



Putting an end to the over-criminalisation of public drinking in the Northern Territory

Norther Territory Alcohol Policies and Legislation Review

21 July 2017

www.hrlc.org.au

Freedom. Respect. Equality. Dignity. **Action.**

Contact

Shahleena Musk and Adrienne Walters
Human Rights Law Centre Ltd
Level 17, 461 Bourke Street
Melbourne VIC 3000

T: + 61 3 8636 4406
F: + 61 3 8636 4455
E: shahleena.musk@hrlc.org.au/adrienne.walters@hrlc.org.au
W: www.hrlc.org.au

Human Rights Law Centre

The Human Rights Law Centre protects and promotes human rights in Australia and beyond through a strategic mix of legal action, advocacy, research, education and UN engagement.

It is an independent and not-for-profit organisation and donations are tax-deductible.

Follow us at <http://twitter.com/rightsagenda>
Join us at www.facebook.com/HumanRightsLawCentreHRLC/

Executive Summary

In recent years, the Northern Territory Government has responded to public drinking and drunkenness by creating more and more powers to deprive people of their liberty. This approach flies in the face of recommendations of the landmark Royal Commission into Aboriginal Deaths in Custody. Those most acutely affected by punitive responses are often the most vulnerable, and in the Northern Territory it is Aboriginal people who are being unfairly and disproportionately harmed by what has been described as a ‘culture of mass incarceration’.¹

Undoubtedly, alcohol misuse and alcohol-related harm are significant problems in the Northern Territory, as articulated in the issues paper for this review. However the response should be to address alcohol misuse for what it is – a complex health issue requiring health-focused responses within a broader framework of supply, demand and harm reduction – not to criminalise individuals struggling with alcohol addiction and other health and social challenges.

The Human Rights Law Centre (**HRLC**) welcomes the Northern Territory Government’s decision to commission an Independent Expert Advisory Panel to undertake a review of alcohol policies and legislation. Such a review was recommended by the Coroner after investigating the death of Warlpiri man, Kumanjayi Langdon, who died after being taken into police custody under draconian paperless arrest laws for simply drinking in public.²

Since the commencement of this review, the Alcohol Harm Reduction Bill 2017 was tabled in Parliament. If passed, the Bill would reinstate a revised version of the Banned Drinkers Register, which places obligations on suppliers rather than consumers – an approach we are broadly supportive of. The Bill would also see the repeal of the *Alcohol Mandatory Treatment Act* (NT) and *Alcohol Protection Orders Act 2013* (NT). The repeal of these two pieces of legislation and the current review are important steps, although long overdue, to removing laws that are having discriminatory and unjust impacts, and which contribute to the over-incarceration of Aboriginal people in the NT. We commend the Government for taking these steps.

However, paperless arrest and police protective custody laws continue to be over-used, primarily against Aboriginal people. These laws see thousands of Aboriginal people each year deprived of their liberty and locked up in police cells. This submission calls for the urgent repeal of paperless arrest laws and for a significant reining in of protective custody powers.

The Human Rights Law Centre welcomes the opportunity to provide a submission to this inquiry. In partnership with the North Australian Aboriginal Justice Agency (**NAAJA**), the HRLC has challenged punitive alcohol-related laws in the NT:

- *Prior v Mole*: a High Court challenge against the application of protective custody laws;
- *NAAJA v Northern Territory of Australia*: a High Court challenge against paperless arrests laws; and
- *Munkara v Benschovich*: a Northern Territory Supreme Court challenge against alcohol protection order laws.

This submission is confined to looking at punitive laws that have resulted in inequality and injustice for Aboriginal people through the criminalisation of a complex public health issue.

¹ Jonathon Hunyor, ‘Imprison Me NT: Paperless Arrests and the Rise of Executive Power in the Northern Territory’ (2015) 8(21) *Indigenous Law Bulletin* 3, 3.

² *Inquest into the death of Kumanjayi Langdon* [2015] NTMC 016 (14 August 2015) [93].

