Parliamentary Joint Committee on Human Rights

2016 Review of Stronger Futures measures

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Functions of the committee

The committee has the following functions under the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- to examine bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue; and
- to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

Human rights are defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* as those contained in following seven human rights treaties to which Australia is a party:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

The establishment of the committee builds on the Parliament's established traditions of legislative scrutiny. Accordingly, the committee undertakes its scrutiny function as a technical inquiry relating to Australia's international human rights obligations. The committee does not consider the broader policy merits of legislation.

The committee's purpose is to enhance understanding of and respect for human rights in Australia and to ensure appropriate recognition of human rights issues in legislative and policy development.

The committee's engagement with proponents of legislation emphasises the importance of maintaining an effective dialogue that contributes to this broader respect for and recognition of human rights in Australia.

Committee's analytical framework

Australia has voluntarily accepted obligations under the seven core United Nations (UN) human rights treaties. It is a general principle of international human rights law that the rights protected by the human rights treaties are to be interpreted generously and limitations narrowly. Accordingly, the primary focus of the committee's reports is determining whether any identified limitation of a human right is justifiable.

International human rights law recognises that reasonable limits may be placed on most rights and freedoms—there are very few absolute rights which can never be legitimately limited.[1] All other rights may be limited as long as the limitation meets certain standards. In general, any measure that limits a human right must comply with the following criteria (the limitation criteria):

- be prescribed by law;
- be in pursuit of a legitimate objective;
- be rationally connected to its stated objective; and
- be a proportionate way to achieve that objective.

Where a bill or instrument limits a human right, the committee requires that the statement of compatibility provide a detailed and evidence-based assessment of the measures against these limitation criteria.

1 Absolute rights are: the right not to be subjected to torture, cruel, inhuman or degrading treatment; the right not to be subjected to slavery; the right not to be imprisoned for inability to fulfil a contract; the right not to be subject to retrospective criminal laws; the right to recognition as a person before the law.

Abbreviations

Abbreviation	Definition
2013 report	Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation* (27 June 2013)
AMP	Alcohol management plan
ANAO report	Australian National Audit Office, *The Improving School Enrolment and Attendance through Welfare Reform Measure: Department of the Prime Minister and Cabinet, Department of Human Services*, Audit Report No. 51 2013-14, Performance Audit (2014)
APA	Alcohol protected area
Current minister	Senator the Hon Nigel Scullion, Minister for Indigenous Affairs
Declaration	Declaration on the Rights of Indigenous Peoples
Final Evaluation Report	J Rob Bray et al, Social Policy Research Centre, UNSW, Australian National University and Australian Institute of Family Studies, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (July 2012)
Former minister	The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs
NT	Northern Territory
NTNER	Northern Territory National Emergency Response

NTNER Act	*Northern Territory National Emergency Response Act 2007*
PM&C report	Department of the Prime Minister and Cabinet, *Improving School Enrolment and Attendance through Welfare Reform Measures (SEAM) Trial (2009-2012): Final Evaluation Report* (May 2014)
SEAM	Improving School Enrolment and Attendance through welfare reform Measure
Stronger Futures Act	*Stronger Futures in the Northern Territory Act 2012*
Stronger Futures bill	Stronger Futures in the Northern Territory Bill 2012
Stronger Futures regulation	Stronger Futures in the Northern Territory Regulation 2013 [F2013L01442]
Stronger Futures rule	Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013

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2.25 The committee considers that the amendments relating to customary law in the Stronger Futures legislation are likely to be compatible with the right to a fair trial and the right to equality and non-discrimination.

2.26 Noting the broader concerns raised in relation to the reduced scope for consideration of customary law in bail and sentencing decisions for Commonwealth and Northern Territory offences, the committee recommends that a review be undertaken into the operation of these provisions, with specific emphasis on the impact of the prohibition on the right to a fair trial and the right to equality and non-discrimination.

Food security

2.38 The committee considers that the food security measures continued under the Stronger Futures legislation are likely to promote the right to an adequate standard of living (including the right to food).

Land reform measures

2.56 The committee considers that the land reform measures engage the right to self-determination, including the right of peoples to freely pursue economic, social and cultural development, under article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. The committee considers that expanding the purposes by which Indigenous peoples can voluntarily decide to lease their community land has the capacity to promote the right to self-determination.

Measures to address alcohol abuse

3.56 On the basis of the evidence before it, it is difficult for the committee to establish that the existing legislative alcohol restrictions are rationally connected or proportionate to the stated objective of reducing alcohol related harm. The committee considers that it is vitally important that there be a coherent approach to addressing alcohol related harm in Indigenous communities in the NT. A human rights compliant approach to the regulation of alcohol requires that any measures must be effective, and genuinely tailored to the needs and wishes of the local community. It is not apparent that the current legislative process set out under the Stronger Futures Act meets these requirements. As such, the committee makes the

following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 1

- **The committee recommends that a detailed and evidence-based review be undertaken to assess the effectiveness of existing legislative alcohol restrictions in the NT in reducing alcohol-related harm. The review should consider whether any laws should be amended to ensure a more coherent and effective approach to reducing alcohol-related harm. Specific data and evidence analysing the effectiveness of the existing laws should be collected and made available; and the review should be undertaken by independent experts and given sufficient time to gather and analyse the available evidence.**

Recommendation 2

- **The committee recommends that the existing process for approval of AMPs be streamlined to reduce unnecessary administrative burden and the legislation amended to remove the power of the minister to unilaterally refuse to approve AMPs agreed to by the affected communities (with consideration given to devolving decision-making power to ensure greater responsiveness to communities).**

Recommendation 3

- **The committee recommends that the existing blanket alcohol restrictions that continue to apply to all Indigenous land in the NT be reviewed and that the legislation be amended within a reasonable timeframe to ensure a transition from the existing blanket restrictions to locally developed AMPs.**

Income management

4.104 The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family. Although the committee considers that under certain conditions income management is a legitimate and effective mechanism, evidence before the committee indicates that compulsory income management is not effective in achieving its stated objective of supporting vulnerable individuals and families. The committee considers that this objective remains an important and legitimate goal.

4.105 A human rights compliant approach requires that any measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The current approach to income management falls short of this standard. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 4

- **The committee recommends the continuation of community led income management where there has been a formal request for income management in a particular community following effective consultation on the particular modalities of its operation, including whether it should be a voluntary program.**

Recommendation 5

- **The committee recommends that income management should be imposed on a person only when that person has been individually assessed as not able to appropriately manage their income support payments. Information concerning rights and processes of appeal should be provided to the person immediately and in a language that they understand.**

School Enrolment and Attendance through Welfare Reform Measure

5.108 The committee considers that it is vitally important that school enrolment and attendance be markedly improved across the NT. However, on the basis of the evidence before it, the committee considers that there are real doubts as to whether SEAM is effective, and thereby rationally connected to this objective. Even assuming a rational connection, the committee considers that SEAM is not proportional to the objective of improving school enrolment and attendance. A human rights compliant approach to this problem requires that any measures must be effective, flexible to take into account individual circumstances, calibrated carefully to protect vulnerable groups and targeted at dealing with the causes of unauthorised absences rather than punishing the symptoms. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 6

- **The committee recommends that SEAM be redesigned to focus on identifying and overcoming complex barriers to school engagement within regional and remote communities. To do this, the provision of social work support should be enhanced.**

Recommendation 7

- **The committee highlights that sanctions are a legitimate and effective mechanism to encourage families to assist their children to attend school. The committee recommends that sanctions regimes must differentiate between voluntary disengagement and non-attendance resulting from causes or factors outside the child or family's control. This likely requires the consideration of a social worker.**

Chapter 1

Background

Introduction

1.1 In the 43rd Parliament the Parliamentary Joint Committee on Human Rights (the committee) conducted an examination into the human rights compatibility of the Stronger Futures legislation and reported in June 2013 (the 2013 report).[1] The Stronger Futures legislation comprised three principal Acts, plus associated delegated legislation. The three Acts are:

- *Stronger Futures in the Northern Territory Act 2012* (Stronger Futures Act);
- *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*; and
- *Social Security Legislation Amendment Act 2012*.

1.2 In its 2013 report the committee made a number of findings, including indicating the importance of continuing close evaluation of aspects of the Stronger Futures measures. It recommended that in the 44th Parliament the committee undertake a review to evaluate the latest evidence in order to test the continuing necessity for the Stronger Futures measures.

1.3 This report considers the latest evidence in relation to the effectiveness of key aspects of the Stronger Futures measures, together with associated legislation introduced since the adoption of the 2013 report, and concludes the committee's examination of the human rights compatibility of that legislation.

