"Why government is treating us like animals?"

Legal and Human Rights Perspectives on Living in Public Space

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"...we're getting sick and tired of city council giving us the bill. We're all human beings. Why can't you just try and help us instead of locking us up, giving us the bill and busting our grog" Daisy M, Long grass, Darwin

Legal Regulation of Public Space

There is a range of laws, passed by either the Northern Territory Government, or by the Darwin City Council that criminalise people who live or spend significant amounts of their time occupying public spaces. Laws may be said to criminalise homelessness if they prohibit behaviour in public that is essential to human existence or that would otherwise be lawful, if it was conducted in private homes. Such laws are also known as "quality of life" laws:

"Quality of life" laws, or laws which make illegal activities like sleeping, sitting, leaning, cooking, storing personal belongings, urinating, and standing in public places, are indiscriminately enforced against people experiencing homelessness based on their housing status and criminalise behaviours which, in and of themselves, are not criminal activities. These laws specifically target people experiencing homelessness because they make illegal behaviours which homeless individuals must conduct in public places because they do not have housing.1

In the Northern Territory, some examples of so-called "quality of life" laws include prohibitions on the following activities in public space:

- Sleeping between sunset and sunrise (Darwin City Council By-law 103)
- Storing personal belongings (Darwin City Council By-law 100)
- Urinating or defecating (Darwin City Council By-law 107(3))
- Failing to cease to loiter i.e. being idle or lingering about (Summary Offences Act, s 47A)
- Trespassing on Crown land (Trespass Act)

Under most of these laws, it is not a defence to be able to show that you had a reasonable justification or excuse for committing the offence. For example, it is not a defence to a charge of falling asleep in a public place to show that you fell asleep because you had no money, it was late, and there was no where else for you to reasonably go. It is not a defence to a charge of urinating in public to prove that it was late at night, you had no money and nowhere to live, and that all the public toilets were locked.

In addition to the laws mentioned above, there is significant regulation of public drinking in the Northern Territory. Under s 450 of the Summary Offences Act (NT), it is an offence to drink alcohol in a public place within 2 kilometres of licensed premises unless, for example, the area has been exempted.

Whilst it is no longer a general offence in the Northern Territory for a person to be drunk in public, the police have the power to take a person into "protective custody" under ss 128-132 of the Police Administration Act. The police officer needs to have reasonable grounds to believe that the person is "intoxicated", i.e. being "seriously affected by alcohol or a drug." There is no requirement to show that the person is at risk to themselves, or a threat to anyone else.

The drinking of alcohol would not be generally considered a "life sustaining activity". However, for some people, who have an addiction to alcohol, there is a very limited concept of choice involved in engaging in the behaviour. In addition, whilst people who have a private home to go to have a choice about whether to drink alcohol in public or in private, people who are "homeless" do not have the same choice. This regulatory scheme is therefore another example of where the law discriminates against people living in public space.

The use of "quality of life" laws against people considered homeless is long-standing and is not unique to the Northern Territory.

"...the common response to homelessness is to criminalise the victims through laws and ordinances that make illegal life-sustaining activities that people experiencing homelessness are forced to do in public," Donald Whitehead, Executive Director of the United States National Coalition for the Homeless, August 2003.

However, there are features of the Northern Territory that suggest that criminalising people living in public spaces is of particular concern. Those features include the NT rates of Indigenous homelessness (and homelessness generally) as well as the rates of criminalisation and imprisonment of Indigenous people.

Indigenous Rates of "Homelessness"

The Northern Territory Government recognises that the NT has the highest rates of homelessness generally in Australia (see September 2003 edition of Parity).

Furthermore, in Darwin, and in other urban areas, available statistics and local perceptions indicate that a disproportionately high number of people who are "homeless", including those who live in public spaces, are Indigenous.2 (An analysis of the data of the 1996 Census indicated that nationally, Indigenous people made up some 50% of people who were classified in the "primary homelessness" category, i.e. living in public spaces. In the Northern Territory, the figure was the highest, at 99%, compared to the next highest at 54% in Western Australia with the lowest rate in Victoria at 1%.) There appears to be recognition that some Indigenous people's use of public space in this way is an aspect of culture, in the context of lack of culturally appropriate and adequate housing options. Some of the people living in public space would not consider themselves to be "homeless" although this is often the way that people are described. Professor Marcia Langton has noted that:

"Aboriginal people in Darwin are a reminder of Australia's 'black' history, a history footnoted in Australia's southern capitals. Darwin was settled later in the frontier history when people could not be so readily "dispersed" or
"pacified" (that is, shot). By the 1970s, at the end of the frontier period, large numbers of displaced Aboriginal people, both Larrakaya, the traditional owners of the area, and the people who had been relocated from their homelands elsewhere in northern Australia, forcibly and otherwise, to this regional capital, were resident on the edges of the town in the so-called "long grass" and in camps along the beaches. They have, somewhat mistakenly, come to be regarded as "homeless." Globally, this term has become a catch-all for a range of situations which imply a failure to reside in acceptable ways in the post-industrial urban conglomerations.5

