

Extract from Chapter Six, “Aboriginal Fringe Dwellers in Darwin: cultural persistence or a culture of resistance?” by W B Day

6.5 Bob Bunduwabi’s complaint to the Anti-Discrimination Commission

At my suggestion, Bob Bunduwabi lodged a complaint to the NT Anti-Discrimination Commission in September 1996. The complaint was based on statements by the Mayor of Darwin who was quoted saying of Aboriginal ‘itinerants’: ‘I reckon if you keep shifting them around, constantly harass them so they can’t settle, they will get sick and tired of it and maybe some will go back to their communities’ (*NT News* September 10, 1996). In another media report the mayor said: ‘The only real answer is to get the Aboriginals back to their own communities’ (*Bulletin* February 27, 1996, p.28). Bob’s complaint, written by me on his behalf, claimed that the mayor’s statements created ‘a climate of persecution against alleged “itinerants” including people like [Bob] who have lived in Darwin for many years’.ⁱ

To have the complaint accepted was quite an achievement in itself and this aroused media interest (*Channel 8 News*, October 10, 1996), some of which has been discussed in an earlier chapter. The publicity then incurred the displeasure of the ADC. They objected on the grounds that ‘it is very difficult to get Respondents to move positions if there is the glare of publicity and there may be a public perception that a Respondent is acting illegally and/or they have been pressured into changing policy’.ⁱⁱ The comment acknowledged that representative bodies like the government and city council are vulnerable to public pressure from the media, which provided a weapon to an otherwise powerless group. In addition, through the media coverage, the workings of the ADC gained some credibility amongst the fringe dwellers. The statutory body remained distant to the campers, other than the impersonal pamphlets explaining the role and processes of the ADC that had been mailed to the complainant, which the campers could not read. However, I recorded a long interview by Nikki Harrison with myself and an officer of the Darwin City Council debating the anti-discrimination case on the local ABC radio (‘Drivetime’, October 11, 1996). After hearing the interview, the Fish Camp residents asked me for a copy of the tape and played it repeatedly in the camp for weeks.

With the collaboration of the fringe dwellers, the media reports placed the private realm - the living conditions of the fringe dwellers - into the public domain to ‘shame’ the government. This was more clearly spelt out in later protests. The media also acted as an intermediary between the Aboriginal campers and the government by gaining direct access to government ministers. In gathering their stories, journalists were able to ask government ministers the questions Aborigines wanted to have answered. Previously, fringe dwellers had no opportunity for face-to-face contact with government representatives or politicians. Positive media images and interviews now categorised the ‘itinerants’ as ‘homeless’, giving interlocutors names, voices and histories.

My role in the process is an important issue. As I have implied in my analysis of fringe dweller resistance, probably no formal action would have been made by the fringe dwellers alone without outside assistance. In the original complaint, I tried to express the grievances Bob and others often related to me against the Darwin City Council (DCC) and the NT Government. Once the complaint had been accepted by the ADC, the moral decision I had made early in my fieldwork to be an active witness of the conditions in the camps began to direct the nature of my thesis research. My role as a letter writer and intermediary was particularly time-consuming, but these records became my data. The point is that, as in the 1970s, the fringe dwellers were noticeably willing to participate in acts opposing their marginalisation by government departments and others.

The ADC delegate authorised me to act for the complainant, Bob Bunduwabi, in 'recognition of his impairment and non-English speaking background'.ⁱⁱⁱ In that role, I was asked by the ADC delegate to check with Bob the draft letter to the Darwin City Council that the delegate had composed, based on Bob's complaint. I was then to submit a written response 'with any amendments that Mr Bunduwabi wishes to make'.^{iv} This request formalised my role as an activist working in collaboration with my interlocutors.

On receiving Bob Bunduwabi's approval, the ADC formulated the final version of his complaint of discrimination on the basis of race, impairment and failure to accommodate a special need. The ADC alleged:

1. He is a person of Aboriginal descent, originally from Maningrida but for at least 17 years has been resident in Darwin and feels entitled to have his needs represented by the Darwin City Council regardless of his race.
2. He has suffered from Hansen's Disease and as a result is severely impaired. He was formerly a patient at the East Arm leprosarium until it closed and then camped at Ludmilla Creek, Coconut Grove, Buffalo Creek and Marrara. For the past four years he, with the approval of a person he considers the owner, Mr-----, camped at Lee Point until he and others were evicted by officers of the Department of Lands, Planning and Environment (press cutting attached).
3. He is now a resident of 'Fish Camp' at Kulaluk. The move to Kulaluk has caused him anxiety and humiliation. The enforced move resulted in expense to him and loss and damage to his property. The dust and facilities have caused discomfort and infections. He is dependent on two artificial legs and his relations are either pensioners or unemployed.
4. There are social tensions with the other residents at Kulaluk as those in his group have to cart water through the mangroves from houses at Minmarama village. There is also tension with the other residents of the Kulaluk lease on the basis that they have plans for development which have been affected by the establishment of 'Fish Camp'.
5. The land at Kulaluk is Larrakia land, and he feels uncomfortable being on it. Aborigines have been visiting Darwin since white settlement commenced, and have a traditional right to camp, which has not been respected by the Council.
6. He considers the enforced move to Kulaluk to be discriminatory, and failed to accommodate his special need. The Council has refused to make land available for other town camps until the land at existing Aboriginal leases is fully utilised. This policy has been a consistent one of the Council's as evidenced by the attached letter from the Town Clerk to the House of Representatives Standing Committee on Aboriginal Affairs, dated 25 June 1981.^v It is understood that this is still the Council policy, as evidenced by the statements to the media by Council representatives in February 1996.

6.6 The Lee Point protest, 1996

When Bob Bunduwabi decided, after four and a half months, to return to his old camp at Lee Point in late 1996, he was aware of the probable response by the authorities. He told me he was prepared to die at Lee Point, rather than be shifted again. At the request of the residents of Fish Camp, on November 24, I hired a twin-cab utility that transported Bob, his faithful pet hen, four men, one woman and a child to Lee Point. Once unloaded, the campers strung up a tarpaulin besides the sawn-off stumps of the old shelter at 'Bottom Camp'. The others at Fish Camp, who had been talking about returning to the old camp for months, were eventually deterred by the prospect of a repetition of their July eviction.

Bob was photographed with an expression of grim determination, being pushed on his wheelchair as he led his followers in the return to his old camp at Lee Point (Plate 1; *NT News* November 26, 1996). The campers joked about the large 'No Camping' signs that had been erected at the entrance to their campsite before they were evicted in July. On one sign someone had written with a felt pen, 'except for blacks'. Contradicting that scrawled comment, two non-Aboriginal travellers and their Maori companion were camped in the bush nearby. When the travellers heard the explanation for the protest camp, they accepted Bob as the owner of the land and offered to pay rent to him. For the next month, Bob kept the neighbouring campers to their promise of \$100 per week rental payments.

Bob considered returning to Fish Camp after the first night when we were attacked by swarms of mosquitoes. However, a television crew came to interview him during the day and the Aboriginal journalist asked him the leading question, 'You're not going to move are you?' (ABC TV News, November 25, 1996). In what is perhaps an example of the way the media makes its own news, Bob then publicly committed himself to making a stand that he maintained until his death. The next day one of the more aggressive protesters returned to Fish Camp and attempted to force those who stayed behind to move to Lee Point. To make his point, the man had ripped down tents and harassed the remaining people with unfounded assertions that I was coming with a vehicle to take everything to Lee Point.

Meanwhile, the response from the DCC to the ADC letter stated that the mayor's statements were not necessarily Council policy. The reply added: 'Local government is apolitical and allows all elected members the opportunity to express the views of constituents'. The Council reply quoted minutes and decisions including the creation of a network of agencies to work with itinerants to coordinate the provision of services and facilities for 'the long grass population group' and to facilitate the development of appropriate housing needs of people disadvantaged in the rental housing sector.^{vi}

If the complaint was to proceed, a reply to the DCC's defence was urgent because Bob was under threat of eviction from Lee Point. I had to leave Bob at Lee Point and return to Perth on the sixth of December. My ticket could not be changed. In a tearful farewell, Bob and the few kin remaining with him vowed they would still be at Lee Point on my return. They did not appear to fear any action the authorities might take. On the same day, the Delegate of the ADC, who was handling the complaint, videotaped scenes at Lee Point and Fish Camp before driving me to the airport. By then, government representatives had asked Bob to move several times, so I felt guilty in leaving him. On 13 December, as requested by the ADC Delegate, from Perth I faxed a reply to the DCC's response that read:

On 8 November Ms Leeder wrote that 'the Council is not involved in the provision of land nor does it presume to comment on how Aboriginal organisations determine the utilisation of land managed by them...' However, [the Community Services Manager] also wrote: 'since the early 1990s Council has encouraged the pursuit of appropriate land in the northern suburbs which could be used for camping by the "long grass" community and visiting Aboriginal people'.

The fact that Mr Bunduwabi lived without the most basic of facilities at Fish Camp should be a concern of the City Council (DCC). It is discriminatory to maintain that the living conditions in Fish Camp are the responsibility of an Aboriginal organisation. That is, matters of hygiene (infectious diseases, mangy dogs, water supply, sewerage etc) are the concern of the City Council, regardless of race.