The HRLC acknowledges the need for supply, demand and harm reduction strategies to tackle alcohol-related harm in the Northern Territory. While, this submission calls for public health focused responses and greater investment in Aboriginal community-led treatment, rehabilitation and health services, its focus is otherwise restricted to the negative impact of law and order approaches.

Recommendations

Recommendation 1: The Northern Territory Government should introduce a Bill into Parliament to amend section 128 of the *Police Administration Act* (NT) (protective custody laws) to:

- a) require police to exhaust other reasonable alternatives for a person's care and protection before detaining a person at a police station; and
- b) narrow the circumstances in which police may apprehend a person for protective custody purposes to where the person is: likely to cause harm to themselves or others, or damage to property; or incapable of protecting themselves from physical harm.

Recommendation 2: The Northern Territory Government should introduce a Bill into Parliament to repeal sections 133AA-133AC of the *Police Administration Act* (NT) (paperless arrest laws).

Recommendation 3: The Northern Territory Government should work in partnership with the health sector and Aboriginal communities and organisations in the development of the Northern Territory's harm-minimisation alcohol framework, and adequately fund Aboriginal community controlled rehabilitation, treatment and health services to meet demand.

Listening to the Royal Commission into Aboriginal Deaths in Custody

One of the main findings of the Royal Commission into Aboriginal Deaths in Custody (**Royal Commission**) in 1991 was that:

Aboriginal people die in custody at a rate relative to their proportion of the whole population which is totally unacceptable ... But this occurs not because Aboriginal people in custody are more likely to die than others in custody but because the Aboriginal population is grossly over-represented in custody. Too many Aboriginal people are in custody too often.³

The Royal Commission identified factors contributing to the disproportionate number of Aboriginal people in the criminal justice system and provided wide-reaching recommendations. At the heart of the recommendations was this straightforward equation: to reduce Aboriginal deaths in custody, Governments need to reduce the rates at which Aboriginal people are taken into custody. In other words, custody should only be used as a last resort.

Specific attention was drawn to policing practices and laws that contributed to Aboriginal people being taken into police custody, including for public drunkenness offences, other minor offences and under

³ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, [1.3.6].

protective custody laws. The following recommendations aimed to reduce the over-incarceration of Aboriginal people by police:

- Decriminalisation of the offence of public drunkenness and other related offences.
- Policy changes to ensure compliance with the principle of arrest as a sanction of last resort by police and sufficient resources directed towards community policing.
- Adequate investment by governments in non-custodial facilities for the care and treatment of intoxicated persons.
- Legislation that places a statutory duty upon police to consider and use alternatives to police custody.
- Monitoring of changes made in accordance with the Royal Commission's recommendations to ensure effectiveness in reducing the over-incarceration of Aboriginal people in police cells.⁴

Punitive alcohol-related laws are contributing to the crisis of Aboriginal over-imprisonment in the Northern Territory

The Northern Territory continues to lead Australia in locking people up. In the March 2017 quarter, the Northern Territory's imprisonment rate was 921 people per 100,000 adult population, which was more than four times the national imprisonment rate.⁵ Aboriginal people accounted for 84% of people in prison in the Northern Territory in 2015-16.⁶ As shocking as these numbers are, they don't capture the thousands detained in police cells for short periods.

The Northern Territory decriminalised public drunkenness in 1974.⁷ While this was a crucial step in reducing the over-incarceration of Aboriginal people, it has been undermined by successive reforms by governments, which have bolstered powers to regulate, apprehend and lock up intoxicated people.

Prior to 2013, police in the Northern Territory already had wide powers to lock people up, including people who were drunk in public (protective custody powers). Throughout 2013-2014, the Northern Territory Government brought in a raft of legislation that gave the executive, including police officers, more powers to punish and deprive people of their liberty for public drinking. These included:

- *Alcohol Mandatory Treatment Act* (NT);
- *Alcohol Protection Orders Act* (NT); and
- amendments to the *Police Administration Act* (NT) to introduce 'paperless arrest' laws.