Conduct of the inquiry

1.4 On 3 March 2014, the committee agreed to initiate this inquiry. The committee wrote to a number of persons and organisations, inviting submissions to the inquiry by 10 October 2014. Details of the inquiry were also made available through the committee's website.

1.5 The committee received 23 submissions in response to this inquiry. The submissions are listed at Appendix 2 to this report and are available on the committee's webpage.

1.6 The committee wrote to Senator the Hon Nigel Scullion MP, Minister for Indigenous Affairs (current minister) on 18 March 2014 drawing his attention to its 2013 report and inviting his comment. On 18 June 2014, the current minister provided a brief response to the committee's letter, noting that work was underway to revise the Stronger Futures package. The committee again wrote to the current

1 See Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation* (27 June 2013).

minister on 23 June 2015 with a number of specific questions about the Stronger Futures measures and received his response dated 28 July 2015. As this response did not address all of the committee's concerns, the committee wrote again on 9 September 2015 and received the current minister's response dated 28 September 2015.

1.7 The committee would like to thank the current minister and all those who submitted to this inquiry.

Background

1.8 The Stronger Futures measures were introduced in 2012 to make changes to, or repeal, the measures introduced by the Northern Territory National Emergency Response (NTNER) in 2007. The Stronger Futures measures apply to the Northern Territory (NT) and relate in the main to:

- tackling alcohol abuse in Aboriginal communities;
- income management;
- school attendance;
- certain land reform measures;
- food security measures relating to the licensing regimes for food stores in certain areas;
- amendments relating to the extent to which customary law may be taken into account in bail and sentencing decisions; and
- restrictions on access to pornography in certain areas.

1.9 The committee's 2013 report examined the human rights compatibility of the Stronger Futures package of legislation.[2] The report dealt with the human rights compatibility of measures dealing with tackling alcohol abuse; income management; and school attendance. It did not examine the human rights compatibility of the other measures listed above at paragraph [1.8].

Conclusions of the committee's 2013 report

1.10 The committee's 2013 report acknowledged that the aim of the Stronger Futures measures was to reduce disadvantage and ensure that Indigenous Australians enjoy a comparable level of human rights to that of other Australians. The committee noted that this was a compelling policy objective within the framework of Australia's human rights obligations.

1.11 However, in its 2013 report the committee noted that the question of whether some of the measures had delivered their intended beneficial effects was contested, and also acknowledged concerns about the human rights compatibility of a number of the measures.

2 The conduct of the committee's examination is summarised at pages 1-2 of the 2013 report.

1.12 The committee considered in some detail whether the Stronger Futures measures were, as stated by the government, 'special measures' under international human rights law, and therefore not discriminatory.

1.13 Special measures under international human rights law are generally seen to be measures granting a benefit or preference to members of a disadvantaged group, designed to advance the rights of members of those groups. If a measure is seen to be a 'special measure' under international human rights law the measure will not be classified as discriminatory, even though it applies only to one particular group.

1.14 The committee's 2013 report found that the measures could not properly be classified as 'special measures'. It found that a measure that criminalises conduct by some members of the group that is to be benefited, in order to promote the overall benefit of the group, is not appropriately classified as a 'special measure' under international law.[3]

1.15 Accordingly, the committee considered that any limitations on rights had to be considered using the committee's usual analytical framework of asking whether the measure pursues a legitimate objective, is rationally connected to achieving that objective and is proportionate to that objective.

1.16 The committee's 2013 report accepted that reducing disadvantage faced by Indigenous Australians and ensuring they achieve a comparable level of human rights to other Australians was clearly a legitimate objective for the purposes of international human rights law.[4]

1.17 However, the 2013 report noted that at the time the report was conducted only limited empirical data was available to demonstrate a rational connection between the measures and the social objectives they were intended to address.

1.18 The committee emphasised two key human rights considerations that had emerged from its examination of the measures:

- the critical importance of ensuring the full involvement of affected communities in the policy making and policy implementation process; and
- the importance of continuing close evaluation of the measures.

3 2013 report, 28.

4 2013 report, 75.

Chapter 2

Matters not dealt with by the committee's 2013 report

2.1 This chapter considers three Stronger Futures measures that raise human rights issues which were not considered in the committee's 2013 report:[1]

- customary law in bail and sentencing decisions;
- food security; and
- land reform.

Customary law in bail and sentencing decisions

2.2 The *Northern Territory National Emergency Response Act 2007* (NTNER Act) amended the *Crimes Act 1914* to provide that, in all bail applications or sentencing under NT law, a court or bail authority must not take into consideration any form of customary law or cultural practice as a reason for excusing, justifying, authorising, requiring or lessening the seriousness of alleged criminal behaviour, or aggravating the seriousness of it.[2]

2.3 The Stronger Futures legislation amended the *Crimes Act 1914* to provide that customary law and cultural practices must not be taken into consideration unless the bail or sentencing decision relates to offences against laws that protect cultural heritage, including sacred sites or cultural heritage objects.[3]

2.4 The committee's analysis is confined to the amendments made by the Stronger Futures legislation. However, the committee notes the broader human rights concerns around the exclusion of customary law considerations raised in submissions to this inquiry, which are outlined briefly below.

2007 amendments

2.5 In 2009 the Supreme Court of the NT considered the application of the NTNER Act provisions relating to customary law considerations in bail and sentencing decisions.[4] It held that their effect was that, while evidence about customary law and cultural practices cannot be considered for determining the objective seriousness of the crimes alleged, it could be considered to:

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1 2013 report, 3.

2 See sections 15AB and 16A of the *Crimes Act 1914* amended by section 91 of the *Northern Territory National Emergency Response Act 2007*. Similar amendments in respect of Commonwealth laws were made the previous year by the *Crimes Amendment (Bail and Sentencing) Act 2006* in response to decisions made by the Council of Australian Governments on 14 July 2006 following the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities on 26 June 2006.

3 See Schedule 4 to the *Northern Territory (Consequential and Transitional Provisions) Act 2012*.

4 See *The Queen v Wunungmurra* [2009] NTSC 24.

- provide a context and explanation for the offender's crimes;
- establish the offender does not have a predisposition to engage in the specified crime and it is unlikely the offender will re-offend;
- establish the offender has good prospects of being rehabilitated; and
- establish the defendant's character.

2.6 The court held that '[t]he purpose and operation of [these provisions] is not to remove all consideration of customary law and cultural practice from the sentencing process'.[5] However, the court also noted that the provision:

> …might be considered unreasonable or undesirable because it precludes a sentencing court from taking into account information highly relevant to determining the true gravity of an offence and the moral culpability of the offender, precludes an Aboriginal offender who has acted in accordance with traditional Aboriginal law or cultural practice from having his or [her] case considered individually on the basis of all relevant facts which may be applicable to an important aspect of the sentencing process, distorts [the] well-established sentencing principle of proportionality, and may result in the imposition of what may be considered to be disproportionate sentences.[6]

2.7 The submission of the Law Society of New South Wales to the present inquiry endorses the submission of the National Aboriginal and Torres Strait Islander Legal Services to a 2012 inquiry, which, while supportive of the Stronger Futures legislation, stated that the measures precluding consideration of customary law or cultural practices runs counter to the principle of equality.[7]

2.8 Similarly, the submission of the Aboriginal Peak Organisations Northern Territory (APO NT) to the present review welcomed the changes introduced by the Stronger Futures legislation, but considered that sections 15AB and 16A of the *Crimes Act 1914* should have been wholly repealed as they devalue Aboriginal culture and customs and result in unjust outcomes for Aboriginal people.[8]

2.9 A review of the measures was conducted by the Attorney-General's department in 2009. The review noted numerous concerns about the amendments raised by stakeholders and in the academic literature, but recommended that the amendments be retained as there was not enough evidence available about the

5 *The Queen v Wunungmurra* [2009] NTSC 24, [29].

6 *The Queen v Wunungmurra* [2009] NTSC 24, [25].

7 Indigenous Issues Committee of the Law Society of NSW, submission 9.

8 Aboriginal Peak Organisations Northern Territory, submission 22.

impact of the amendments at the time of the review to demonstrate that the amendments were having unintended negative consequences.[9]

2.10 The committee considers that the prohibition on considering customary law for aspects of sentencing and bail decisions engages the right to a fair trial and the right to equality and non-discrimination.

