

North Australian Aboriginal Justice Agency

Priscilla Atkins

Panel 5B: Developing Services for Specific Communities-Indigenous Peoples

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.

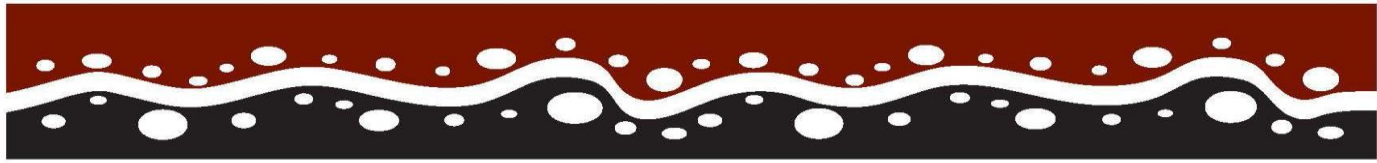
Aboriginal people in the Northern Territory face a number of issues with the justice system.

Aboriginal people make up 30% of the population but make up 85% of the NT prisons population and over 95% of the youth detention population.

Particular legal needs and barriers to accessing justice also arise from issues such as:

- Acute social disadvantage in the areas of education, housing, employment, income and health;
- 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 centre 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;
- Language. In many parts of the country, Aboriginal people speak Aboriginal English (a distinct dialect) as their first language.¹ 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

¹ See Department of Justice and Attorney General, *Aboriginal English in the Courts* (2000). Available at: www.courts.qld.gov.au/__data/assets/pdf_file/0004/90715/m-aboriginal-english-handbook.pdf.



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- 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.

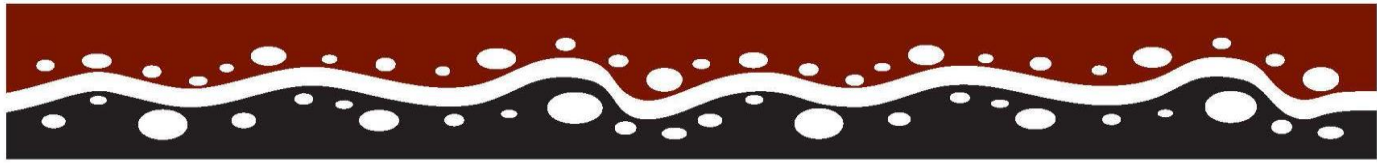
To ensure NAAJA delivers culturally appropriate services to Aboriginal people throughout the Northern Territory we have designed specialized services to meet the language and cultural needs of Aboriginal people in remote communities.

In our criminal law practice NAAJA represents Aboriginal people in remote communities at the bush courts.

A bush court is like a Magistrates Court except it is out bush. The facilities are not first class. To give an example a bush court might be run out of a spare office near the Police station, we interview the clients under a tree, in the rain, in the heat and we don't have an office.

Client Service Officers (**CSOs**) are an integral part of NAAJA's service. CSOs are people with a deep understanding of Indigenous culture and community – generally Aboriginal themselves or with significant connections to Indigenous society. CSOs assist clients to access legal services and with issues related to their legal problems. For example:

- Providing legal information to clients before and after court and making referrals to other agencies;
- Assisting lawyers to understand cultural and communication issues that may arise with a particular client or in a particular community;



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- Assisting clients to engage with other service providers, such as rehabilitation services, crisis accommodation or government agencies that can assist with fine payment options;
- Liaising with clients families and communities; and
- Assisting lawyers to contact clients and witnesses where remoteness and/or itinerancy may make this difficult.

The importance of language and cultural issues in providing access to justice cannot be overstated. In many of the communities that NAAJA services, English is a second, third or fourth language and almost all clients from remote communities require an interpreter.

While NAAJA works closely with, and strongly supports, the Aboriginal Interpreter Services (AIS), there is a well recognised shortage of fully qualified legal interpreters for many Aboriginal languages.

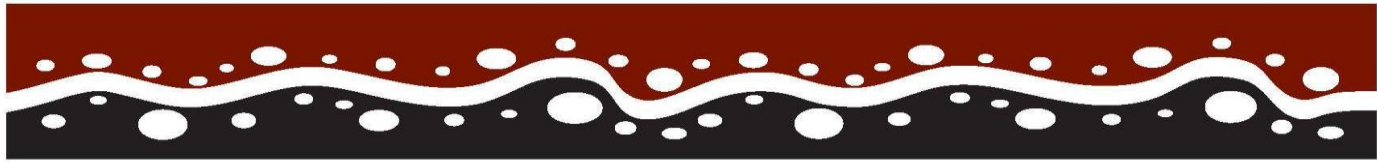
NAAJA lawyers representing in-custody Aboriginal clients are often unable to find a suitable interpreter at short notice. The case may be adjourned so that an interpreter can be arranged, with the client often remaining in custody. Alternatively, the case may proceed without an interpreter, with the risk that the client may not fully understand the sentence or bail order.

This inevitably poses a dilemma for the lawyer, particularly for a lawyer with a client in custody facing only minor charges. Should a lawyer proceed without an interpreter and try to achieve immediate liberty for a client, by way of bail or non-custodial sentence? Or should an accused person remain in custody longer than necessary (sometimes weeks), so that proceedings are conducted with an interpreter?

NAAJA lawyers are often required to make difficult ethical decisions about how to proceed in the absence of a qualified interpreter. As noted above, it can also make the process of providing legal services and conducting court proceedings particularly difficult and time consuming.