These laws are discussed further below.

The factors contributing to the misuse of alcohol in the Northern Territory are complex and closely linked to social and economic disadvantage. It should be noted that alcohol misuse is a problem for

⁴ Ibid, Vol. 5, recommendations 79-87.

⁵ Australian Bureau of Statistics, '4512.0 - Corrective Services, Australia, March Quarter 2017 (8 June 2017), table 5.

⁶ Department of Attorney General and Justice, *Northern Territory Correctional Services and Youth Justice Annual Statistics 2015-2016* (Northern Territory Government, 2017) 6.

⁷ The earliest Northern Territory legislation governing public drunkenness was s 27(1) of the *Police and Police Offences Ordinance 1924* (NT) ('Ordinance'), which provided police officers with the power to apprehend, without warrant, any person found drunk in a public place. In 1974, an amendment was introduced so that section 27(1) of the Ordinance no longer applied to public drunkenness. The Ordinance was replaced by the *Summary Offences Act* (NT) and *Police Administration Act* (NT) in 1979.

both Aboriginal and non-Aboriginal people in the Northern Territory and that a majority of Aboriginal people do not drink or misuse alcohol.⁸

There are particular factors that expose Aboriginal people to a greater risk of interaction with police when drinking. These include the fact that most Aboriginal communities are designated dry areas or subject to strict liquor restrictions. Some people choosing to drink travel into towns or roadhouses. In doing so they are more likely to be homeless or living rough and consuming alcohol in public, and close to licenced premises. The circumstances in which alcohol is consumed are typically more public and increase exposure to and interaction with police, who have a long history of discriminatory over-policing.⁹

It is therefore unsurprising that the above laws have been disproportionately used against Aboriginal people. Despite being only 30 per cent of the Northern Territory population, Aboriginal people accounted for approximately:

- 90 per cent of all persons locked up under protective custody powers in 2016;¹⁰
- 71 percent of people detained under paperless arrest laws and released with an infringement notice in 2016;¹¹ and
- 97 per cent of people subject to mandatory alcohol treatment from 1 July 2014 to 30 June 2015.¹²

NAAJA obtained figures in 2015 that indicated that over 85 per cent of Alcohol protection orders were issued to Aboriginal people.¹³

Protective custody powers as a backdoor way to lock up public drinkers

The *Police Administration Act* (NT) gives police excessively broad discretionary power to lock an intoxicated person up for a range of reasons, including because they:

- cannot care for themselves;
- are a risk to others or themselves;
- may cause 'alarm' or 'substantial annoyance' or they may intimidate people; or
- are 'likely to commit an offence'.¹⁴

These powers are referred to as 'protective custody' powers.

⁸ Over 50% of Aboriginal people in the NT *abstain* from alcohol consumption in comparison to just 15.4% of the non-Aboriginal population: see Productivity Commission, *Report on Government Services* (Australian Government, 2017), table EZ.23. This does not capture the many others who drink but drink in moderation.

⁹ See generally Sara Hudson, 'Alcohol Restrictions in Indigenous Communities and Frontier Towns' (Policy Monographs, Centre for Independents Studies (2011)

¹⁰ The total number of people taken into protective custody from 1 January 2016 to 31 December 2016 was 9,525, and of those 8,594 or 90% were Aboriginal. Correspondence from Research and Statistics Unit, Northern Territory Police, Fire and Emergency Services (21 April 2017).

¹¹ Ibid. From 1 January 2016 to 31 December 2016 there were a total of 3,003 custody episodes from which people were released with an infringement notice pursuant to s133AB(3)(b) of the *Police Administration Act* (NT). Of those, 2,134 or 71 % were Aboriginal. Limitations in data collected by NT Police mean only persons detained and released with an infringement notice are captured (ie, these statistics do not include people released unconditionally or on bail, or brought before a court).