Right to a fair trial and fair hearing rights

2.11 The right to a fair trial and fair hearing are protected by article 14 of the International Covenant on Civil and Political Rights (ICCPR). The right applies to both criminal and civil proceedings, to cases before both courts and tribunals and to military disciplinary hearings. The right is concerned with procedural fairness, and encompasses notions of equality in proceedings, the right to a public hearing and the requirement that hearings are conducted by an independent and impartial body. Circumstances which engage the right to a fair trial and fair hearing may also engage other rights in relation to legal proceedings contained in article 14, such as the presumption of innocence and minimum guarantees in criminal proceedings.

Right to equality and non-discrimination

2.12 The right to equality and non-discrimination is protected by articles 2 and 26 of the ICCPR.

2.13 This is a fundamental human right that is essential to the protection and respect of all human rights. It provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that all people are equal before the law and entitled without discrimination to the equal and non-discriminatory protection of the law.

2.14 The ICCPR defines 'discrimination' as a distinction based on a personal attribute (for example, race, sex or religion),[10] which has either the purpose (called 'direct' discrimination), or the effect (called 'indirect' discrimination), of adversely affecting human rights.[11] The UN Human Rights Committee has explained indirect discrimination as 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.[12]

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9 Attorney-General's Department, *Review of customary law amendments to bail and sentencing laws*, November 2009, 4. Available at http://www.aph.gov.au/DocumentStore.ashx?id=dae3aee2-4fb3-49fd-b147-aa9dc7dc77e0.

10 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

11 UN Human Rights Committee, *General Comment 18*, Non-discrimination (1989).

12 *Althammer v Austria* HRC 998/01, [10.2].

2.15 Articles 1, 2, 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) further describes the content of these rights and the specific elements that state parties are required to take into account to ensure the elimination of discrimination on the basis of race, colour, descent, national or ethnic origin.

Compatibility of the Stronger Futures measure with the right to a fair trial and the right to equality and non-discrimination

2.16 The Hon Jenny Macklin MP, former Minister for Families, Housing, Community Services and Indigenous Affairs (former minister) provided the committee with her assessment of the human rights compatibility of the customary law measures in the Stronger Futures legislation.[13] In that assessment the former minister stated that the policy objective for the measure was to 'enable customary law and cultural practice to be considered in bail and sentencing for certain offences against Commonwealth and NT law that protect cultural heritage, including sacred sites or cultural heritage objects.' The former minister noted that the Stronger Futures measures were intended to tailor the effects of the original NTNER Act amendments as these had 'produced unintended effects in some instances' regarding cultural heritage.

2.17 The former minister also noted that the measures were not discriminatory as they applied to all people and all cultural backgrounds, and that, where the prohibition was removed by the measure, it left the question of how customary law would be considered to the discretion of the court.

2.18 The committee wrote to the current minister in June 2015 requesting an updated assessment of the human rights compatibility of the Stronger Futures measures.[14] In relation to the general prohibition on considering customary law in bail and sentencing for federal and NT offences, the committee sought an assessment of the compatibility of the prohibition with the right to a fair trial, the right to freedom from arbitrary detention and the right to equality and non-discrimination.

2.19 In concluding that the prohibition was compatible with the right to a fair trial, the current minister stated:

> The relevant provisions of the Crimes Act do not place limitations on any of the procedural guarantees set out in Article 14. Further, there is no international jurisprudence suggesting that the right to a fair trial includes a right to be tried under customary law, or the right to have customary law

13 See letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures/background/index.

14 See Appendix 3, Letter from the Hon Philip Ruddock MP to Senator the Hon Nigel Scullion, Minister for Indigenous Affairs (dated 23 June 2015).

> taken into account. In fact, trial by customary law would be incompatible with the ICCPR to any extent that it was inconsistent with the requirements of Article 14.[15]

2.20 In relation to the right to freedom from arbitrary detention, the current minister's response stated:

> The Crimes Act provisions create a general exclusion on the consideration of customary law and cultural factors. This ensures and promotes certainty and predictability in criminal trials, and should not result in a person being unjustly or inappropriately detained.
>
> While section 15AB (3A) of the Crimes Act creates an exception to the rule against considering 'any form of customary law or cultural practice', the exception is narrowly confined to a small range of Acts for the purposes of protecting cultural heritage, an obligation incumbent upon Australia under Article 27 of the ICCPR and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the Convention for the Elimination of All Forms of Racial Discrimination (CERD).[16]

2.21 In relation to the right to equality and non-discrimination, the current minister's response stated:

> The prohibitions excluding consideration of customary law in bail and sentencing decisions in the Crimes Act are universal and apply throughout Australia to all people and all cultural backgrounds. They ensure that all persons are subject to the same legal rules, except in a limited range of circumstances.
>
> Those limited circumstances allow for the consideration of customary law in relation to bail and sentencing decisions for offences under a small number of Acts protecting cultural heritage. Under international human rights law, differential treatment such as this will not constitute discrimination if the differentiation is reasonable and objective and the aim is to achieve a legitimate purpose.
>
> The exceptions for offences relating to the protection of cultural heritage recognise customary law or cultural practice in domestic law for the legitimate purpose of preservation of minority culture and ensure relevant cultural practice can be taken into account in relation to bail and sentencing decisions for offences which relate to practices that are inherently cultural. They ensure the adequate development and protection of Indigenous peoples in Australia, as required under Article 2(2) of the

15 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 5.

16 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 6.

CERD, and protect cultural rights under Article 27 of the ICCPR and Article 15 of the ICESCR.[17]

2.22 The committee thanks the current minister for his response, and considers that the amendments to the customary law prohibition made by the Stronger Futures measures are likely to be compatible with the right to a fair trial, the right to freedom from arbitrary detention and the right to equality and non-discrimination.

2.23 However, the committee notes that the prohibition on consideration of customary law introduced by the NTNER Act engages and limits a number of human rights, including the right to a fair hearing and the right to equality and non-discrimination. This is because the prohibition constrains the ability of courts to exercise their discretion to consider all relevant matters when making bail and sentencing decisions relating to people from culturally diverse backgrounds, including Indigenous people. As the prohibition in the NT extends to all offences, the committee considers that Indigenous people are disproportionately affected by the prohibition, despite the current ministers' assurances that the measures apply universally.

2.24 While the committee considers that the NTNER Act amendments raise human rights concerns, the Stronger Futures measures, by providing an exception to the prohibition imposed by the NTNER Act, improve the compatibility of the measure with the right to a fair trial and the right to equality and non-discrimination.[18]

2.25 The committee considers that the amendments relating to customary law in the Stronger Futures legislation are likely to be compatible with the right to a fair trial and the right to equality and non-discrimination.

2.26 Noting the broader concerns raised in relation to the reduced scope for consideration of customary law in bail and sentencing decisions for Commonwealth and NT offences, the committee recommends that a review be undertaken into the operation of these provisions, with specific emphasis on the impact of the prohibition on the right to a fair trial and the right to equality and non-discrimination.

17 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 6-7.

18 See subsections 15AB(3A) and 16A(2AA) of the *Crimes Act 1914* as amended by the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

Food security

2.27 The NTNER measures of 2007 created the legislative framework for community stores in prescribed communities to be licensed.

2.28 The 2012 Stronger Futures measures renewed the scheme for a further ten years (until July 2022). A community store is often the primary source of food and other goods in remote communities, and the intention behind licensing was to enhance the contribution of community stores to achieve access to a range of reasonably priced and healthy grocery items. Food security is defined in the legislation as meaning there is a reasonable ongoing level of access to a range of food, drink and grocery items that is reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs.[19]

2.29 The licensing scheme provides for licensing procedures, license conditions, business registration requirements, assessment criteria for stores and a penalty scheme for breaches of licenses, including fines, injunctions and withdrawal of a license in some circumstances.

2.30 The licensing scheme appears to engage the right to an adequate standard of living, including the right to food.

Right to an adequate standard of living

2.31 The right to an adequate standard of living requires that the state take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia.

2.32 Australia has two types of obligations in relation to this right. It has immediate obligations: to satisfy certain minimum aspects of the right; not to unjustifiably take any backwards steps that might affect living standards; and to ensure the right is made available in a non-discriminatory way. It also has an obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right to an adequate standard of living.

Compatibility of the measure with the right to an adequate standard of living

2.33 The former minister provided the committee with her assessment of the human rights compatibility of the food security measures.[20] In that assessment, the former minister stated that the policy objective of the food security measure was to

19 Subsection 37(3) of the *Stronger Futures in the Northern Territory Act 2012*.

20 See letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures/background/index.

improve the quality and availability of fresh healthy food in Aboriginal communities.[21]

2.34 The committee acknowledges that improving the quality and availability of fresh healthy food is a legitimate objective for the purposes of international human rights law. If the measures are capable of producing this outcome the committee considers that the measures are likely to promote the right to an adequate standard of living, which includes a right to access affordable, nutritious and safe food.