NAAJA is committed to improving the ability of Aboriginal people to understand the law and legal processes and therefore access justice. Some of NAAJA's work in this area includes:

- Conducting joint training sessions on legal interpreting for AIS and NAAJA staff;
- Working with AIS to develop a Yolgnu Matha plain English dictionary;
- Working closely with the AIS to develop a protocol for court interpreters; and
- Seconding interpreters from the AIS into NAAJA to provide legal skills training and facilitate professional skills exchange.



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NAAJA has a specialist youth team who case manage the youth when they attend court and provide intensive case management with the aim of the youth not returning to court.

Case study 2

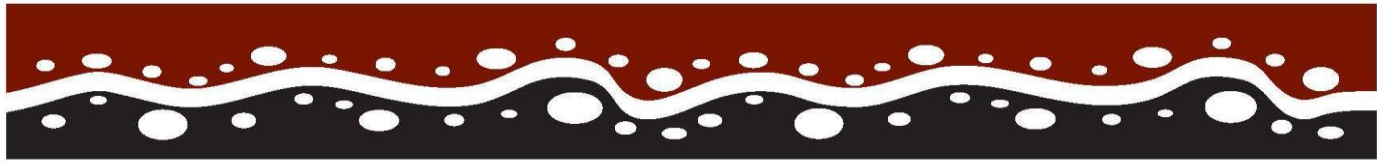
A NAAJA Alice Springs lawyer recently represented a young man charged with very serious offending. He was adamant that he had nothing to do with the offending but due to the seriousness of the allegations he remained in custody. The client's family were very upset at their relative being held in custody and advised NAAJA of this. Our lawyer, as well as representing the client in court mentions and analysing the brief, also travelled to the client's community to speak with his family accompanied by a NAAJA Aboriginal Client Services Officer. The lawyer with the assistance of the NAAJA Aboriginal CSO explained the legal processes that the client had to go through before the lawyer could apply for bail or question witnesses and present the client's side of the story. After this meeting the family were very happy and felt that they had been listened to and that they had gained a better understanding of the legal processes.

Evidence later came to light in this matter, that on learning of its existence, the lawyer immediately commenced a bail application arguing that the new evidence exonerated the client. The lawyer pushed for the client's immediate release and, after legal argument, the client was eventually released and all charges were withdrawn against him. Another person has since been charged with the offending.

In our Civil Law section NAAJA has recently employed an Intensive Case Worker for families whose children are in child protection.

NAAJA represents families when Applications have been made by Territory Families for the care of a child or children under the *Care and Protection of Children Act 2007 (NT)*. NAAJA was concerned that the rate of Aboriginal people in out-of-home care is ten times that of other children in Australia.

NAAJA established a pilot project for an Intensive Case Worker to join our Civil Law team to assist families as they face Applications under the Care and Protection of Children Act. The role specifically assists families who have merit to seek an Order that they have Daily Care and Control of their children or merit to seek a reduction in the length of an Order through meaningful and early engagement. NAAJA also seeks to provide assistance to those families for the 6 months following the conclusion of the Court proceedings.



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The Intensive Case Worker works with the legal team to provide intensive pre and post Order support and service referrals to families. They provide case management for families to address their diverse protection concern needs including rehabilitation, housing, health, life skills, family violence intervention, reconnection to family and community, social connectedness, education and training.

Case study 2

The family team assisted a putative father in determining the paternity of a child subject to a care and protection order. A two year protection order was made in the father's absence, as a different father was listed on the child's birth certificate. The family team worked with Territory Families to organize a paternity test, which showed our client to be the father of the subject child. The child is no longer in residential care and was placed with the father and paternal family in community earlier this month. Territory families provided to the father a crib and car seat.

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.

They travel to the remote communities and deliver tailor made community legal education in the remote communities in some cases they travel 1100 km by road to get to a community.

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.

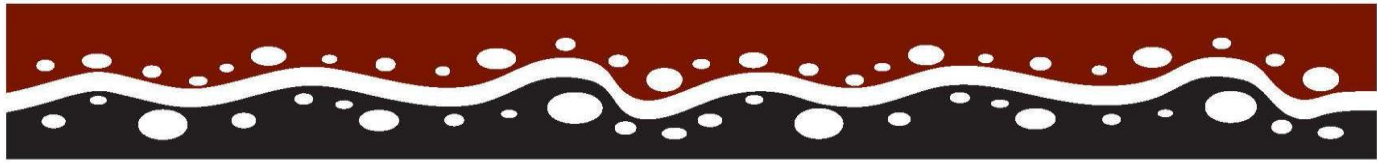
The Northern Territory has the highest rates of reoffending in Australia, with 48% of prisoners returning to prison within 2 years of their release.

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.

NAAJA travels out to the remote communities and works with the families to ensure the client has a successful reintegration back into their community.

NAAJA has commenced a joint pilot project with Miwatj Health. The first phase is the integration of the visiting NAAJA civil legal clinic within the services of Miwatj Health and at the Nhulunbuy health clinic (and for surrounding areas). The second phase is the integration of a health based response to the criminal justice system and

The HJP is the first of its kind in the Northern Territory between a prominent Aboriginal community-



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controlled health service and NAAJA as the principal, culturally appropriate legal and justice service in the NT. It is developed in recognition of the significant potential of a health based response to justice issues, and the potential of integrating a civil law practice in the context of the broader social determinants of health. As Aboriginal community-controlled organisations, there is a strong commitment to developing and integrating best practice cultural competency into the partnership.

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.

Thank you