¹² Price Waterhouse Coopers Indigenous Consulting, *Evaluation of the Alcohol Mandatory Treatment Program* (Northern Territory Department of Health, 2017), 44, 73.

¹³ Hunyor, above n 1, 7.

¹⁴ *Police Administration Act* (NT) s 128. A person taken into custody under s 128 is not a person under arrest for an offence. The police can hold the person in custody only for so long as it appears that a person remains intoxicated. The person cannot be charged with an offence whilst under apprehension: ss 129-130.

Protective custody powers represent a deprivation of liberty for the person locked up and can be a distressing or traumatising event.

While protective custody can be an important safety mechanism to ensure protection of a drunk person where there is a real risk of harm to themselves or another, the powers given to police in the Northern Territory go far beyond what can be justified. The Northern Territory's protective custody laws need to be reined in to remedy the unfair application of the laws to Aboriginal people.

Discriminatory impact on Aboriginal people in the Northern Territory

The Northern Territory's protective custody laws are the most punitive in Australia.

The Northern Territory has a population of around 245,000 people.¹⁵ Protective custody powers were used 9,525 times in 2016.¹⁶ While this is a reduction from 2014-15 figures, paperless arrest powers, which can be used in similar circumstances, came into force in December 2014 and were used at least 3,003 times in 2016.¹⁷

The laws are used overwhelmingly against Aboriginal people. Between 2008-09 and 2015-16, 92 per cent of people taken into protective custody in the Northern Territory were Aboriginal.¹⁸

The Northern Territory Court of Appeal has identified that in using protective custody powers, police have relied in part on stereotypes and that stereotyping is undesirable.¹⁹ While a challenge against the Court of Appeal's decision in the High Court by the HRLC and NAAJA was unsuccessful,²⁰ the above statistics indicate that allowing police to rely on stereotypes and assumptions in the application of an excessively broad discretionary power, creates a real risk that police will, consciously or unconsciously, act on racial stereotypes.

The laws require urgent reform to ensure that police are acting in a non-discriminatory manner, based on the circumstances of each person, and are considering alternative options to police lock up.

The harmful impact of excessively broad protective custody powers

While there has been significant improvement in policing practices over the years, the ineffectiveness and potential dangers associated with institutional custody as a response to public drunkenness remain. The impact of excessive protective custody powers and their disproportionate application against Aboriginal people has been the subject of scrutiny and criticism over the years by the Northern Territory Coroner.²¹ For example, the Coroner has observed:

It was recognised over twenty years ago in the Royal Commission into Aboriginal Deaths in Custody that persons who drink too much are not criminals by that act alone. They should not be in police cells, but in facilities such as the sobering up shelters found in larger population centres. I, too, have repeatedly commented on the need to avoid placing inebriated people in

¹⁵ Australian Bureau of Statistics, Data by Region, Northern Territory, 21 July 2017, <<http://stat.abs.gov.au/>>.

¹⁶ Correspondence from Research and Statistics Unit, Northern Territory Police, Fire and Emergency Services, above n 10.

¹⁷ Ibid. For 2014-15 protective custody figures, see Northern Territory Police Annual Report 2015-2016, 171. Note that limitations in data collected by NT Police mean only persons detained under paperless arrest laws and released *with an infringement notice* are captured (i.e. these statistics do not include people released unconditionally or on bail, or brought before a court).

¹⁸ Northern Territory Police, *Annual Report 2015-16* (2016) 171.

¹⁹ *Prior v Mole* (2016) 304 FLR 418, 430 [53] (Riley CJ, Kelly and Hiley JJ).

²⁰ *Prior v Mole* [2017] HCA 10.

²¹ See eg, *Inquest into the death of Mark Corbett* [2003] NTMC 044; *Inquest into the death of Rita Dandy* [2003] NTMC 012; *Inquest into the death of Eric Gaykamangu* [2003] NTMC 015; *Inquest into the death of Kwementyaye Briscoe* [2012] NTMC 032.

police cells during my time as the Northern Territory Coroner. This is, of course, predicated on the availability of a suitable alternative to the police cells.²²

...