Further, decision No 16\5318(13/03/95) states that: 'Council delivers the same municipal services to Town Camp residents on the same basis it does to the rest of the community'. This has not been Mr Bunduwabi's experience (for example the DCC ranger refused to remove mangy dogs from the camp). What other people are expected to live without sufficient available water for washing, within the city boundaries?

If the DCC has encouraged the setting up of more camps in the northern suburbs since the early 1990s, as [the Community Services Manager] says (8 November), there is nothing to show for it. This point seems contradictory to the statement that the DCC is not involved in the provision of land. Decision No 16\5318(13/03/95) states that Council acts as 'an advocate to the NT and Commonwealth Governments in relation to local housing issues', so at the very least the DCC *influences* planning and policy. The Lee Point Camp was established for many years and there appears to have been very little in the way of advocacy on their behalf. There has been even less support at Fish Camp, despite the appalling conditions and dangerous health situation there.

In her response dated 10 December, [the Community Services Manager] denies 'Council's supposed involvement in conditions of camping at both Kululuk [sic] and Lee Point'. I believe it is necessary to look beyond the legalistic reasoning of [the Community Services Manager], that Council policy is all in the minute book. What is *not* done is just as important as what is *recorded* as done. This surely is the point of a complaint of 'failure to supply a special need'. When Aborigines camp on land controlled by the DCC they are moved on. The camp at Kululuk is the direct result of these DCC Public Places Program. When they 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 that is little different to the old DCC policy, as listed in the complaint, that Aborigines must 'utilise existing leases'.

In one year the number of infringements issued has almost trebled... The camps exist because of a failure to provide a special need; the pressures on the more established camps comes from the enforcement of DCC programs; the increase in homeless Aborigines living on the Kululuk lease is because DCC policies and programs are not in force there. From the granting of the lease in 1979 until the beginning of the present Public Places Programs, there was no similar problem with camps on Kululuk land. In short it is incorrect to say DCC has no involvement in

present conditions at Kulaluk and Lee Point.

Whatever the official policy recorded in the minute book, and the informal nature of 'a network of agencies working with itinerants', the DCC policy has clearly been to harass homeless people. The Lord Mayor has taken a prominent role in promoting these policies including a well-publicised election campaign on the issue. There has been no recognition that people like Mr Bunduwabi are not 'itinerants' but identify as citizens of Darwin, entitled to be represented by the DCC, not harassed by them. To attempt to force people like him back to their place of origin as is suggested by the Mayor is grossly discriminatory.

The usual response to this complaint is to point out that other accommodation is available. However, Mr Bunduwabi needs the support of an extended family and indeed it is his culturally appropriate life-style to live in a communal group. He was institutionalised by the Department of Health for many years and does not want to go back to an institution. He regards Darwin as his home. He says the 15 Mile Camp was built for his people; however, the houses were gradually occupied by other culture/language groups (from Humpty Doo).

Mr Justice Woodward, the Aboriginal Land Rights Commissioner, recognised the special needs of Aborigines camped in Darwin in his 1974 final report. Various Parliamentary inquiries confirm this special need. Both the DCC and NT Government have failed to accommodate this need, with dire continuing consequences for Mr Bunduwabi. This reply attempts to trace the interconnectedness of actions that make it impossible to confine DCC responsibilities to 'Council resolution which is recorded in the minute book and in the Policies and Procedures guide'. The DCC as a responsible body is the sum of the whole: public statements, the Mayor as head, employees like [the Community Services Manager], informal networks and actual on-the-ground actions.^{vii}

Two days after I left Darwin, NT Government officers again approached Bob and the other campers at Lee Point. According to a later letter:

[An officer of the Department of Lands Planning and Environment], accompanied by an Aboriginal liaison officer and an Aboriginal health worker from the Territory Health Services visited the camp and spoke to Mr Bunduwabi to encourage him to take up an offer of appropriate alternative accommodation in Darwin'.^{viii}

Despite the government opinion expressed in the above letter, that it is unnecessary for notices or other written advice to be served before eviction action occurs, Bob received another visit on 19 December 1996:

a Department officer, accompanied by police visited the camp and delivered a letter to Mr Bunduwabi advising that if he continued to stay at the camp then the Department would ask the Northern Territory Police to ask him to leave the area pursuant to the *Trespass Act*.^{ix}

The letter delivered to Lee Point by hand, dated 19 December 1996 and signed by the Assistant Director of the Department of Lands, Planning and Environment, stated in full:

Dear Mr Bunduwabi

I refer to your conversation of 6 December 1996 with Mr Greg Lambert of this Department and officers from the Territory Health Services regarding your camping at Lee Point.

I am sorry to hear that you did not accept the offer from the Territory Health Services to look at alternative possibilities for accommodation that were not on Crown land. I understand that this was as a result of advice from Mr Bill Day that the Northern Territory Government has no legal power to ask you to leave the land.