2.35 In 2012, the NT Government reported that there were improvements in store governance, and the availability and affordability of fresh fruit and vegetables as a result of the licensing scheme.[22]

2.36 In 2014, the Australian National Audit Office (ANAO) reported on issues of food security in remote Indigenous communities.[23] It found there had been some problems with the implementation of the licensing scheme, however, as at late 2014, the vast majority of stores had been licensed with attention focused on ongoing regulation.[24] The report found through anecdotal evidence that people were generally positive about the impact of the licensing scheme on remote community stores in relation to the range of healthy foods being made available by a licensed store.[25] However, the ANAO noted that there were difficulties in measuring broader outcomes as a result of food security initiatives.[26] It concluded that, on the basis of the available evidence, 'the Community Stores Licensing Scheme is likely to be achieving food security outcomes' (though it noted the difficulties in making accurate assessments).[27]

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21 Attachment to the letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (dated 27 June 2012), Assessment of Policy Objectives with Human Rights, 7.

22 See Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) paragraph [3.68].

23 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014).

24 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.49].

25 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.42].

26 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.46].

27 The Auditor-General, ANAO Report No. 2 2014-15, Performance Audit, *Food Security in Remote Indigenous Communities*, Department of the Prime Minister and Cabinet (2014) paragraph [3.52].

2.37 In August 2015 the current minister provided further information to the committee as to whether the food security measures had improved the accessibility and affordability of food in the NT:

> There is a range of evidence suggesting that the licensing scheme has contributed to its objective of promoting a reasonable ongoing level of access to a range of food, drink and grocery items that are reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs in Aboriginal communities in the NT. An evaluation by the Cultural and Indigenous Research Centre in 2011 found that store licensing has had a positive impact on food security, including the ongoing access to food that is safe and of sufficient quality and quantity to meet household needs. More recently, the Northern Territory Market Basket Survey 2014 showed the average number of varieties of fresh fruit and vegetables available in remote NT stores was 29 in 2014, compared with only 22 in 2007 when the licensing scheme was not in place.[28]

2.38 The committee considers that the food security measures continued under the Stronger Futures legislation are likely to promote the right to an adequate standard of living (including the right to food).

28 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP, Attachment A (received 25 August 2015) 1-2.

Land reform measures

2.39 Part 3 of the Stronger Futures Act enabled the Commonwealth to make regulations modifying any law of the NT relating to the use of or dealings in land, planning or infrastructure (or anything else prescribed by the regulations) to the extent that the law applies to an Aboriginal town camp or community living area.[29]

2.40 The Stronger Futures in the Northern Territory Regulation 2013 (the regulation) was subsequently made on 25 July 2013.[30] This regulation modifies NT law to:

- allow community living area title holders to grant leases and licences over their lands for a broader range of purposes, including for commercial, infrastructure and public purposes; and
- require that consent be sought from the relevant NT minister only for leases on community living area lands for terms greater than 10 years, as opposed to leases with terms greater than 12 months.

2.41 The committee considers that the land reform measure engages and may promote the right to self-determination.

Right to self-determination

2.42 The right to self-determination is protected by article 1 of the ICCPR and article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2.43 The right to self-determination includes the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes peoples being free to pursue their economic, social and cultural development. It is generally understood that the right to self-determination accrues to 'peoples'.

2.44 The UN Committee on the Elimination of Racial Discrimination has stated that the right to self-determination involves 'the rights of all peoples to pursue freely their economic, social and cultural development without outside interference' and that 'Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin'.

2.45 Accordingly it is important that individuals and groups, particularly Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to impact on them. This includes ensuring that they have the opportunity to participate

29 See sections 34 and 35 of the *Stronger Futures in the Northern Territory Act 2012*. A town camp is defined as one leased primarily for residential, community or cultural purposes for Aboriginal people and a community living area is defined as an area granted or created as an Aboriginal community living area under a law of the NT.

30 The Stronger Futures in the Northern Territory Regulation 2013 [F2013L01442]. This instrument was deferred in the committee's *First Report of the 44th Parliament* for consideration as part of the Stronger Futures review.

in the making of such decisions through the processes of democratic government, and are able to exercise meaningful control over their affairs.

Compatibility of the measure with the right to self-determination

2.46 The explanatory memorandum for the Stronger Futures bill set out the objective behind the land reform measures. It stated that the amendments to facilitate voluntary long term leasing 'give[s] effect to the Commonwealth's commitment to provide a platform for secure tenure which then can enable economic development and home ownership opportunities in Aboriginal communities'.[31] The statement of compatibility for the Stronger Futures regulation stated:

> …the Regulation is being made for the sole purpose of securing adequate advancement for residents of Aboriginal community living areas. This Regulation is required as a first step in providing a platform for secure and meaningful land tenure in community living areas so as to assist in securing members of those communities full and equal enjoyment of human rights and fundamental freedoms by removing land tenure impediments that uniquely restrict community living areas.[32]

2.47 The committee notes that the right to self-determination includes a right for peoples to freely pursue economic, social and cultural development. The Declaration on the Rights of Indigenous Peoples (the Declaration) also provides that Indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence and development and to engage freely in economic activities.[33] The committee reiterates the views expressed in its 2013 report that the Declaration is an important and relevant instrument for the work of the committee and provides specific guidance on the content of the rights in the human rights treaties which fall within the committee's mandate.[34]

2.48 The committee notes that the Central Land Council (CLC), which provides legal and administrative support to title holding bodies of community living areas in the NT, made a submission to government that argued that opportunities for economic and social enterprise development had been limited by constraints on the use of community living area land.[35] While the CLC argued there was a need for broader reform beyond that contained in the regulation, it stated that there was a

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31 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2.

32 Explanatory statement, statement of compatibility [3].

33 See article 20(1) of the Declaration on the Rights of Indigenous Peoples.

34 See 2013 report, 16.

35 Central Land Council, *Community Living Area Land Reform in the Northern Territory Discussion Paper- Central Land Council Response*, 3.

genuine and urgent need for reform of NT legislation to allow the residents of community living areas to have more control over their land.[36]

2.49 In addition, the committee notes that the Northern Land Council (NLC), which assists Aboriginal people in the Top End of the NT to acquire and manage their traditional lands, also supported the land reform measures contained in the Stronger Futures bill. The NLC submitted that legal restrictions on communities living on community living area land were unjustifiable and there needed to be capacity for secure tenure to be appropriately granted for commercial and government activity.[37]

2.50 The committee considers that allowing Aboriginal community living area title holders to grant leases and licences over their lands for a broader range of purposes, including for commercial, infrastructure and public purposes, on a voluntary basis, engages and may promote the right to self-determination, as it allows Indigenous people greater opportunity to use their lands as they determine.

2.51 However, the committee notes the importance of ensuring proper consultation with Indigenous groups and other affected communities in order for the right to self-determination to be realised.[38] In that respect the committee looks to what consultation with affected communities was undertaken prior to the regulation being made.

2.52 The statement of compatibility for the regulation stated that, before it was made, the government released a Discussion Paper and undertook consultation, including meetings in community living areas and with community living land owners, residents and representatives from the relevant land councils. Views provided in these meetings were summarised in an Outcomes Paper released by the Australian Government on 21 June 2013.[39] The Outcomes Paper noted that 17 written submissions had been received in response to the Discussion Paper and these were used to inform discussions at consultation meetings. Consultation meetings were held across the NT in 16 selected community living areas and with a number of cattle station owners and/or managers. Plain English communication materials were distributed in advance of, and used during, in-community meetings

36 Central Land Council, *Community Living Area Land Reform in the Northern Territory Discussion Paper- Central Land Council Response*, available at: http://www.clc.org.au/files/pdf/CLA_Reform-_CLC_Submission_.pdf.

37 Northern Land Council, submission 361 to the Senate Community Affairs Legislation Committee (10 February 2012) 2.

38 See 2013 report, 31-34.

39 Australian Government, *Community Living Area Land Reform in the Northern Territory Outcomes Paper*, available at Appendix 3, Attachment A to the letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 25 August 2015).

and interpreters attended a majority of in-community meetings.[40] The current minister further advised the committee that the 16 areas chosen for consultation were the largest population centres:

> All community living area communities were potentially affected by the regulation. There are over 100 community living areas in the Northern Territory. They range in size from towns to small family outstations. The 16 communities consulted are the largest (by population) community living areas. The 16 communities were selected in consultation with the Central and Northern Land Councils.[41]

2.53 Following this consultation a draft of the regulations was released and comment sought before the final regulations were made.