It is inappropriate that police watch houses be used as de facto alcohol detoxification units. The appropriate environment for detoxification is a medical one.²³

Locking people up in police cells to sober up places strain on police resources. Police watch houses and cells are not equipped to provide care for those who are seriously intoxicated and who have chronic health issues. In 2012, the Coroner stated:

The fact that so many detainees suffer from a combination of alcohol toxicity and chronic ill health means that police must care for large numbers of very drunk, very sick people, in Watch Houses that are not designed for that purpose.²⁴

The concerns repeatedly raised by the Coroner have been echoed by retired Superintendent and Acting Commander, Wayne Harris:

Why is it that in an affluent, modern, first world economy such as Australia accepts as a matter of course that every night a significant cross section of the most disadvantaged social group in the community are held, often against their will in Police lockups. This reality cannot by any definition be considered to be morally just, the austere, bleak and depressingly punitive environment associated with these facilities is not the type of place any vulnerable person should be placed in order to provide protection.²⁵

There needs to be a significant shift away from the use of police custody as a response to public drinking in the Northern Territory. As Harris' report documents, there are evidence-based alternatives that can work, alternatives focused on providing community support and addressing underlying casual factors rather than simply responding to the symptoms in punitive and harmful ways.

Safeguards to prevent the misuse of power and deaths in custody

In addition to more supportive and health-focused responses, the *Police Administration Act* (NT) should be reformed to rein in the protective custody powers of police and ensure safeguards against the arbitrary or discriminatory deprivation of liberty.

The Royal Commission's recommendations require a statutory duty to be imposed on police to consider alternatives to protective custody, such as sobering up shelters, and for investment in alternative facilities led by Aboriginal people and organisations.²⁶ While Night Patrol and sobering up shelters do exist in the Northern Territory, they require proper resourcing. In addition, there is no statutory obligation on police to consider these alternatives.

Police should be required to exhaust safer or more therapeutic alternatives to detention, including the release of the person into the care of a responsible person or an appropriate care facility, such as a sobering up shelter. Laws in the ACT, Western Australia and Tasmania require police to take steps to satisfy themselves that there is no alternative prior to detaining a person in a police cell.²⁷

²² *Inquest into the death of Mr Corbett* [2003] NTMC 044, [77].

²³ *Inquest into the death of Ms Dandy* [2003] NTMC 012, [57].

²⁴ *Inquest into the death of Kwementyaye Briscoe* [2012] NTMC 032, [17].

²⁵ Wayne Harris, 'Alternatives to Incarcerating Intoxicated Persons in Police Watch Houses' (The Churchill Memorial Trust of Australia, 2013), 6. Harris' report offers a snapshot of alternative programs, processes and models in the United States and Canada to care for intoxicated persons who have not committed a crime.

²⁶ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, above n 3, [21.1.43].

²⁷ *Intoxicated People (Care and Protection) Act 1994* (ACT) ss 4(1)(2), (6); *Protective Custody Act 2000* (WA) s 6, *Police Offences Act 1935* (Tas) s 4A(4).

In addition, the threshold for taking a person into protective custody should be raised. The Northern Territory has by far the most draconian protective custody laws, which permit preventative detention for a range of circumstances, including because the person might cause ‘alarm’ or ‘substantial annoyance’ or might commit an offence, no matter how minor.²⁸ No other jurisdiction has such broad protective custody laws.

Protective custody powers should be limited to situations where the person:

- is likely to cause harm to themselves or others, or damage to property; or
- is incapable of protecting themselves from physical harm.

This would align Northern Territory law with that of Western Australia and Tasmania.²⁹

Paperless arrest laws and the ever-expanding powers of the police

In December 2014, the Northern Territory Government gave Northern Territory police even greater powers to arrest and detain people, including in circumstances where no offence has been committed, through ‘paperless arrest’ laws.³⁰ The Attorney-General at the time indicated a preference for getting people ‘out of circulation’³¹ and compared paperless arrest powers to ‘a form of catch and release’.³²

These laws empower police to lock a person up if they reasonably believe the person has, or might, commit an infringement notice offence. Infringement notice offences are minor offences, which typically result in a fine, such as drinking in public, swearing, making undue noise and failing to keep a front yard clean.