If you persist in this view, this Department will have no alternative but to approach the Northern Territory Police to ask you to leave the area in accordance with their powers under the *Trespass Act* should you continue to remain on the Crown land at Lee Point.

I would therefore hope that you could reconsider the offer made by the Territory Health Services to help you to find suitable accommodation. In order to progress the matter would you please arrange for further contact to be made with Mr [D] of the Department of Lands, Planning and Environment, who has delivered and explained this letter, on telephone [number], and who will assist you in every possible way to resolve the matter.

6.7 Fighting the threat of eviction

A few days before Christmas, Bob and his small group of kin received eighteen days notice to leave Lee Point (*NT News* December 22, 1996). The *NT News* republished the poignant photograph of Bob being carried helplessly from his camp in July 1996 with his stumps of hands and legs exposed, beside a heading, 'Camper plea: Please don't kick me out'. Meanwhile I kept in distant contact with the situation at the camp through faxes and telephone calls between myself in Perth, the ADC in Darwin, the NT media and activist supporters who were in regular contact with Bob at Lee Point. The Minister had been quoted on ABC radio as saying that the campers had been given notice to remove themselves before January 8, 1997.^x On advice from Bob's supporters, in my role as authorised representative, I urgently faxed an application for an interim order by the Anti-Discrimination Commissioner to prevent eviction proceeding on the grounds that it would be difficult for the campers to get legal aid or other assistance over the holiday period. In a letter from Perth published in the *NT News* (December 25, 1996), I satirised the single-mindedness of the government minister in pursuing the eviction on Christmas Eve:

'With the poor and weak and lowly,' goes the old carol. At Christmas-time even Ebenezer Scrooge might hesitate to evict a severely disabled pensioner like Bob Bunduwabi at Lee Point. Not the hard-hearted Minister for Lands, Planning and Environment. In the season of goodwill the minister has issued an eviction notice to Bob and his followers.

Two of the White activists in Darwin, who were working closely with the campers at Lee Point, also sent a fax to the Commissioner on December 24, which said, in part:

Under section 101 of the Anti-Discrimination Act, we wish to seek interim orders to preserve the status quo pending resolution of the complaint by Bob Bundawabi [sic] before the

Commission. We wish to notify your office that in Bill Day's absence we have been authorised by Bob Bundawabi to make representations on his behalf.

The representations of Bob and his supporters were successful in gaining an interim order from the ADC Commissioner for a stay of eviction until a hearing on January 6 while another complaint, this time against the NT Government, was considered by the Delegate of the ADC. At the January 6 hearing by the ADC Commissioner, an extension of the stay of eviction was ordered until January 17 for the processing of the second complaint from Bob Bundawabi, which was eventually delivered to the NT Government by the ADC on January 14.^{xi} Theoretically, this delay also gave Bob time to seek legal advice. Until then it was the interconnected actions of the ADC, the media, the Aboriginal protesters, myself and the activists in Darwin that had prevented the government enforcing their eviction notice.

Despite Bob's failing health after record January rains in Darwin and monsoon gales, the application for an extension to the interim order for maintenance of the status quo was heard at the ADC offices on Friday January 17 (see *NT News* January 17 and 18, 1997). Bob's health had continued to deteriorate and he had been admitted to the Darwin hospital, a multistorey air-conditioned building with the same design as a Canberra hospital. He told his friend and supporter, Caroline, that he felt uncomfortable in the enclosed wards, as many Aboriginal patients do. With Caroline's help he had discharged himself and returned to the camp where he was pictured on television being tended under his tarpaulin by an Aboriginal health worker. The young man said: 'The main contribution to his sickness is basically living conditions. No basic necessities such as water, power, toilets, not even a roof over his head' (ABCTV news, January 17, 1997).

The reasoning behind the determination to evict was presented to the NT Anti-Discrimination Commissioner, Dawn Lawrie, at the hearing on January 17. Firstly, the representative of the Department of Lands, Planning and Environment requested that the department be allowed legal representation. The departmental official claimed to have a solicitor standing by to attend immediately, if allowed.^{xii} He also noted that the details broadcast on the morning's ABC radio news had indicated a breach of confidentiality in the proceedings. The Commissioner also said she had had phone calls from the press all morning indicating they were aware the hearing was to be held. She clarified that the reason for closing the hearing was 'to preserve the confidentiality of the complaint process which is still on foot'.^{xiii} However, it could be suggested that the ADC's suppression of media scrutiny was beneficial only to the government.