2.54 Two submissions to the present review stated that information received from Aboriginal people in the NT is that consultations have occurred on land reform, but only for 15 of the 100 plus affected communities, and suggested this consultation was inadequate.[42]

2.55 The committee notes that the relevant power in the Stronger Futures legislation does not specifically require consultation with land owners, only that consultation be undertaken if it is requested by a land owner.[43] However, based on the information available to the committee, it appears relatively extensive consultation was undertaken with land owners and relevant land councils prior to the regulation being made.

2.56 The committee considers that the land reform measures engage the right to self-determination, including the right of peoples to freely pursue economic, social and cultural development, under article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. The committee considers that expanding the purposes by which Indigenous peoples can voluntarily decide to lease their community land has the capacity to promote the right to self-determination.

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40 See Australian Government, *Community Living Area Land Reform in the Northern Territory Outcomes Paper*, 2 and letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 25 August 2015), Attachment A, 1.

41 Appendix 3, Letter from Senator Nigel Scullion, Minister for Indigenous Affairs, to the Hon Philip Ruddock MP (received 2 October 2015) 1.

42 See Belconnen Amnesty International, Submission 1 and Digby Habel, Submission 2.

43 See paragraph 35(4)(b) of the *Stronger Futures in the Northern Territory Act 2012*.

Chapter 3

Measures to address alcohol abuse

Background

3.1 The *Northern Territory National Emergency Response Act 2007* (NTNER Act) modified existing NT law in relation to alcohol regulation. In particular, it prescribed a range of areas in the NT for which it is an offence to bring liquor into, be in possession or control of liquor, or consume or sell liquor. There were limited exceptions to allow liquor to be consumed in certain licenced premises.[1]

3.2 The prescribed areas applied to most Indigenous land in the NT. The current minister advised the committee that it is not feasible to provide the numbers of areas prescribed under this measure, but that in broad terms, the following areas under the NTNER Act were deemed prescribed areas:

- Aboriginal land as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- community living areas under the Lands Acquisition Act of the NT; and
- town camps that have been declared for the purpose by the minister.[2]

3.3 The prescribed areas are all areas with predominantly or solely Indigenous inhabitants. The Stronger Futures legislation continued these restrictions, turning prescribed areas under the NTNER Act into 'alcohol protected areas' (APAs).[3] The same restrictions on alcohol possession, consumption or sale applied to the APAs as to prescribed areas under the NTNER Act (but with increased penalties for any breach).

3.4 When the Stronger Futures measures were introduced it was intended that the communities subject to the existing restrictions would be transitioned to community-driven alcohol management plans (AMPs). The Stronger Futures Act set out the process by which a person or group could apply for approval of an AMP. The explanatory memorandum for the Stronger Futures bill explained that the measures

1 See Part 2 of the *Northern Territory National Emergency Response Act 2007*.

2 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1.

3 See items 5 and 6 of Schedule 1 to the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

were intended to ensure that local solutions could be developed to address the problems of alcohol misuse:

> Existing alcohol protections will be preserved in 'alcohol protected areas' with additional provisions that **enable the geographic areas covered by these protections to be changed over time and for local solutions to be developed.**
>
> This Bill includes new provisions for the Commonwealth Minister for Indigenous Affairs to approve alcohol management plans. **This allows for communities to play an active role in continuing to reduce alcohol-related harm, and to tailor a solution specific to the community's needs**.[4]

3.5 The Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 (the Stronger Futures rule) was subsequently made, setting out the minimum standards to be met by AMPs. The statement of compatibility for the Stronger Futures rule stated that the prescribed minimum standards 'will encourage community groups to take ownership of the way that they manage alcohol in their community'.[5]

3.6 The committee's 2013 report examined the Stronger Futures rule and the AMP process and concluded:

> The committee considers that alcohol management plans following compliance with the detailed criteria set out in the Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 are likely to avoid the human rights compatibility concerns that attached to alcohol restrictions permitted under the [NTNER] and continued under the Stronger Futures package.[6]

3.7 However, the committee noted that it was concerned to know whether there were still communities in which alcohol restrictions apply which had not followed the new consultation procedures and, if so, whether a timetable was in place to bring those communities under the new framework.

3.8 Following correspondence with the current minister as part of this inquiry, it has become clear that all of the existing alcohol restrictions imposed by the NTNER, and continued by the Stronger Futures measures, remain in place across the NT. As at late 2015, only one AMP has been approved by the current minister, and there has been no revocation or variations to existing APAs. This includes the one area which has had its AMP approved; the Titjikala community. In that case, the AMP operates

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4 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2 (emphasis added).

5 See Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 [F2013L00290], statement of compatibility 11-12.

6 See 2013 report, 44.

alongside the existing alcohol restrictions; it does not replace those restrictions.[7] In addition, the current minister has refused to approve seven AMPs submitted by community groups.[8]

3.9 As the restrictions imposed in 2007 by the NTNER continue to apply to Indigenous communities in the NT, the committee considers it necessary to assess whether the continuation of these measures, within the context of the current status of the AMP process, is compatible with human rights.

Rights engaged

3.10 The tackling alcohol abuse measures were designed with the aim of reducing the effects of alcohol-related harm in Aboriginal and Torres Strait Islander communities in the NT.[9] It is clear that alcohol-related harm in many of these communities is a major concern and greatly affects the health and well-being of people in those communities. As such, reducing alcohol-related harm in these communities promotes a number of human rights, including the:

- right to health;[10]
- rights of the child (which includes the rights of the child to protection from all forms of physical or mental violence or neglect and a child's right to an adequate standard of living);[11] and
- right to security of the person (which includes protection by the state against violence or bodily harm).[12]

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7 See Appendix 3, letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1, which stated: 'To date I have approved one Alcohol Management Plan (AMP) for the Titjikala community. It was approved on 26 May 2014…No APAs have been revoked or varied'. See also letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 25 August 2015) Attachment A, 2, which stated: 'the Titjikala community submitted an AMP for approval in February 2014. The Minister approved the AMP on 26 May 2014. The Minister did not make a rule revoking or varying the Titjikala APA rule as the community had not applied for a revocation or variation'.

8 See Appendix 3, letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1.

9 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

10 Article 12 of the ICESCR.

11 CRC, especially articles 19, 24 and 27, and article 24 of the ICCPR.

12 Article 9 of the ICCPR and article 5(b) of the ICERD.

3.11 However, in addition to seeking to promote these rights, the committee considers that restricting the supply of alcohol in a community solely on the basis that it is an Aboriginal community engages and limits the following rights:

- right to equality and non-discrimination;[13]
- right to a private life;[14] and
- right to self-determination.[15]

Compatibility of the measures with multiple rights

3.12 The government's position is that the measures taken to address alcohol abuse are 'special measures' for the purposes of international human rights law. A measure which provides differential treatment for certain racial groups may be considered to be a 'special measure' (and therefore not discriminatory) if it can be demonstrated that the measure is temporary and taken for the advancement of that group.

3.13 However, as set out in Chapter 1, in its 2013 report the committee found that measures which criminalise conduct by some members of the group to be benefited, in order to promote the overall benefit of the group, are not appropriately classified as a 'special measure' under international law.[16]

3.14 As such, the measures limit the right to equality and non-discrimination as they directly discriminate on the basis of race. The APAs apply only to Aboriginal land, Aboriginal community living areas and Aboriginal town camps. The measures also limit the right to a private life as they prohibit consumption of alcohol in such areas, including in the home. Nevertheless, limitations on these rights may be permissible if it can be demonstrated that the measures seek to achieve a legitimate objective and are rationally connected to, and a proportionate way of, achieving that objective.

Legitimate objective

3.15 The tackling alcohol abuse measures in the Stronger Futures Act were aimed at reducing alcohol-related harm to Aboriginal people in the NT.[17] In its 2013 report the committee accepted that this goal is an important and legitimate objective, and if achieved would contribute to the promotion of a number of human rights.[18]

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13 Articles 2 and 26 of ICCPR and article 2 of ICESCR and ICERD.

14 Article 17 of the ICCPR.

15 Article1 of the ICCPR and article 1 of the ICESCR.

16 See 2013 report at 21-31.

17 See section 6 of the *Stronger Futures in the Northern Territory Act 2012*.

18 2013 report, 44.

