also increasing. In 2013, the Northern Territory prison population increased 2% to 1,436. In the Northern Territory, Aboriginal people make up 300% of the population but make up 85% of the NT prisons population and over 95% of the youth detention population.

The Northern Territory also has the highest recidivism rate in Australia, with [57.5% of people](#) released from prison being returned within two years. This figure has risen by 5% in the last year and can be compared with the national average of 40.3%.

Aboriginal women are also grossly overrepresented in the criminal justice system.

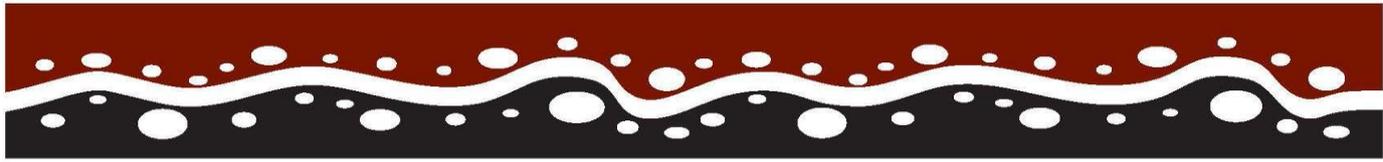
Between 2012-2015, there has been a significant increase in female prisoners in the NT. In 2012, the average daily number of female prisoners was 82. In March 2015, this is 142. This equates to an increase in the rate of female imprisonment from 101 female prisoners per 100,000 total female population in 2012, to 167 female prisoners per 100,000 adult female population in March 2015. To put this in context, the national female incarceration rate is more than 5 times the national rate - 30 female prisoners per 100,000 adult female population.

The cost of detaining a young person is over \$250,000 per year.

The estimated annual average cost per adult prisoner is \$110,000 per year.

When an Aboriginal client comes to NAAJA they don't come with one legal issue they come with a cluster of legal issues including:

- Acute social disadvantage in the areas of education, housing, employment, income and health;



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- Remoteness. In the case of NAAJA's clients, many live in communities or outstations that are hundreds of kilometers by dirt road to the nearest regional center and can be inaccessible by road for significant parts of the wet season (roughly December – April). With geographical remoteness also comes a lack of social services;
- In the NT, many Aboriginal people speak English only as a second, third or fourth language and require interpreters. In a number of communities that are serviced by NAAJA (including communities like Wadeye, the NT's largest Aboriginal Community), almost all people appearing before the court require an interpreter; and
- Cross-cultural issues. For many of our clients, the mainstream legal system is quite simply an alien one. Its language and concepts are difficult to effectively interpret into Aboriginal languages and are very poorly understood. This means that clients often have a poor understanding of court proceedings and the orders made by the court as well as a very limited awareness of their rights and what legal remedies they may have available. There are a range of other common cross-cultural issues that arise for NAAJA's clients including those arising from kinship relationships, the practice of customary law and the prevalence of gratuitous concurrence (the tendency to agree with the questioner). These issues particularly arise in remote communities, although they are by no means confined to those communities.

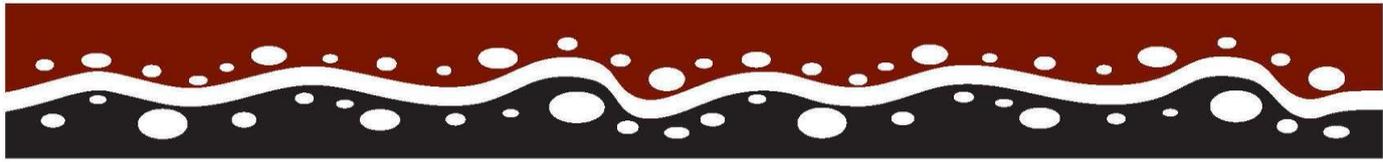
The total area in size of our client base is over 1.421 million km². By comparison, the United Kingdom comprises 245,000 sq/kms.

To address the legal needs of Aboriginal people NAAJA provides a specialist culturally appropriate legal service which is client centred to address the cluster of needs.

We have Chinese wall between our legal services which enables us to work with our clients and refer between the practices to ensure their legal needs are met.