Caroline, who was now Bob's authorised representative, asked for more time to get legal advice, which she said was not available until January 22. Her appeal to the Commissioner for an extension of the order is an example of how the media mediates between government, Aborigines, activists and others:

On the last hearing, which was 7 January, the Minister ... was on TV news that night. At that stage I believe [the Minister] had not had a copy of the complaint at hand with the ADC. However, in the news items he said that he would be enforcing the Trespass Act at the close of business today. Which to me states that he's not interested in the merits of the case at all, or any of those things. He just wants those [Aboriginal] people out of there. So I imagine that at close

of business today the Trespass Act will be enforced as the Minister has said, and that as I've stated at the opening of this hearing, Mr Bunduwabi has just gotten out of hospital this morning. He's only got his brother Jackie looking after him at Lee Point at the moment. Most of the other family has returned to Maningrida for funeral ceremonies, and even though he's left hospital, he's still not in good condition at all. And he refuses to go to Fish Camp and so he's ... what will happen at 5.00 or 4.21 today I don't know. Once again we haven't had advice on the Trespass Act, what that will mean at the end of today. Whether Mr Bunduwabi - he will be refusing to leave - and what will happen to Mr Bunduwabi at that point I don't know, I haven't got legal advice.^{xiv}

In response, the departmental officer pointed out that Bob Bunduwabi 'refuses to go to alternative accommodation' and that from the first notice of eviction in December there had been 'adequate time to seek legal advice'. He continued:

Our contention is that we have responsibility to control both access and the management of this land. We have in the past removed this particular person, his family and many others. We wish to continue to be able to manage the land and continue to remove campers including many others. A continuation of this order would authorise a continuing breach of the law rather than maintaining any rights. It would be seen, we believe, by the public as discrimination in favour of a particular person on the grounds of race, and that would present us wider problems within the community with which we would then have to deal. Thank you.^{xv}

Caroline pleaded: 'I don't think the usual accommodation applied to people with impairment would be appropriate because Bob is not usual, he is Aboriginal and he has lived more or less traditionally all his life'. The Commissioner was also concerned. She asked:

The matter of suitable accommodation which is a very good phrase and something we all believe in but there's nothing been put to me to say that suitable accommodation is immediately available and suitable to whom - is it suitable in Mr Bunduwabi's eyes?

In a further example of institutional racism that enforces a racially particular view on others, the government went on to object to the order of a stay of proceedings against 'Mr Bunduwabi and family'. They claimed, because the complaint was only in the name of an individual, the clause, 'and family', should be struck out of the order.^{xvi} The commissioner then asked for a definition of family, to which Caroline replied, 'a lot of them have gone back to Maningrida over the wet. There's usually about, well in the dry season there can be anything from twenty to forty'. The department objected to the order '*in toto*'; however, they accepted five people as a reasonable family size.

After hearing both sides, the Commissioner extended the order until February 11, 1997 to give the department time to reply to Bob's outstanding complaint of discrimination against the NT Government, which was almost the same as that laid against the DCC. Also within that time, Bob was expected to reply to the government response (see Appendix I). Finally, the Delegate would need to make his finding after these designated processes were complete. Making available to the media her judgment for an extension of the interim order for maintenance of the status quo (*NT News* January 18,

1997), the Commissioner commented 'it may serve the best interests of truth, honesty and justice if the order itself without any other embellishment [as above] is made known'.^{xvii}

6.8 The reply from Lands, Planning and Environment

Although I am not able in this thesis to discuss fully all the points made in the government reply, the basis of their argument was that: 'The Northern Territory Government provides services to Mr Bunduwabi in the same manner as it would any other person with similar needs'.^{xviii} The reply maintained a narrow legalistic view in claiming Section 24 of the Anti-Discrimination Act, 'Failure to accommodate a special need', was irrelevant because: 'the matter is not one of providing services. Rather it is one of the right of the Northern Territory Government to evict trespasses on Crown Land'.^{xix}

As the department argued in the hearing, alternative accommodation was available and 'it was Mr Bunduwabi's personal cultural values that caused him to reject it'. The respondent asked, 'how can he have been denied the single service of camping at Lee Point when such a facility is not available to anyone else?' Furthermore, 'with regard to Lee Point, the NT Government has not conceded that any person has a "right" to camp there and regularly moves on campers, including in the past Mr Bunduwabi'. The department asserted, 'All people, no matter what their background are regularly moved on from Lee Point. Mr Bunduwabi has not been treated singularly in this instance'.^{xx} The letter ended:

Overall, I submit that Mr Bunduwabi has been treated in the same manner as all other itinerant campers at Lee Point. He has not been discriminated against either on the basis of race or disability. There has been no distinction made in his case, nor have there been any restrictions in the area of goods, services and facilities. Indeed, the contrary is true'.^{xxi}

According to the government spokesperson at the hearing before the ADC commissioner, to allow the Lee Point campers to stay would be seen 'by the public as discrimination in favour of a particular person on the grounds of race'. In this interpretation, the demands of Aboriginal campers are against the interests of a homogeneous group, or at least a majority, described as 'the public' or 'the community'. Presumably 'the public' also includes the tourists who are the other group most affected by camping bans. Yet the protest indicated that some Aboriginal people who have particular cultural needs and indigenous rights are disadvantaged by the treatment of all people in a supposedly similar fashion.