3.16 The committee reiterates its view that the goal of reducing alcohol-related harm in Aboriginal communities in the NT is a legitimate objective for the purposes of international human rights law, and is clearly aimed at meeting a pressing and substantial concern. The committee considers that the evidence clearly establishes that alcohol is a major problem in parts of the NT and the harmful use of alcohol is causing numerous social, cultural, economic and health problems in many Indigenous communities.[19] As such, the committee considers that any limitations on human rights imposed by the tackling alcohol abuse measures seek to address a legitimate objective for the purposes of international human rights law.

Rational connection

3.17 In ascertaining whether the measures are rationally connected to that objective, the key question is whether the measures are likely to be effective in achieving the objective of reducing alcohol-related harm in Aboriginal communities in the NT.

Review of the effectiveness of the Stronger Futures measures

3.18 When the Stronger Futures bill was introduced, emphasis was placed on the fact that the legislation included a requirement that an independent review of the effectiveness of NT and Commonwealth laws in reducing alcohol-related harm was required within three years of the passage of the Stronger Futures Act.[20]

3.19 A report prepared in accordance with this requirement was tabled in both Houses of Parliament on 16 September 2015. However, that review did not, contrary to the legislative requirements, assess the effectiveness of the measures. The law firm engaged to conduct the review was engaged on 20 July 2015 (over one year later than required by the legislation) and reported within 14 business days (on 6 August 2015). The approach taken to the review within this timeframe was to conduct a 'desktop' review. The report's authors noted 'we have not had the benefit of any specific evidence or data collected for the purposes of this review'.[21] As such, the review concluded it was unable to assess the effectiveness of the existing laws:

> …given the absence of specific evidence and data concerning alcohol-related harm, we have been unable to determine with any certainty the extent of alcohol-related harm suffered by those communities nor establish any definitive measure of the extent to which

19 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

20 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2.

21 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 7.

> the laws under review may have been effective in reducing alcohol-related harm.[22]

3.20 In terms of making any conclusions, the review stated that sufficient data and evidence was not identified to allow a proper baseline to be established regarding the extent of harm caused by alcohol misuse at the commencement of the Stronger Futures Act or to date.[23] This is consistent with the submission to this inquiry from the Aboriginal Peak Organisations NT (APO NT), which noted that data on the effectiveness of establishing alcohol protected areas has not been collected, analysed or made publicly available:

> The Stronger Futures Progress Report (1 January 2013-30 June 2013) does not contain any data related to the imposition of Alcohol Protected Areas and other alcohol restrictions, nor does it propose to establish an evaluation process to measure the impact of these restrictions.[24]

3.21 As at December 2015 the progress report from 1 January to 30 June 2013 remains the most recent report issued by the Department of the Prime Minister and Cabinet on the implementation of the Stronger Futures measures.[25]

3.22 As the government has not produced any evidence as to the effectiveness of the Stronger Futures measures in reducing alcohol-related harm (contrary to the legislative requirements) it is difficult for the committee to assess whether the tackling alcohol abuse measures are rationally connected to the legitimate objective of reducing alcohol-related harm.

3.23 At a broad level, the committee notes that the evidence indicates that policies to reduce alcohol-related harm work best when they have the support of the local community, while blanket bans on alcohol appear to have had a number of unintended consequences which may have led to more unsafe drinking practices, as set out below.

Policies with local support are most likely to be effective

3.24 The committee's 2013 report noted that studies have shown that the alcohol restrictions most likely to be effective are those decided on by the community rather

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22 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 7.

23 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 28.

24 Aboriginal Peak Organisations Northern Territory, submission 22, 7.

25 See Department of the Prime Minister and Cabinet, *Stronger Futures in the Northern Territory: Part 1 and Part 2: Six-Monthly Progress Report, 1 January 2013 to 30 June 2013* (24 May 2014).

than ones imposed from the outside.[26] In 2007 the National Drug Research Institute conducted a comprehensive review of all alcohol restrictions in Aboriginal communities and found that there is no single mix of restrictions that work for all communities.[27] A review of AMPs (including plans approved since 2002 under different arrangements to those set out in the Stronger Futures Act) has concluded that while the evidence is limited, where AMPs are locally driven and owned there are stronger and more sustainable outcomes.[28] For example, positive outcomes were recorded in relation to an AMP developed for Groote Eylandt and Bickerton Island:

> A key finding of the study was that the success of the AMP could be attributed to ownership and support of the system by the Aboriginal communities and by key local service providers, employers and by the licensed premises.[29]

3.25 As set out above at paragraphs [3.4] to [3.5], it was intended that the Stronger Futures measures would transition the existing blanket bans imposed by the NTNER Act to AMPs developed by local communities. Yet, since the legislation was introduced in 2012 only one AMP has been approved by the current minister, and seven AMPs agreed to by local communities have been rejected. A number of other communities have been in the process of developing an AMP, but it appears that these were either rejected by the former minister or have not been submitted to the current minister for approval.[30] As a consequence, the existing blanket alcohol

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26 2013 report, 39.

27 National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes* (2007).

28 Indigenous Justice Clearinghouse, *Alcohol management plans and related alcohol reforms*, Brief 16 (October 2013) 7.

29 See Indigenous Justice Clearinghouse, *Alcohol management plans and related alcohol reforms*, Brief 16 (October 2013) 5.

30 See the submission from the Northern Territory government in April 2014 which stated that there were then 29 AMPs being developed across the NT, which included 17 AMPs signed off at the community level which were awaiting approval by the federal minister. See also a 2014 report from the Department of the Prime Minister and Cabinet that stated that 'At the end of August 2013, 19 communities were developing an AMP with 17 plans in final draft at the community agreement stage'. Contrast this with the Commonwealth Government's response to the House of Representatives inquiry which stated that only eight AMPs had been submitted for approval to the minister and that there were no AMPs with the Department of the Prime Minister and Cabinet for consideration: Northern Territory Government, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60, 25; Department of the Prime Minister and Cabinet, *Stronger Futures in the Northern Territory: Part 1: Six-Monthly Progress Report, 1 January 2013 to 30 June 2013* (24 May 2014) 7; and *Commonwealth Government's response to the House of Representatives Standing Committee on Indigenous Affairs Report: Alcohol, hurting people and harming communities* (December 2015) 6.

bans, which had no community development or involvement before their imposition in 2007, continue to exist in all prescribed areas across the NT.

3.26 There is some evidence to suggest that the stalled process on AMPs has had the effect of undermining the capacity of communities to manage alcohol in their area. For example, in a submission to a recent House of Representatives inquiry into the misuse of alcohol in Indigenous communities, Professor Peter d'Abbs provided a case-study of a community that, when developing their AMP, decided it wanted to have a designated drinking area on the outskirts of the community, to ensure the safety of those who continued to drink.[31] This decision was reached after the blanket ban imposed in 2007 had meant a number of people had been killed after being struck by vehicles while drinking on crown land located next to a highway not covered by the alcohol bans.

3.27 Despite the community having overwhelmingly endorsed this plan (a plan which included the support of the then regional Police Superintendent and the local Health Centre), the current minister refused to endorse the AMP. Professor d'Abbs explains the effect of this process:

> One immediate effect was a palpable deflation in the level of energy that community members were prepared to put into addressing alcohol-related issues—a deflation that, in my observation, continues to this day, despite the sustained efforts of a few committed community members. Another was an ongoing search by drinkers for places where they could drink (in their terms) safely….
>
> The net effect of all of these events, I suggest, has been to undermine rather than enhance the community's own capacity to manage alcohol, and to increase the likelihood of both drink-driving and opportunistic binge-drinking.[32]

3.28 That House of Representatives inquiry noted that concerns were raised during the inquiry that once a community had mobilised to develop an AMP, the lack of responsiveness from governments can mean that impetus and motivation is lost.[33]

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31 See Professor d'Abbs, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, submission 99.

32 Professor d'Abbs, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, submission 99, 18.

33 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 49.

Unintended consequences of blanket alcohol bans

3.29 In assessing whether the limitations on rights occasioned by the tackling alcohol abuse measures are justifiable, it is also important to consider whether the measures would have any unintended consequences and so fail to achieve the objective of reducing alcohol-related harm. There is some evidence that the blanket alcohol bans imposed in 2007 and continued under the Stronger Futures measures are having unintended negative consequences. The recent House of Representatives inquiry into the misuse of alcohol in Indigenous communities highlighted that 'where there is a demand for alcohol and a supply point is not available, people will engage in a range of activities to circumvent alcohol restrictions'.[34] This includes: the trafficking of alcohol to restricted areas; setting up drinking camps outside of restricted areas (in potentially unsafe locations); the displacement of community members to locations where alcohol is more readily available; and the possible substitution of alcohol with other drugs.

