

APPENDIX I

5 February 1997

Director, Law Policy and Conciliation

Anti-Discrimination Commission

LMB 22, GP0

Darwin NT

Dear Greg

Re: Complaint by Mr Bunduwabi

Please excuse my very late reply to the response by the Northern Territory Government dated 20 January 1997. Normally the complainant has seven days to respond. However, I have been in Malaysia and Singapore from 22 to 31 January inclusive. During that time I heard of Bob Bunduwabi's death on 22 January. I am arranging to return to Darwin for the rest of 1997 as quickly as I can, as I believe the funeral for Mr Bunduwabi has not been held yet. I should be back in Darwin by this Saturday.

You have mentioned that there are precedents for complaints continuing after the death of the complainant. I maintain that despite the tragic and premature death of Mr Bunduwabi, **this is a complaint which should stand.** This is because the wrongful eviction from Lee Point, as documented by Mr Pinney, noticeably affected Mr Bunduwabi's health and the stress of resisting repeated attempts to forcibly evict him, at the very least, made his last eight weeks very stressful.

As stated in the complaint Mr Bunduwabi believed he had a right to be at Lee Point both traditionally and under Australian law, remembering the area has a long association with Aborigines and has been used continuously as a

campsite for at least 15 years. I believe there is no hope of conciliation between the parties, based on Mr Pinney's defence.

The NT Government appears to hold to a position that Mr Bunduwabi was not treated differently to 'anyone else'. What other people are expected to live without sufficient available water for washing, within the city boundaries? The camps at Kulaluk and Lee Point are the direct result of Government policy. When Aborigines camp in the most shocking conditions without water or any amenities out of the public eye, nobody cares. This shifting of responsibility is a form of discrimination as I argued in our response to the Darwin City Council.

The Trespass laws in this case are mostly directed at Aborigines who have traditionally been allowed to camp around Darwin. The camps exist because of a failure to provide a special need; the pressures on the more established camps comes from the enforcement of Government policies; the increase in homeless Aborigines living on the Kulaluk lease is because these policies and programs are not in force there. All responsibility is shifted to ATSIC.

Mr Bunduwabi's needs were different to non-Aboriginal campers and his connections to Lee Point were different to non-Aboriginal campers. 'The personal cultural values' of the late Mr Bunduwabi are an issue in this case, despite Mr Pinney's dismissal of them. When Mr Pinney states that it was Mr Bunduwabi's 'personal cultural values' which caused him to reject [alternative accommodation] he highlights an absolutely crucial legal question. Anti-discrimination laws were put in place to recognise the rights of minorities against 'everyone else' (although we all undoubtedly belong to one minority or another). The recognition of these cultural values is what this case is about and Mr Pinney's statement shows he has failed to understand this. In the past the NT Government has acknowledged Aboriginal cultural values, in the recognition of a need for more town camps.

Australian law has also recognised that the indigenous inhabitants have special rights (ie Native Title).

Anti-Discrimination is all about difference, a fact which Mr Pinney has failed to recognise. He states that 'such a facility is not available to anyone else'. On that principle, there would be no wheelchair access because 'such a facility is not available to anyone else'. I question who is the 'anyone else' of this phrase? Is it the dreaded white Anglo middle class male? Certainly Mr Bunduwabi was not 'anyone else'. He was a physically disadvantaged traditional Aboriginal single man who needed the support of an extended family and chose to make Darwin his home. His needs were not recognised.

It is natural that Mr Bunduwabi would reject offers from Territory Health Services. The history of the institutionalisation and segregation of lepers and their traumatic experiences in those institutions has yet to be told. Mr Bunduwabi would not talk about these experiences, although he had fond associations with the staff and doctors. Mr Pinney's response shows a lack of sensitivity to Mr Bunduwabi's feelings.

I maintain that a full hearing would prove that there is ample evidence that people have been permitted to camp at Lee Point and establish elaborate dwellings there for many years. The sudden change in policy resulting in forced eviction without written notice or legal recourse is still causing confusion and hardship because a new camp takes many months to establish, especially after the loss of so many possessions, fixtures etc.

Mr Pinney still cannot understand why Lee Point has advantages to Aboriginal campers. It has been often stated that the lack of water, access, toilets and showers was the cause of discomfort at Fish Camp, Ludmilla. Lee Point provides these facilities which should be the right of all citizens. Because of the original eviction and the determined return to Lee Point, Mr

Bunduwabi was living under a single tarpaulin in some of the wettest weather Darwin has experienced. Undoubtable wet clothes and wet mattresses caused ill health as did the dust and lack of washing facilities at Fish Camp. For these reasons I maintain that this is a case of the most callous discrimination leading to the most tragic results. To drop the complaint would be to negate the determined effort of Mr Bunduwabi to stand up for his rights.