Police can keep someone in detention for up to four hours, or until they sober up, without providing them with the opportunity to receive legal advice. Police can release a person unconditionally, with an infringement notice, on bail or bring them before the court.

Discriminatory impact on Aboriginal people

Similar to protective custody laws, paperless arrest powers have been exercised disproportionately against Aboriginal people. According to Northern Territory police statistics, over 70 per cent of those locked up and released with an infringement notice in 2016 were Aboriginal.³³

No other jurisdiction in Australia has paperless arrest laws. They are completely inconsistent with the recommendations of the Royal Commission.

As the Northern Territory Coroner has observed ‘laws that impact so disproportionately on one sector of our community are manifestly unfair’.³⁴

The harmful impact of paperless arrest laws

According to the Government of the day, paperless arrest laws were introduced to make it administratively simpler for police to deal with people who commit, or who might commit, minor

²⁸ *Police Administration Act* (NT) s 128(1)(c)(iii)-(iv).

²⁹ *Protective Custody Act 2000* (WA) s 6; *Police Offences Act 1935* (Tas) s 4A.

³⁰ *Police Administration Act* (NT) ss 133AA-133AC.

³¹ Northern Territory, Parliamentary Debates, Legislative Assembly, 26 November 2014 (The Hon John Elferink, Attorney-General)

³² *Ibid.*

³³ From 1 January 2016 to 31 December 2016, 3,003 people were detained under paperless arrest laws and released *with an infringement notice*. Of those 2,134 people, or 71 per cent, were Aboriginal. Paperless arrest figures are likely to be higher – limitations in data collection mean that people detained under paperless arrest laws and released *unconditionally or on bail, or brought before a court* are not captured. See above n 11.

³⁴ *Inquest into the death of Kumanjayi Langdon* [2015] NTMC 016 (14 August 2015) [87].

offences. In doing so, the Government prioritised administrative ease for police over rights to liberty, health and life, particularly for Aboriginal people. The laws lack any evidence base in terms of reducing long term alcohol-related harm.

As noted above, locking a person up, even for a few hours can be stressful, traumatising and potentially dangerous. Within six months of the laws being in place, Kumanjayi Langdon tragically died after police exercised paperless arrest powers and took him into custody. He was detained simply because he had been drinking quietly in public and police thought he might continue to drink in public – an infringement notice offence, which otherwise only empowered police to tip out a person's alcohol and issue a \$74 fine.

In investigating Mr Langdon's death, Northern Territory Coroner observed that there had been a significant increase in the number of people being held in police cells since the paperless arrest laws were introduced and as a result of a police operation targeting public drinking. This put police under more pressure and compromised their ability to conduct health checks.³⁵ On the paperless arrest provisions, the Coroner described them as 'regressive'³⁶ and concluded that:

they are irreconcilable with the recommendations of the Royal Commission, which urged that Police use arrest and detention as an option of last resort. It is no coincidence that just 5 months after the "paperless arrest" laws were introduced, the first person to die being held in custody under s133AB is an Aboriginal man...[T]here is so clear a link between the introduction of that law and an increase in the incarceration of Aboriginal people. Section 133AB of the Police Administration Act (the paperless arrest scheme) in my view, perpetuates and entrenches Aboriginal disadvantage.³⁷

Paperless arrest powers should be abolished immediately

The Coroner's strong recommendation following the Inquest into Kumanjayi Langdon's death was that the paperless arrest laws be abolished.³⁸

The powers were reined in by the High Court as a result of a challenge by NAAJA and HRLC, and the current Northern Territory Government has committed to repealing paperless arrest laws. However, the laws remain in force and contribute to the over-incarceration of Aboriginal people in the Territory.