3.30 The NT Government has highlighted research that has found that the bans introduced by the NTNER Act (and continued under the Stronger Futures measures) have resulted in drinking camps shifting further away from communities, and stated:

> Aboriginal people in remote communities are concerned by the harms and level of grief being experienced by family members and communities through unmanaged drinking in unsafe public places. This includes on highways, close to rivers, or far away from communities hidden in the bush, where family members cannot watch over drinkers, where anti-social behaviour arises between clans and the mixing of communities, and where drinkers are at a long distance from Night Patrol or police officers. There have been a number of road deaths of drinkers, drinking on highways and car accidents of people returning from drinking camps.[35]

3.31 UnitingJustice Australia also submitted to this committee:

> According to [the] Jumbunna Research Institute, blanket alcohol bans have undermined successful existing community-led alcohol management programs, and also may have increased harmful alcohol practices such as binge drinking, drink driving, and an increase in drinking in urban areas because people are forced to go outside their community to access alcohol.[36]

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34 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 87.

35 Northern Territory Government, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60, 28.

36 UnitingJustice Australia, submission 15, 7 (footnotes omitted).

Proportionality

3.32 A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective sought to be achieved. In assessing whether a measure is proportionate some of the relevant factors to consider include whether there are effective safeguards or controls over the measures, including the possibility of monitoring and review. It is also relevant to consider whether the communities affected by the measure have been consulted and agree to the measures imposed.

Monitoring and review

3.33 As set out above at paragraphs [3.18] to [3.21], the Stronger Futures Act contained a legislative requirement for an independent review to assess the effectiveness of the alcohol laws.

3.34 However, a bill was introduced in 2014 seeking to repeal these review requirements on the grounds it was no longer required.[37] One of the reasons given was that the Stronger Futures measures would be assessed as part of the revision of the Stronger Futures National Partnership Agreement (NPA).[38]

3.35 In June 2014, the current minister advised the committee that work was underway to revise Stronger Futures, with a focus on reducing unnecessary administration and red tape and ensuring funding is directed appropriately.[39]

3.36 In July 2015, the current minister further advised that the original NPA was still being revised and advised that the revisions 'are primarily administrative and will not require changes to legislation'.[40] The current minister noted that as consultations were held with affected communities prior to the 2012 Stronger Futures measures being introduced, there would be no further community consultation in the development of the new NPA.[41]

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37 See explanatory memorandum, 36 to the Omnibus Repeal Day (Spring 2014) Bill 2014.

38 See letter from the Hon Christian Porter MP, Parliamentary Secretary to the Prime Minister, to Senator Dean Smith (received 26 March 2015) 2-3 and considered in Parliamentary Joint Committee on Human Rights, *Twenty-Second Report of the 44th Parliament* (13 May 2015) 174-182.

39 See Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 24 June 2014) 2.

40 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) 1-2.

41 See Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) 2: 'Extensive consultation was undertaken prior to the introduction of Stronger Futures and the new Agreement will continue to address those issues Aboriginal people in the Northern Territory said were most important to them'.

3.37 The revision of the Stronger Futures NPA will not affect the existing restrictions imposed by the alcohol abuse measures. Therefore, the committee does not consider that the review of the NPA, while it may have other benefits, will be of assistance in determining whether the existing legislative alcohol restrictions are appropriate.

Consultation with affected communities

3.38 As noted in the committee's 2013 report, one of the much criticised features of the 2007 NTNER was the failure to consult with the communities and groups affected by the measures introduced.[42] The 2013 report acknowledged that in developing and introducing the Stronger Futures measures the government went to considerable effort to consult with Indigenous communities and other stakeholders around many aspects of the proposed measures.[43] However, as found by the Senate Community Affairs Legislation Committee, notwithstanding this, there remained much confusion and frustration in many communities over the measures.[44]

3.39 The community engagement aspect of the AMP process introduced by Stronger Futures has support from a number of organisations. The APO NT submitted to this inquiry:

> Alcohol Management Plans ("AMP's") could potentially be an effective way for communities to gain control over alcohol issues. APO NT agrees with the Committee that the use of Alcohol Management Plans generally overcome human rights concerns which are presented by some other strategies implemented under Stronger Futures to address alcohol issues.[45]

3.40 The Australian Human Rights Commission has also indicated its support for AMPs:

> The Commission believes alcohol management plans have significant potential to address alcohol related harm in the Northern Territory by facilitating community control of alcohol regulation and harm reduction strategies. This is both consistent with human rights standards and the evidence base.[46]

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42 See 2013 report, 31.

43 2013 report, 31.

44 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) 62-63.

45 Aboriginal Peak Organisations Northern Territory, submission 22, 6.

46 See Australian Human Rights Commission, *Stronger Futures in the Northern Territory Bill 2011 and two related Bills*, submission to the Senate Community Affairs Legislation Committee (6 February 2012) paragraph 267 (note this earlier submission was referred to the committee as still relevant by Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, submission 19, 1).

3.41 As noted above at paragraphs [3.4] to [3.5] and [3.25], while it was intended that the Stronger Futures measures would transition the existing blanket bans imposed by the NTNER Act (which had no community development or involvement) to AMPs developed by local communities, since 2012 only one AMP has been approved across the entire NT.[47]

3.42 From correspondence with the current minister, it appears that, despite the legislative requirement for approvals of AMPs, the development of AMPs is no longer a focus of the alcohol abuse measures:

> The requirements for AMPs set out in the AMP Rule have proven rigid and time-consuming and make it difficult for communities to prepare AMPs that the Minister can approve in accordance with the legislation. As a result the Government has adopted a new streamlined approach to AMP approvals in which the Government is supporting communities to work directly with the NT Government to implement activities that reduce alcohol-related harm in a more timely and responsive manner. Both the Commonwealth and NT Governments are currently working with communities to implement the new approach.[48]

3.43 This is in line with a submission from the NT government to the recent House of Representatives inquiry, which stated that the process for approving AMPs under the Stronger Futures measures is overly bureaucratic:

> The current model of Alcohol Management Planning under the [Stronger Futures] Act is a top down driven approach, with a protracted bureaucratic process for gaining approval by the Federal Minister requiring extensive evidence of meeting the AMP Minimum Standards linked to the [Stronger Futures] Act.[49]

3.44 The committee notes that the House of Representatives inquiry recommended that communities be empowered to develop the strategies that will work for their communities and that AMPs and other community driven strategies

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47 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August) Attachment A, 2. Note the statement in the Attachment in relation to the AMP that has been approved: 'The Minister did not make a rule revoking or varying the Titjikala APA rule as the community had not applied for a revocation or variation'.

48 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 2.

49 Northern Territory *Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60 to the House of Representatives Standing Committee on Indigenous Affairs (April 2014) 25.

needed to be reviewed and processed within a maximum of six months.[50] The government's December 2015 response to this stated:

> The process around Government handling of AMPs has been streamlined to reduce red tape and support local outcomes. Priority is being given to working with the Northern Territory (NT) Government and local communities to advance practical actions that reduce alcohol related harm. For those communities that choose to submit AMPs, they will be assessed by the Government in accordance with legislative requirements.[51]

3.45 It is not clear to the committee what steps are now being taken in relation to alcohol restrictions in Aboriginal communities in the NT. The committee notes the government's advice that work is being done with the NT government and local communities in relation to 'practical actions' to reduce alcohol-related harm and encouraging communities to work directly with the NT Government 'to implement activities that reduce alcohol-related harm'. No further detail has been provided as to what exactly this entails. What is clear is that under the Stronger Futures legislation, the existing blanket alcohol restrictions introduced in 2007, without any community consultation, continue to apply to Indigenous communities across the NT.[52]

3.46 There is evidence that the process for the approval of AMPs has resulted in widespread frustration and a loss of community goodwill and engagement. The APO NT submitted to this inquiry that there has been a lack of progress on the approval of AMPs and a significant number of AMPs which have community endorsement have been awaiting governmental approval for longer than 12 months:

> The purpose of the AMP scheme was to enable communities to develop and tailor community specific measures to address alcohol. The AMP scheme seems to indicate an acknowledgement by the legislature of the importance of community control on issues such as alcohol. Unfortunately, the slow progress on the approval of these plans is hindering community tailored control and initiative. [53]

3.47 The recent House of Representatives inquiry into the harmful use of alcohol in Indigenous communities also received a number of submissions which, while

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50 Northern Territory *Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60 to the House of Representatives Standing Committee on Indigenous Affairs (April 2014) 56.