In an analysis of a similar case, Cowlishaw (1997a:178) states:

These notions of equality, meaning sameness, operate to block any consideration of how difference can be accommodated in a liberal democratic society. That is, both establishment and popular egalitarian discourse silence the kind of dissent that is embedded in cultural differences.^{xxii}

6.9 How notions of equality discriminate against fringe dwellers

Morris (1997:168) argues that the removal of discriminatory legislation to give Aboriginal Australians citizenship rights has not abolished racism (see also Kapferer 1995) . When everyone is theoretically

born equal in the secular state, 'the individual is made "the measure of all things"' and birth, class, race, religion or other grouping has no currency (p.168). As the NT Minister for Lands, Planning and Environment was later to say: 'Lee Point is publicly owned land. If you were to go there, dare I say it, as a white person, and camp on public land, you'd be asked to move. Why can't the same laws be applied to Aboriginal people?' (ABCTV news, April 24, 1997). Ironically, unable to achieve the land rights which have caused popular sentiment to claim that Aborigines receive 'special treatment', at Lee Point in 1996/7 the fringe dwellers appealed to recognised universal rights to shelter and water to make their demands, albeit as a group with particular cultural needs.

Merlan (1994:17) discusses 'entitlement' and 'needs', while warning against 'the predictable poles of a policy opposition'. The current concept of 'needs' is associated with deficiency, whereas 'entitlements', or 'rights', has a stronger association with justice (p.17). Merlan (p.17) concludes:

If present needs derive from abridged rights, that is from previous injustice and dispossession, then any rights-linked conception of justice which formally concedes that abridgement will eventually be bound to do something about it.

However, the above reply from the Department of Lands, Planning and Environment suggests that any move towards a wider interpretation of needs by the government is unlikely in Darwin.

Cowlishaw (1997a:178) shows how racism flourishes as a 'hidden discourse' behind the assertion of equality within institutions that are based on the assumption of 'a cultural homogeneity in the nation'. As Cowlishaw (1997a:180) points out, claims of equal rights can disguise the legitimisation of privilege. In the Lee Point case, the 'commonsense' natural right of 'everybody' as equals in matters of access to land in Darwin disguises the dispossession of Aboriginal people. The overlaying liberal anti-racist discourse that normalises the privileges of the White settlers ensures 'a double victimisation' of the already socially and economically disadvantaged Aboriginal residents of 'settled Australia' (Cowlishaw 1997a:180). That is, Aboriginal communal living and homelessness become signs of 'deviance' that cause 'the Aboriginal problem' in settled Australia (see Morris 1997:172). The government refusal to consider the claims of fringe dwellers, under the guise of equal treatment for all, denies the racial nature of these policies.

My fieldwork suggests that the Lee Point fringe dwellers had been unable to achieve culturally appropriate accommodation through institutions founded after 1972 to recognise Aboriginal difference, as I discuss in Chapter Seven. In Darwin, these organisations claim a conflict of interest when asked to represent fringe dwellers' claims, or cannot support groups who have no land title. However, Chapter Eight discusses how the fringe dwellers are able to connect with oppositional groups of non-Aborigines in their struggle for the right to live within the town as a group. These allied groups also contest the ideology behind the 'commonsense' definition of equality in citizenship.^{xxiii}

6.10 The death of Bob Bunduwabi

On January 22, five days after the extension of the stay of eviction, and before the ADC could make a decision on his complaint, Bob died after being returned to the Darwin hospital from his camp. He had endured two months of arduous monsoon weather under his inadequate tarpaulin, under the stress of government determination to have him moved from Lee Point over the Christmas-New Year

holiday period, which had made coordination of his defence difficult. By this time I was visiting friends in Singapore and Malaysia, but a journalist from the *NT News* notified my contact in Singapore, who passed the sad news on to my Kuala Lumpur hosts. That night, when I visited the annual Hindu festival of Thaipusam at the sacred Batu Caves, I stood amongst worshippers, pilgrims and chanting priests in the huge and crowded Temple Cave as clouds of incense rose to a gap in the high roof above. Through the swirling smoke the moon was visible in the dark sky overhead. Although I was in a distant land, in this intensely spiritual atmosphere, reminiscent of Aboriginal ceremony, my sorrow was eased by a sense of the presence of my friend's indomitable spirit.

