

Submission to the 2014 PJCHR Review of the Stronger Futures Act

The Stronger Futures legislation should be repealed. ,

The Stronger Futures legislation overtly racially discriminates. This is not disputed by Government although the official terminology used mollifies the harshness of the actions.

This policy is said by Government to be legitimate because the racially discriminatory measures used, comply with the UN Convention for the Elimination of Racial Discrimination Special Measures requirements. There is doubt that these Special Measures do indeed meet UN requirements. This means that official racial discrimination continues whether the UN requirements are met or whether they are not. Whatever arguments are put, the existing Australian policy places the Government in an unenviable situation within the Global community with regard to racial discrimination.

The Australian Government has never provided an independently compiled statement of compatibility with human rights in regard to this Act.

The Government has made statements indicating that human rights are intact and it has amended the Act to state that the Racial Discrimination Act is not affected; but these glib statements have never been independently tested.

It does not advantage Aboriginal people in the Northern Territory if the restrictive measures only apply to them. It is racially discriminatory. It is not agreed to by the target Aboriginal people. It ignores international human rights guidelines in the UN Declaration on the Rights of Indigenous Peoples that the Australian Government has officially endorsed. It ignores the consultation guidelines in the ILO Convention 169, a Convention ratified by 20 countries, but not Australia.

The Australian Government is potentially in breach of the Racial Discrimination Act.

The Australian Government has 2 choices:

- to continue with a law that overtly racially discriminates and to publicly explain why it needs to racially discriminate
- to repeal the Stronger Futures Act and comply with the letter and the spirit of the Racial Discrimination Act.

Digby Habel

The repeal of the Stronger Futures legislation

<p>Government admits racial discrimination but continues with it</p>	<p>At the time of the original NTER Intervention, the Government publicly declared an emergency when referring to <i>The Little Children are Sacred</i> report - a report focused on child abuse, not child sexual abuse. The Government ignored the report's recommendations and implemented various racially discriminatory measures in the NT.</p> <p>We know that the Government considered the measures to be racially discriminatory as it repealed the relevant Part of the Racial Discrimination Act to avoid breaching Australian law. A law based on the Convention for the Elimination of Racial Discrimination.</p> <p>However, Australian Government never advised UN States Parties that it had availed itself of right to derogate racial human rights as it is legally required under the International Covenant on Civil and Political Rights, Article 4.</p> <p>Subsequent Governments must be aware of this, but nevertheless, the Stronger Futures law continues to uphold mechanisms brought about initially by the NTER.</p> <p>Subsequent flawed consultations where there is no consent to racially discriminatory Measures as required by Convention for the Elimination of Racial Discrimination, mean that the Stronger Futures Act is still non compliant with the restored Racial Discrimination Act. No plebiscite has ever been conducted to determine whether consent exists. However, a <i>concerned Australians</i> publication, NT Consultation Report 2011 would suggest that there is no consent to these Measures</p> <p>Recommendation: That the PJCHR report to Government that racially discriminatory laws are still in place</p> <p>Recommendation: That the PJCHR advise Government that it should prove it has agreement to racially discriminate through an independent Electoral Commission poll of affected Aboriginal communities.</p>
<p>The Act limits human rights</p>	<p>The Act employs Special Measures that are not enacted in the spirit of UN Declaration on the Rights of Indigenous Peoples. There is no evidence that the Special Measures to racially discriminate have been agreed to by the target population. All NGO audio recordings of consultations indicate a broad objection to the Special Measures. (<i>concerned Australians</i> Consultation Report 2011)</p> <p>The land reform Special Measures have not had consultations associated with them except in a limited form, where only 15 of 100+ communities were consulted.</p> <p>There is no evidence provided by Government that most members of the consulted Aboriginal communities fully understood the implications of the consultations. It beggars belief that traditional Aboriginal people would be in agreement that land owned by the whole community, for example, should be made available for private purchase or extended lease unless confusing</p>

	<p>information is communicated.</p> <p>This is surely not in accord with the International Convention for the Elimination of all forms of Racial Discrimination, Article 1 nor the International Covenant on Economic, Social and Cultural Rights Article 1(1) that provides for self determination.</p>
<p>The Special Measures cannot be connected with the Act's objective</p>	<p>The object of this Act is to <i>"support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy."</i></p> <p>This is an admirable objective, but it should apply to the whole of Australian society.</p> <p>It is not clear, and the Government has not explained, how racially discriminatory restrictions that only apply to Aboriginal people support the NT Aboriginal community. This is especially the case where Aboriginal people have not agreed to be racially discriminated against.</p> <p>The application of the law has restricted independence of the people to determine their own futures as is indeed required by international conventions that support self determination. This is reminiscent of Orwellian concepts where laws for independence have created disempowerment and diminished independence.</p>
<p>Special Measures imposed are not reasonable, necessary and proportionate</p>	<p>The Special Measures are not reasonable, necessary or proportionate. The Government has yet to explain how the Measures meet these criteria in terms that are understood by all people affected by this law.</p> <p>Many Aboriginal people in the NT support constraints on alcohol, for example, indeed many communities were voluntarily "dry" before restrictions. It does not make sense to erect signs at the entrance to communities that already have self imposed constraints. The Government has not placed policed constraints on the suppliers of alcohol in the NT to the extent that less alcohol consumption occurs. Aboriginal people have every right to question why they are constrained but not the suppliers. It is not reasonable that only the consumers be constrained.</p> <p>The message is that the measures applied by this law should rather be voluntary. There is no reason why communities and individuals should not be empowered to decide whether they want these constraints. If this had been done then there would be no need to question the more heavy handed racially discriminatory approach that suggests that human rights obligations have been avoided.</p> <p>Recommendation: That the Government be advised to publicly address why the Special Measures as applied are reasonable, necessary and proportionate.</p>