NAAJA conducts the largest criminal law practice in the Northern Territory. We represent clients:

- On criminal charges in the Youth Justice Court, Magistrates Court, and Supreme Court;
- In circuit courts in 28 remote Aboriginal communities; and
- In appeals before the Supreme Court and Court of Criminal Appeal.



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We also provide:

- Legal advice over the phone or face to face about criminal charges or police investigations; and
- 24 hour legal advice when people are arrested or taken into police custody.

NAAJA also provides specialised services for clients who are vulnerable or have special needs including:

- Youth;
- People with mental illness or cognitive impairment;
- Deaf and hearing impaired clients, including those with limited ability to communicate in Auslan.

The number of criminal matters over the past 12 years has doubled.

Criminal case studies

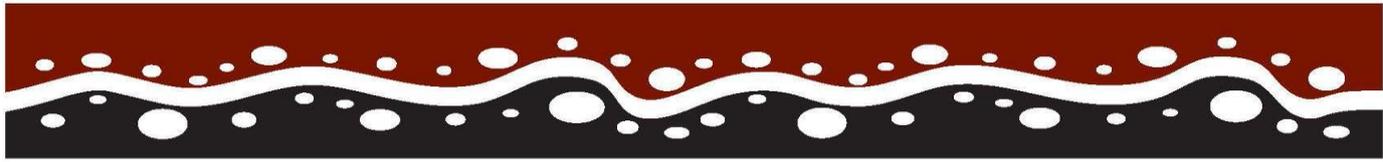
Case study 1

In Alice Springs the on call NAAJA Criminal lawyer was called by police at the watch house notifying that there was a young Aboriginal woman who had been arrested on her third warrant which had been issued for shop stealing charges and for failing to attend court. The on call lawyer attended the watch house and spoke with the young woman in custody. The young woman was only visiting Alice Springs and had previously only been bailed over the phone by police in a remote community and was frightened of attending court. The NAAJA lawyer was able to reassure the young client that if she came to court on bail the next day, a NAAJA lawyer would assist her with her court matters. The on call lawyer successfully argued that bail should be granted and the client was released from custody to attend court on bail the next day.

The next day the young woman attended court on bail in Alice Springs and was represented by the same NAAJA lawyer who had attended the watch house. Her matters were finalised and she received a fine.

Our Civil Law solicitors provide advice and legal representation in relation to a vast range of civil law areas, such as:

- Complaints about government services (police, health, prison)
- Forfeiture or seizure of property - where property was used to take liquor, kava or drugs into a restricted area or in the commission of a crime
- Child protection matters



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- Motor Accident Compensation claims
- Adult guardianship matters
- Mental Health Review Tribunal matters
- Volatile substance abuse matters
- Prison transfer requests
- Discrimination
- Victims of crime compensation
- Coronial inquests
- Victims of crime compensation

Civil Case Studies

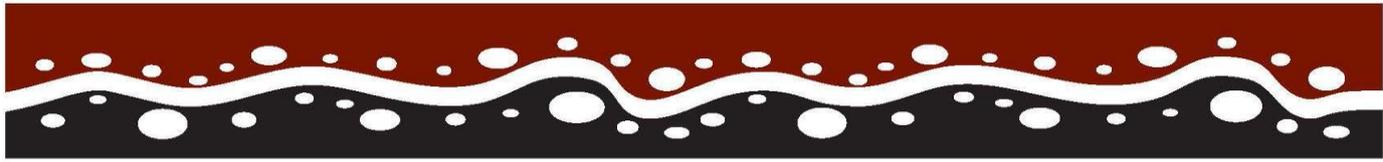
Case study 1

Our client has significant cognitive impairment, and is subject to an Adult Guardianship Order. We were approached by our client's Adult Guardianship Officer, who held serious concerns regarding a number of alleged fines he had received from the Fines Recovery Unit ('FRU') in respect of our client. The fines were for minor infringements that were the direct result of the client's cognitive disability, such as loitering, offensive behavior in a public place, possessing opened liquor container, drinking liquor, using indecent language, and disorderly behavior in a public place. The quantum alleged owing was in the range of \$7000.