In an example of fringe dweller resistance, Bob's family approved the use of his name in the continuing campaign for fringe dwellers' rights. However, after his death, amongst themselves, they use only his subsection category of 'Gojok'. Family amongst the 100 who attended the mortuary rites spoke of Gojok as a 'fighter [who] fought for the rights of Aboriginal people (*NT News* January 24, 1997). In the same article, another of Gojok's family was quoted: 'He was a kind man and fought to have Lee Point available for Aboriginal people, but no one understood what he wanted'. I later commented: 'If ever there was a martyr, it's got to be him' (*NT New* February 11, 1997).

Darwin fringe dwellers from Arnhem Land organised a ceremony at Gojok's camp attended mostly by homeless Aboriginal campers, where his possessions were burnt the day after his death (Plate 2).^{xxiv} The same *NT News* journalist who notified me of the death later told me that he had received a telephone call from Gojok's relatives, asking the media to hurry out to Lee Point as the ceremony was about to begin. In an interview following the ceremony that was shown on ABCTV News (January 23, 1997), Gojok's nephew said:

He find us a safe place to use the grog away from the town, away from the accident... This man died because he suffered. He suffered by government pushing him away. He's so scared but he's so brave to hold this place, he's so brave.

The ABC's Aboriginal journalist ended the news item with the comment: 'Gojok's brothers say they will continue the fight' (January 23, 1997). In Chapter Eight, I give an account of the later return to Lee Point, and Gojok's brother's involvement. The Aboriginal flag that flew over Fish Camp, where the evicted Lee Point campers had settled, displayed additional evidence of the continuing resistance. When the flag was replaced in mid-1997, a new Aboriginal flag on a bamboo pole became a symbol of the deceased. The people at Fish Camp expressed their grief as the new flag was raised and again when the flag was replaced in October 1998. In the latter emotional flag-raising ceremony, singers and dancers from several Darwin camps, wailing and painted as mourners, were led by Yolngu men singing Macassan chants as the bamboo pole was fixed in the ground with the flag attached to the top (Plate 14). White supporters were invited to participate and encouraged to make video recordings and take photographs (see *Simmering* 1998).

On my return to Perth, presuming the case would proceed, on February 5, before the deadline, I faxed the ADC a six-page reply to the letter from the Department of Lands, Planning and Environment. In my reply (Appendix 1), I questioned who was advantaged by the department's statement: 'How can [Bob Bunduwabi] have been denied the single service of camping at Lee Point when such a facility is not available to anyone else?' Did the categories 'anyone else', 'any person' and 'all people', referred to

in the government response, discriminate against Aborigines? The Anti-Discrimination Act was created to ensure the rights of people who are disadvantaged in comparison to 'anyone else'. If all are treated alike there would be no need for wheelchair access to buildings or interpreter services in courts. And if the group was treated as 'anyone else', how was it that they had been left to live without water or services in the city?

The legalistic defence submitted by the government was a classical example of institutional racism under the guise of equality before the law. Cowlishaw (1988a:193) defines this as 'the informal ways that institutions reflect particular cultural practices and values, and disallow the expression of others'. Confining the case to one of trespass avoided the interconnectedness of government actions. In my reply and in this thesis, by tracing the connections between fringe dwellers and past and present actions I attempt to place Bob's situation into a wider perspective. However, the ADC did not consider my final replies to the NT Government and the DCC on behalf of the complainant. Following Gojok's death, the delegate for the ADC had decided to end my right to represent the complaint. 'As a matter of courtesy', in letter to me dated 12 February the ADC delegate also explained why he had decided to dismiss the complaint:

On 14 January 1997, I authorised you to act for the deceased complainant (a person who, for reasons of Aboriginal custom, cannot be named) in this matter, under Section 62 of the *Anti-Discrimination Act 1992*.^{xxv} I authorised you to act for him in view of his non-English speaking background and his impairment. As you are no longer able to receive instructions from him, your authority under Section 62 is hereby revoked.

Given your past involvement and assistance in this matter, as a matter of courtesy I write to you to advise that I have decided to dismiss the complaint of discrimination on the basis of race and impairment.

The complainant was a person suffering from Hansen's disease and had been a camper in the Darwin area for many years. He alleged that he had been granted permission to camp at Lee Point. He claimed that the actions of the NT Government and Darwin City Council, in evicting him and failing to supply essential services, amounted to discrimination on the basis of race and impairment.

The complainant sought permanent access to the land at Lee Point.

The complaint was not brought in a representative capacity, as the Anti-Discrimination Act 1992 does not allow for representative actions. The complainant was therefore, in a legal sense, only acting for himself.

The complainant has now died, and the issue for decision is whether the complaint survives the death of the complainant.