The Northern Territory Government should act on its commitment and introduce a Bill into Parliament to repeal the paperless arrest provisions of the *Police Administration Act* (NT).

Positive steps: repealing alcohol protection orders and mandatory alcohol treatment laws

The HRLC commends the Northern Territory Government for introducing into Parliament laws to repeal two of the most egregious alcohol-related laws – alcohol protection orders and alcohol mandatory treatment laws. The Bill that seeks to repeal these laws is due to be debated in September.

Alcohol protection orders

Alcohol protection order (APO) laws were brought in in 2013 to 'provide police with a law enforcement tool to monitor offenders associated with alcohol-related crime' and to create new 'offences to deter future offending on an individual level.'³⁹

³⁵ Ibid [11], [52].

³⁶ Ibid [77].

³⁷ Ibid [87]-[88].

³⁸ Ibid [93]. The Coroner also recommended an independent inquiry into alcohol policy.

APO laws allow for punitive control of people who have not even been before a court let alone found guilty of an offence. Once an APO is issued, it is an offence to possess or consume alcohol and to enter licenced premises (except for work or residence).⁴⁰ This restricts access to most public recreational areas including local sporting venues and shopping centres.

Many people subject to APOs suffer chronic alcoholism, but the laws require them to control their drinking. The failure to stop drinking therefore becomes a criminal offence. Police have extraordinary powers to stop, search and arrest people on APOs.⁴¹ Some people subject to APOs have been arrested 20 to 30 times for breach.⁴² The laws effectively criminalise drinking, nearly 40 years after public drunkenness was decriminalised in the Northern Territory and nearly 25 years after Royal Commission recommended the decriminalisation of public drunkenness and related offences.

The breadth of APO laws and the racially discriminatory application of the laws have been challenged in the Northern Territory Supreme Court by NAAJA, in partnership with HRLC, in a case involving an Aboriginal man arrested for breaching APOs 20 times.⁴³ While the Court is yet to make a decision, it is positive to see the Northern Territory Government taking the necessary steps to repeal alcohol protection order laws.

Mandatory alcohol treatment

Mandatory alcohol treatment laws were also enacted in 2013. They allow for a Tribunal to order that a person taken into protective custody by police on three occasions within two months be deprived of their liberty and forced to undergo treatment for alcohol addiction for three months.⁴⁴ Originally, it was a criminal offence to abscond from a treatment facility, however this was repealed following significant criticism.

As noted above, the regime disproportionately impacts Aboriginal people, who have made up approximately 97 per cent of those subject to mandatory alcohol treatment orders.

Mandatory alcohol treatment continues to be criticised by members of the health and legal sectors for many reasons, including because of the lack of consultation and evidence-base, ethical concerns and concerns about the institutional racism towards Aboriginal people.⁴⁵ An evaluation by Price Waterhouse Coopers was damning, finding that mandatory alcohol treatment fails to:

- engage or benefit many of the most vulnerable chronic drinkers; and
- address the underlying social and cultural determinants of risky alcohol consumption.⁴⁶

Like APO and paperless arrest laws, mandatory alcohol treatment laws should be repealed. The HRLC supports the Northern Territory Government's attempt to repeal mandatory alcohol treatment laws through the Alcohol Harm Reduction Bill 2017 currently before Parliament.

³⁹ Northern Territory, Parliamentary Debates, Legislative Assembly, 16 October 2013 (the Hon Adam Giles, Chief Minister).

⁴⁰ *Alcohol Protection Order Act 2013* (NT) s 5.

⁴¹ *Ibid* ss 18-19.

⁴² Hunyor, above n 1.

⁴³ *Munkara v Bencsevich* [2015] NTSC 78.

⁴⁴ *Police Administration Act* (NT) s128A; *Alcohol Mandatory Treatment Act* (NT) ss 8-10.

⁴⁵ Price Waterhouse Coopers Indigenous Consulting, above n 12, 68, 73.

⁴⁶ *Ibid*.