Although Lee Point is included in the Larrakia Native Title Claim, its status is different to the Kulaluk special purpose lease, a fact the Larrakia claimants recognised when they excluded Kulaluk from the claim. The Kulaluk people kindly allowed Mr Bunduwabi's group to move to Fish Camp but it is clearly 'someone else's land', and there is no incentive to establish a more permanent camp there. Mr Bunduwabi felt Lee Point was his place and he felt comfortable there. However, most of Mr Bunduwabi's group stayed behind at Fish Camp, preferring the atrocious conditions there to the threats of police action at Lee Point.

It is sad that Mr Pinney feels that policies presented to Federal Parliamentary Committees by the NT Government are irrelevant. It is this attitude which angers Aborigines when States and Territories present needs to Federal Parliament and then do not honour their budgets for improvements in Aboriginal health and housing. This failing is in itself discriminatory.

The Minister for Lands, Planning and Environment, Mike Reed, has been quoted in the media as saying that evicted Aboriginal town campers should return to their place of origin. There has been no previous denial or apology for these repeated statements which are very hurtful to long-term residents of Darwin. Bob regarded Darwin as his home and it was his wish to be buried here. He said the 15 Mile Camp was built for his people; however, the houses were gradually occupied by other culture/language groups (from

Humpty Doo). Mr Pinney's confirmation of people's right to be in Darwin should be a recognition of their needs.

In summary, the response from Lands, Planning and Environment has accentuated their perceived right under the Trespass Act to evict people from Lee Point. This does not answer all the points of the complaint which has been taken out against the NT Government **as a whole**. There appears no hope of conciliation and in the light of circumstances, I believe the complaint should proceed to the next stage.

I note in the transcript of the hearing for an interim order, Mr Pinney's concern about confidentiality. In this case I believe it only serves the interests of the NT Government to insist on confidentiality of response and reply. As you have stated, suppression of proceedings is not a requirement of the Act. I therefore believe it is in our best interests to release this exchange to the media and intend doing so.

Yours sincerely

Bill Day

APPENDIX II

Extract from 'Statement of aims and objectives: Fish Camp Community Housing Project' (Simmering 1999).

The Problem Now

A visit to Fish Camp would be very instructive. The residents of Fish Camp live in squalor of the kind human rights reports depict in third world refugee camps. Their problem goes to the fundamental purpose of housing. Some specific difficulties include:

(a) Many of Fish Camp's residents are frail and would qualify for "meals on wheels" and other services designed to help people look after themselves. But these services are not extended to Fish Camp. They have no easily found address, meaning volunteer drivers would probably get lost too often, and vehicle access is a little difficult;

(b) The residents have several times been disturbed by outsiders who have driven around their campsite at night or even in the day, and have driven through their camp. Unwelcome and unruly visitors disturb them and steal their food. The residents have no way of keeping such people away, no telephone for police, and no address to give to the police.

(c) Some residents are chronically ill. One of the reasons some live in Darwin is that they need regular treatment (e.g: kidney dialysis) not available elsewhere. Although much more hygienic, hospitals discourage visits by family groups and Aboriginal people tend to find them stressful places, and to leave them as soon as they can walk. Most residents are likely to need operations of various kinds and have experienced difficulty keeping their

dressings clean in a place where there are no ablution facilities or clean places to recover from treatment.

(d) The residents have no refrigerator to keep their prescription medicine.

(e) Many of the residents are very likely to need emergency medical treatment, associated with complaints like very high blood pressure, epilepsy, recent Tuberculosis infection, general frailness and others. The residents have no way of calling an ambulance, and ambulance drivers have in the past found it difficult to find Fish Camp.

(f) Post is not delivered to the residents, making them unnecessarily dependent on friends acting as "care of" addresses. Some residents find this inconvenient and undignified, and must devote a full day to walking and taking a bus to check for post.

(g) The residents have no telephone to call taxis, minibuses or otherwise to arrange visits into Darwin for shopping, banking, medical treatment, having a shower, and other daily tasks.

(h) The residents have no power or permanent water supply, no secure place to store food, no refrigeration to keep food, and no clean place to cook food. They derive almost no nutritional value from the store-bought products left available to them in these circumstances pre-cooked fast food and could not afford this anyway. For proper nutrition, they depend upon, rather than merely supplement their diet with, fish and other bush food hunted and gathered on the coastal areas, meaning a large part of their time is spent merely collecting food.

Existing Housing Options

This group currently has no practical and real housing option. There are various ways low-income groups are housed, but current housing options do not, would not or indeed have demonstrably not worked for this group, because they do not take into account practical considerations dealt with below:

(a) Owner-Occupation: This group cannot afford to buy land or housing. They have no assets and their income level disqualifies them from borrowing on mortgage. Just like singles, couples and families on or near the poverty line, this group will not be housed without state assistance.

(b) Private Rental Market: It is not likely a private developer could be persuaded to design and build housing to fit the special needs of this group. Generally private rental accommodation is designed for single residents, couples and small nuclear families, and can be easily sold and re-let once a particular lease has come to an end. A special and necessarily non-mainstream form of housing would by its nature be unattractive from a private investor's point of view.

(c) Town camps: These also accommodate Aboriginal people. Indeed, some in this group have lived at town camps at times. But town camps do not meet this group's needs. According to some residents who have tried town camps, there are "Too many different groups, fighting between them, no control over who comes and goes, and new groups form and push out the old".