The ADC delegate referred to Stephenson's Case, a decision of the Full Court of the Federal Court that found that a hearing could continue where the correction of discrimination is 'independent of the identity of the particular complainant or her continued life at the time of the determination'. I

considered Gajok's case might create a precedent for all Aboriginal homeless people. However, that was not to be so, because the delegate ended his letter by dismissing the complaint under Section 102(a) of the Act as 'frivolous in the sense that it is "manifestly futile"'. The delegate wrote:

I accept that there may be cases where a complaint will survive the death of the complainant. The difficulty that I have is that the complainant's situation in this case was a very unusual one. He had been resident in and around Darwin for many years. He suffered from a serious disease. The remedy he was seeking was access to land.

In all the circumstances, a further consideration of the complaint appears to be futile, as, even if the complaint were to be successful (and there would be considerable practical difficulties, given the absence of any documentation proving, for example, the complainant's occupation of the Lee Point land and the conversations surrounding his being allowed to stay there) I cannot see what practical order the Anti-Discrimination Commissioner could now make at the conclusion of any Hearing. The objects of the *Anti-Discrimination Act 1992* are not advanced by continuing with proceedings which have their own particular and unusual facts (unlike those in *Stephenson's Case*) and which can only have one outcome.

I am therefore dismissing the complaint under Section 102 (a) of the Act, namely that it is frivolous. It is frivolous in the sense that it is 'manifestly futile'.^{xxvi}

Endnotes:

Letter from W B Day to Delegate of ADC, 21 November 1996.

- ii Letter to Bill Day from the Delegate, NT Anti-Discrimination Commission, 10 October 1996.
- iii Draft letter to Darwin City Council from delegate of the ADC, 3 October 1996 (copy to Bill Day).
- iv Letter from Delegate of ADC to Bill Day, 3 October 1996.
- v The letter stated the Darwin City Council's opposition to more town camps until existing Aboriginal special purpose leases are fully utilised. I argue that it appears discriminatory to presume that all Aboriginal people should be accommodated on leases granted for the use of particular groups.
- vi Letter from the Community Services Manager, DCC to ADC, 8 November, 1996.
- vii W B Day, reply to the Delegate, 13 December 1996.
- viii Letter from A/Secretary, Department of Lands, Planning and Environment to ADC, 17 January, 1997.
- ix Letter from A/Secretary, Department of Lands, Planning and Environment to ADC, 17 January, 1997.
- x Letter from Bill Day to Dawn Lawrie, NT Anti-Discrimination Commissioner, 23 December, 1996.
- xi Letter from the Delegate, ADC (re: 'Complaint of discrimination on the basis of race, impairment and failure to accommodate a special need') to Acting Secretary, Department of Lands Planning and Environment, 14 January 1997.
- xii Transcript of hearing for extension of interim order. ADC 17 January 1997.
- xiii as above
- xiv as above.
- xv as above.
- xvi as above.

as above.

xvii as above.

xviii Reply to the Delegate of the ADC from A/Secretary, Department of Lands, Planning and Environment, 17 January 1997.

xix Section 24 states in part:

2(a) a failure or refusal to accommodate a special need of another person includes making inadequate or inappropriate provision to accommodate the special need; and

(b) a failure to accommodate a special need takes place when a person acts in a way which unreasonably fails to provide for the special need of another person if that other person has the special need because of an attribute.

xx Reply to the Delegate of the ADC from A/Secretary, Department of Lands, Planning and Environment, 17 January 1997.

xxi Reply to the Delegate of the ADC from A/Secretary, Department of Lands, Planning and Environment, 17 January 1997.

xxii For an account of the 'Rights for whites' or 'Equal rights for Territorians' campaign in Katherine based on the belief that there should be 'one law for all', see Merlan (1995b:70-76, 1998:177-8).

xxiii Trigger (1998a:164) questions whether difference is to be nurtured or subordinated by the ideological construction of 'a good citizen'. He notes that in the Gulf country, Aborigines contest the view of natural resource development as a civic duty. Importantly for this thesis, Trigger (1998a) fails to adequately consider that the benefits of economic development are also questioned by many non-Aboriginal Australians.

xxiv When relatives in the camps had been visited to be ritually informed of the death, bearers of the news approached in a crocodile dance, representing the deceased's totem. The next morning, minibus taxis were ordered relatives of the deceased, to bring mourners from camps around Darwin to Lee Point. As well as an expression of grief and respect, the ritual burning of the deceased's sweat-impregnated possessions protects the living from any sorcery associated with the death (see also Hiatt and Hiatt 1966:3; Berndt and Berndt 1992:458; Sansom 1995:290). In this case, the ritual at Lee Point was followed by a cleansing of Gojok's close associates with water and smoke, to the accompaniment of the deceased's totemic songs, in an elaborate ceremony at Fish Camp six months later (see Plate 13).

xxv The Delegate of the ADC first authorised me to act for the deceased in the complaint against the DCC on 3 October 1996.

xxvi Letter from the Delegate, Anti-Discrimination Commission to Bill Day, 12 February 1997.