The Mayor of Brisbane has also recently noted, as part of launching the Brisbane City Council Homelessness Strategy: "Whilst a disproportionate number of Indigenous people experience homelessness in comparison to other cultural groups, community gatherings in public spaces are an integral part of life for some members of the Indigenous community. There are a number of public spaces and parks in Brisbane which have traditional and/or historical cultural associations for Indigenous communities. A number of Indigenous people make use of these public spaces to conduct their daily lives. Some of these people are homeless in the strictest sense and the park is their home, however others have a home to go to within the community but socialise in the parks and may sometimes sleep there." 4

Accordingly, whilst ‘quality of life’ laws affect all people who live in public space, there needs to be recognition that such laws particularly affect Indigenous people. Reform processes need to be undertaken in a culturally appropriate manner in order to accommodate cultural needs.

Indigenous Imprisonment Rates

There has been no detailed analysis of statistics regarding the particular impact of ‘quality of life’ laws on longgrass people living in and around Darwin. However, recent reports show a sharp increase in rates of Indigenous imprisonment in the Northern Territory. According to the Australian Bureau of Statistics:

‘Nationally, the average daily imprisonment rate was 149 prisoners per 100,000 adult population during the June quarter 2003, an increase of 2% since the June quarter 2002. The Northern Territory had the highest imprisonment rate (549 prisoners per 100,000 adult population), representing a 16% increase since the June quarter 2002 (the Indigenous imprisonment rate in the Northern Territory increased by 33% over this same time period). The next highest imprisonment rates were recorded in Western Australia, Queensland and New South Wales (198, 183 and 155 prisoners per 100,000 adult population respectively).5 It is not asserted that the increase in imprisonment rates in the Northern Territory is a direct result of the policing of people in public spaces either under ‘quality of life’ laws, or generally. However, there may be indirect links. For example, according to Stephen Gray, Senior Lecturer in Law at the Charles Darwin University, the 2km law has been extensively criticised on the basis that such laws increase the level of contact and surveillance of people’s lives, thereby increasing the likelihood of acts of resistance and conflict with authorities. In any event, the current rate of incarceration of Indigenous people is a stark reminder of the need for public policy makers to avoid further criminalisation of Indigenous communities, particularly when the trigger is behaviour that the person is not in a position to reasonably avoid.

A Way Forward

As noted above, solutions to the problems faced by longgrass people regarding the legal regulation of public space in Darwin need to be developed in a culturally appropriate manner, including importantly the direct participation of longgrass people themselves.

The NT Itinerants Project, referred to in the September 2003 edition of Parity, is an initiative that could be used to facilitate such reform. Whilst the Project is working on developing appropriate accommodation options for people living in the long grass, it has not as yet initiated reform of the legal regulation of public space. An initial report on “Legal Issues” is in the process of being prepared by the Project, and may be a welcome contribution to the debate once it is published.

There is a significant amount of research and public policy work that could be drawn upon, including international research such as the recent report, "Illegal to Be Homeless: The Criminalisation of Homelessness in the United States,"6 The Federal Race Discrimination Commissioner, Dr William Jonas AM may also be prepared to offer his assistance.

On 17 October 2003, Dr Jonas provided a compelling overview of developments and failings since the Royal Commission into Aboriginal Deaths in Custody released its Final Report in 1991. He refers specifically to the regulation of Indigenous occupancy of public space:

"A third key challenge is the re-emergence, if you could say that it ever went away, of strict regulation of Indigenous people in public space. During the past year the trend has continued of State and local governments resurrecting old policies which have the effect of excluding Aboriginal people from public places. These laws and policies in theory apply to everyone but in practice target Aboriginal people."7

The Race Discrimination Commissioner provides the following analysis:

"Exclusionary laws such as these are a return to the old segregation days. They are based on paternalistic notions about the relationship between government and Indigenous people and attempt to impose assimilation as a pre-condition to their acceptance as full members of society. They come close to violating the citizenship rights of Aboriginal people. They also ignore the history of Aboriginal exclusion and disadvantage. They impact on the poorest, most isolated and most disadvantaged, Aboriginal people are grossly over-represented among those afflicted by ill-health, including alcohol addiction, by poor living conditions and by homelessness.”

Dr Jonas has indicated the possibility of undertaking a National Inquiry, which may be an important complement to local efforts to achieve reform. His words sit powerfully alongside those of longgrass people in Darwin.

"Why government is treating us like we are animals? We are not animal, we are family. We got same flesh and blood — equal." Dulce Malimara, Long Grass Protest, Parliament House, Darwin, 2001.