(d) Aboriginal Hostels: Members of this group point out Hostels do not offer a home environment. Indeed this is not their function. Extended families cannot stay together in Hostels. They are not sited near bushland, so there is no access to healthy food sources for this group.

(e) Housing Commission Housing: This has been the group's only alternative to homelessness. The Housing Commission is given the task of meeting state obligations under the Commonwealth-State Housing Agreements to accommodate low-income groups. The Commission offers flats, units and suburban houses designed for a fixed number of occupants, whether single tenants, couples or nuclear families. Judged from the style of dwellings available, the Commission's target group is clearly urban dwellers whose living needs differ little from those of people who can afford their own housing. Consequently, the Commission supplies flats for single people and couples, and houses for nuclear families, at rents they can afford. The accommodation is basically the same as that for people who own their own homes, or who can afford to rent privately. Historically, the Housing Commission and its inter-state equivalents have built and rented homes for lower income groups, and managed these properties. If a low-income applicant demonstrated he or she could not afford to buy or rent a private house, the state tried to supply a state-managed home at affordable, lower-than-market rent. Housing policy has shifted away from the notion of the state as owner and manager of houses. If a person demonstrates he cannot afford to buy or rent a private house, he would now be encouraged to rent privately, but receives a direct rental subsidy so that the state is effectively paying some of the rent. The subsidy "follows the person, not the stock", freeing government from the duties of a landlord and property manager. This new trend assumes the person's only housing problem is affordability, and that appropriate housing can be found on the private rental market. But this group differs fundamentally from model or target tenants because:

(i) This is an extended family group, not a nuclear family, comprising a core permanent group of approximately twelve people. The group feeds and cares for some of its older, frail members, and for those who are sick, and deals with this as a group responsibility. The largest Housing Commission

homes have four bedrooms, and would not provide the space needed for healthy living. Standard family homes and their fittings are not designed or built for heavy wear and tear from so many people.

(ii) The group often prepares food and eats together. The group's main source of nutritious food is shellfish, fish, stingrays, geese, kangaroo, goanna, which they gather themselves. This is usually cooked outside. Apartment balconies and house gardens are not designed for some of the activities associated with this diet, such as butchering game, large-scale cooking, and the noise of communal cooking. Neighbours in flats or suburban houses would tend to be offended, and these kinds of activities would tend inevitably to lead to breach of various lease terms, and city by-laws relating to fire safety.

(iii) The group lives outside as much as it can. Building structures are valued as shelter from the rain, as places to secure food and valuables, and as a secure place to sleep. Housing Commission homes feature family and other rooms as "living spaces" intended to be places of recreation. They often have carpeting, multifarious private rooms, European gardens and other features which many Housing Commission tenants would expect, but which this group do not need or find irksome. In contrast, verandas, secure fencing and an approved outdoor cooking area would be more useful to this group.

(iv) The group enjoys frequent group singing and dancing. Although a long-term Darwin resident, Dulcie Malimara retains the culture of her upbringing in a traditional Aboriginal community, and hosts traditional ceremonies, including funeral business. This is effectively prohibited under Housing Commission leases and the Tenancy Act, for the noise and overcrowding problems it creates in traditional European suburbs.

(v) Family obligation means the group would find it culturally impossible to refuse hospitality to some family and friends, particularly those visiting Darwin and those in need for health reasons, if only short term. Housing Commission leases limit the number of residents in a rented dwelling, often to particular designated people and to a maximum number of occupants. Friends or family staying more than briefly would in lease terms be sub-tenants for which Commission approval is probably needed. To allow such guests to stay can effectively breach lease terms. The design of flats and nuclear-family homes, and lease conditions (sensible in themselves) are not suited to this cultural hospitality imperative, and create difficulties.

(vi) The Elders would need control of access to where they live. At Fish Camp people have harassed them by driving through their camp, even when they are sleeping at night. People have stolen their belongings. Some of the Elders are frail and cannot keep out trespassers, and need a perimeter fence and lockable, secure gate for security. Aboriginal people owing hospitality to extended kin can be vulnerable to abuse of their hospitality, and to being harassed by plain trespassers. Housing Commission homes do not feature high perimeter fences, and tenants are vulnerable to losing their leases due to the actions of trespassers. This objective would be met through design of buildings, location and legal arrangements as to tenure which provide for:

- a. A core group of permanent residents who will control the right to live and visit, but which allows for additional people to be sheltered temporarily;
- b. Emphasis on heavy duty necessities such as running water and security, as opposed to buildings with all features of suburban homes;
- c. Open style living, with less emphasis on small private rooms;
- d. Space for craft work and other group activities;

- e. Wheel-chair accessibility;
- f. Proximity to the sea for food gathering and fishing;
- g. Proximity to bus routes;
- h. Ceremony space in a bush or park setting allowing some distance from neighbours, as opposed to small back-yards for each resident;
- i. Security of tenure for stable lives.