We put to the FRU that our client is significantly cognitively impaired, and therefore has no capacity to understand the Fines and Penalties (Recovery) Act (the 'Act') or any obligations an allegedly fined person may have under that Act in terms of payment and time limitations. Therefore any fine allegedly given to our client is invalid, and all recovery action in respect of the alleged fine is invalid, given our client's lack of capacity, and the subsequent inability of the FRU to meet their obligations in respect of our client under the Act.

Alternatively, all fines issued since 4 November 2016 in respect of our client are invalid given our client's clear lack of capacity as established by Guardianship Order to which he is subject.

Alternatively, should the FRU not be satisfied that the fines allegedly given to our client are invalid, at the very least they should be satisfied that the fees in respect of the alleged fines are invalid. Under the Act, fees can only be charged in relation to fines which have been correctly processed in terms of service of courtesy letters and enforcement action. The FRU failed to follow the necessary process in relation to our client and these alleged fines. Our client never received service of the necessary documents. Our client was not made aware of the due date of payment, as he was never properly



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served with the necessary documents. The FRU have alleged that by serving the documents to service was affected on the client. This is incorrect. Our client has never resided at the place in which they were served, and has never provided their address as his own. Given that the alleged fines were never properly served on our client, our client was never made aware of the due date in relation to the alleged fines, and as such fees cannot be charged on the basis of our client's 'late' payment. The FRU responded with an offer to withdraw all infringement notices in respect our client. Our client and his Adult Guardianship Officer were very pleased.

Our Law and Justice Section includes policy/law reform, legal education, training and projects. In relation to policy and law reform, we prepare submissions, lobby for law reform and work with stakeholders on systematic law and justice issues facing Aboriginal Australians.

We engage with all levels of Government on reforms to the legal system, participate in high-level committees and advisory groups, and document case studies highlighting the operation of the legal system as it impacts our clients.

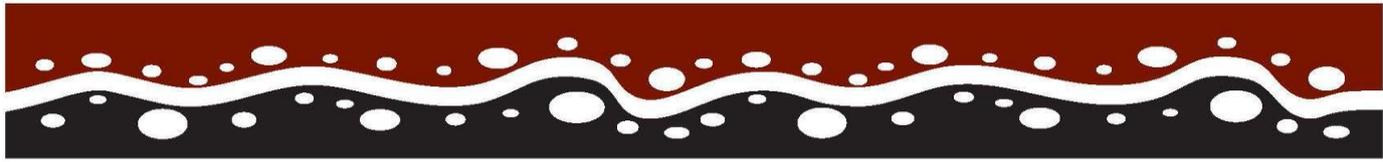
Our policy priorities for the immediate future include:

- The over-incarceration of Aboriginal people in the Northern Territory;
- Mental health issues and the criminal justice system;
- Improving the youth justice system;
- Reform of the parole system; and
- Housing and welfare rights.

NAAJA provides a range of legal education projects and training sessions at schools, prisons, men's and women's centres, rehabilitation centres and various community based organisations. In addition, the team conducts intensive community engagement projects in remote communities.

NAAJA has developed a unique multi-disciplinary methodology that is tailored specifically for communities in which we work. The key features of NAAJA's legal education work are:

- Two-way learning;
- Learning through doing;
- Building relationships and capacity; and
- Using a strength-based approach that celebrates and builds on the unique strengths of each



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community.

In order to make legal education initiatives as successful as possible, NAAJA's legal education team draws on important principles of adult learning, bilingual education, traditional Aboriginal learning styles and community development.

NAAJA places an emphasis on working with elders in remote Aboriginal communities to develop ways for elders to have more influence on the legal processes that affect their communities.

NAAJA's Indigenous Throughcare Project commenced in February 2010 and aims to reduce repeat offending. It is funded by the Commonwealth Attorney-General's Department.

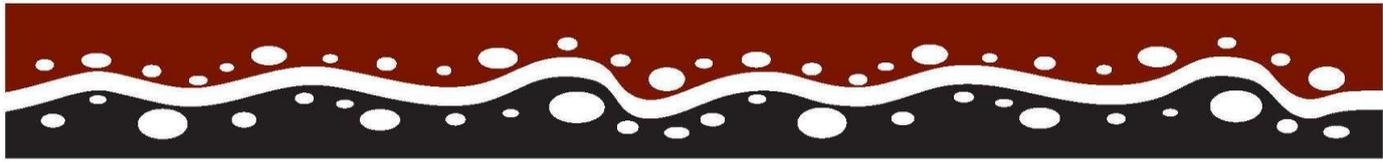
The Northern Territory has the highest rates of reoffending in Australia, with 48% of prisoners returning to prison within 2 years of their release.

We provide intensive pre- and post-release rehabilitation and reintegration services for Aboriginal prisoners from the Darwin Correctional Centre and Don Dale Juvenile Detention Centre. The program provides strength based case management and referral services for individual prisoners to assist them in accessing opportunities when they are released from prison or juvenile detention. This addresses an individual's diverse transitional needs including rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.

We engage with Aboriginal prisoners and juvenile detainees in the 6 months prior to their release and continue to work with clients for the 6 months after their release from custody. To be placed in the program, clients must meet our eligibility criteria.

First, clients are assessed on their voluntary willingness to engage with the service, showing signs of obvious desire and readiness to make positive changes in their lives. Second, clients must also be in a situation of 'high need'. This includes:

- Homelessness or marginal accommodation;
- No income, disengagement from Centrelink, or unstable income;
- Literacy and numeracy issues, and/or English as second, third or fourth language;
- Problematic family relationships;
- Involvement with welfare agencies, history of family violence, cultural/payback issues;
- Lack of community supports;



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- Substance misuse issues; and
- Health, including mental health issues, and/or physical disabilities.

We have case workers, each having a capacity of 15 active clients, with the exception of the Indigenous Throughcare Project Coordinator who has a maximum caseload of 10 clients. We place the utmost emphasis on providing high quality case management support to our clients with a view to delivering a service that is both rigorous and able to achieve results.

The Kungas program delivers pre and post release through care services to female prisoners in custody at the Alice Springs Correctional Centre, in order to reduce recidivism rates, support women to transition back into the community, and increase safety of women and children.

From 1 January 2018 to 30 June 2018 the Kunga program worked with 50 women over the reporting period providing pre and post release through-care case management.

The Kunga program staff have continued to work collaboratively with many government and non-government partners to help provide holistic support to women and their families.

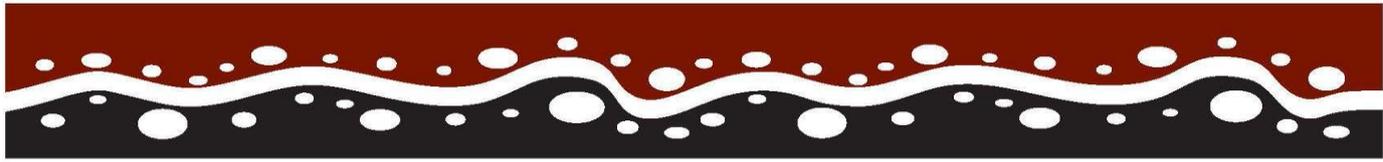
The Bilata Legal Pathways Program was established in 2016 with the aim of increasing the number of Aboriginal and Torres Strait Islander (ATSI) people practicing law in the Northern Territory (the Law Society NT 'Balance' publication 2/15 reports this number as 10 of 533 practitioners, approximately 2%).

The name Bilata (pronounced, Bee-la-ta) is the Larrakia word for a wooden spear-throwing device, also commonly known as a woomera. The Bilata was traditionally used to guide a spear along a pathway and assists with direction, speed and accuracy. It is used for many purposes and is sometimes more revered and more valued than a spear.

The following principles underpin the program:

- Knowledge is shared 2 ways
- Encourage expectations, no shame in failing
- Pushing boundaries, being culturally safe
- Fostering connections

The issues are important and the challenges that Aboriginal people face are very complex. But we work very hard to meet the legal needs of all Aboriginal people and to give them effective access to justice: men, women and children.



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Thank you

ⁱ Northern Territory Government 2016, Northern Territory Department of Correctional Services Annual Statistics 2014-2015, P.4.