51 *Commonwealth Government's response to the House of Representatives Standing Committee on Indigenous Affairs Report: Alcohol, hurting people and harming communities* (December 2015) 6.

52 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) 2.

53 Aboriginal Peak Organisations Northern Territory, submission 22, 6.

generally supportive of AMPs, questioned the current approach to the approval of such plans:

> Concern was raised during the inquiry that once a community has mobilised to develop an AMP, the lack of responsiveness from governments can mean that impetus and motivation is lost. Professor Langton notes that some AMPs with community endorsement had been waiting for approval for two years or longer.[54]

3.48 One submission to this inquiry also raised concerns with the process established under the legislation, noting that the requirement for federal ministerial approval of AMPs is effectively a ministerial override:

> This approach does not allow for Indigenous communities to be self-determining in terms of effectively and appropriately addressing these issues as they choose.[55]

Committee view

3.49 The committee acknowledges that alcohol is a major problem in parts of the NT and the harmful use of alcohol is causing numerous social, cultural, economic and health problems in many Indigenous communities.[56] The committee therefore considers that any limitation on human rights imposed by the tackling alcohol abuse measures clearly seek to address a legitimate objective for the purposes of international human rights law. If the measures were likely to be effective this would contribute to the enjoyment of a number of human rights, including the right to health and the rights of the child.

3.50 While the committee considers that the measures seek to achieve a clearly legitimate objective of reducing alcohol-related harm, the committee is concerned that the government has not established that the measures are likely to be effective in achieving the stated aim, or are proportionate to that aim.

3.51 A key question for the committee in assessing whether the measures are rationally connected to the stated objective is whether they are likely to be effective in achieving the aim of reducing alcohol related-harm to Aboriginal people in the NT. The required legislative review of the effectiveness of the alcohol laws in the NT did not produce any evidence as to the effectiveness of the Stronger Futures measures in reducing alcohol-related harm. There appears to be no government data

54 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 49.

55 Dr Shelley Bielefeld, submission 10, 8.

56 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

demonstrating whether the measures have made any difference in reducing alcohol-related harm.

3.52 The only evidence that is available indicates that, in general, policies to reduce alcohol-related harm work best when they have the support of the local community. AMPs were intended to ensure that locally tailored solutions could be found to address the problems of alcohol-related harm. The criteria for community involvement and ownership of such plans led the committee to previously conclude that alcohol restrictions based on these community-led plans would be likely to avoid the human rights compatibility concerns attached to the blanket alcohol restrictions imposed by the NTNER Act and continued under Stronger Futures.[57]

3.53 However, it is now clear that the existing AMP process under the Stronger Futures Act and Stronger Futures rule is not functioning effectively. Only one AMP has been approved by the current minister across the entire NT, several have been rejected and many more appear to have stalled. The government itself has stated that the existing AMP process is rigid and time-consuming and a number of stakeholders have stated that the process is overly bureaucratic. In addition, none of the existing blanket alcohol restrictions have been eased in any of the areas originally proscribed by the NTNER Act, despite the Stronger Futures legislation setting out a process by which the existing restrictions could be eased. Even where communities have decided as a group that the best solution for their community would be to have designated safe drinking sites in their community (for a range of sound reasons), this has been rejected by the current minister. This is despite evidence demonstrating that blanket bans on alcohol have had a number of unintended consequences which may have led to more unsafe drinking practices and greater alcohol-related harms.

3.54 In addition, a key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective sought to be achieved. In assessing this it is important to consider whether there are effective safeguards or controls over the measures and whether the communities affected by the measures have been consulted and agree to the measures imposed. As set out above, there appears to now be no legislative process to monitor and review the existing alcohol laws and the blanket alcohol restrictions which were imposed without community consultation apply to all areas originally prescribed in 2007.

3.55 It is not clear to the committee what steps are now being taken in relation to alcohol restrictions in Aboriginal communities in the NT. The government has advised that work is being done with the NT Government and local communities in relation to 'practical actions' to reduce alcohol-related harm and encouraging communities to work directly with the NT Government 'to implement activities that reduce

57 2013 report, 44.

alcohol-related harm'.[58] While the committee welcomes the adoption of any steps that might be taken outside of the legislative process that may reduce alcohol related harm, under the Stronger Futures Act the existing blanket alcohol restrictions continue to apply. There does not appear to be any intention to review these legislative restrictions or make amendments to the legislation. This is despite the current minister's own acknowledgement that the existing legislative process is rigid and time-consuming.

3.56 On the basis of the evidence before it, it is difficult for the committee to establish that the existing legislative alcohol restrictions are rationally connected or proportionate to the stated objective of reducing alcohol related harm. The committee considers that it is vitally important that there be a coherent approach to addressing alcohol related harm in Indigenous communities in the NT. A human rights compliant approach to the regulation of alcohol requires that any measures must be effective and genuinely tailored to the needs and wishes of the local community. It is not apparent that the current legislative process set out under the Stronger Futures Act meets these requirements. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 1

- **The committee recommends that detailed and evidence-based review be undertaken to assess the effectiveness of existing legislative alcohol restrictions in the NT in reducing alcohol-related harm. The review should consider whether any laws should be amended to ensure a more coherent and effective approach to reducing alcohol-related harm. Specific data and evidence analysing the effectiveness of the existing laws should be collected and made available; and the review should be undertaken by independent experts and given sufficient time to gather and analyse the available evidence.**

Recommendation 2

- **The committee recommends that the existing process for approval of AMPs be streamlined to reduce unnecessary administrative burden and the legislation amended to remove the power of the minister to unilaterally refuse to approve AMPs agreed to by the affected communities (with consideration given to devolving decision-making power to ensure greater responsiveness to communities).**

58 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015), Attachment A, 2.

Recommendation 3

- **The committee recommends that the existing blanket alcohol restrictions that continue to apply to all Indigenous land in the NT be reviewed and that the legislation be amended within a reasonable timeframe to ensure a transition from the existing blanket restrictions to locally developed AMPs.**

Chapter 4

Income management

Background

4.1 Income management limits the amount of income support paid to recipients as unconditional cash transfers and imposes restrictions on how the remaining 'quarantined' funds can be spent. Income management was first introduced in prescribed areas of the NT, including 73 remote communities, associated outstations and ten town camp regions, in 2007 as part of the NTNER.

4.2 This measure formed part of the government's response to the 2007 Little Children are Sacred report.[1] While the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse did not directly recommend introducing an income management scheme, it noted:

> The Inquiry was told by some people that they would like to see at least 50 per cent, if not all, of the total sum of individuals' "welfare" (Centrelink) payments made in the form of food vouchers. The view was expressed that this may impact positively on alcohol consumption. The Inquiry believes it is worth investigating.[2]

4.3 Under the 2007 NTNER, the majority of Aboriginal and Torres Strait Islander people on income support in the NT had half of their payments income managed.[3] Income managed funds could not be used to purchase excluded items such as alcohol, tobacco or pornography, or be used for gambling. Because of the targeting of substantially Indigenous communities, the implementation of the NTNER required the suspension of the *Racial Discrimination Act 1975* (Racial Discrimination Act).

4.4 In 2010 legislation was passed to extend income management to all welfare recipients in the NT,[4] regardless of where they lived in the Territory, if they met certain criteria. This legislation also reinstated the application of the Racial Discrimination Act.

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1 See Northern Territory Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007).

2 Northern Territory Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007) 171.

3 The NTER applied to 73 prescribed communities, their associated outstations and the 10 town camp regions of the NT. In 2008, over 70 per cent of Indigenous people in the NT lived within prescribed areas.

4 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act 2010*.

4.5 The 2012 Stronger Futures package amended these income management measures so as to apply income management beyond the NT, and to enable income management referrals from a range of state and territory authorities.[5] As at 2016, income management applies to 15 locations outside of the NT.[6]

4.6 In its 2013 report, the committee scrutinised the income management scheme as it operated in the NT as a whole, not limited to the Stronger Futures measures.

4.7 Whether a person is subject to the income management regime differs according to where the person lives. For income management in the NT, a person on welfare benefits can voluntarily sign up for income management, or be made subject to compulsory income management in the following circumstances:

- *Long-term welfare payment recipients*: persons aged over 25 (but under the pension age) who have received unemployment benefits, youth allowance, or parenting payments for 12 of the last 24 months;
- *Disengaged youth*: persons aged 15 to 24 who have received youth allowance, unemployment benefits or parenting payments for three of the last six months;
- *Vulnerable income management referrals*: persons on most types of welfare benefits who are referred for income management by:
    - a Centrelink social worker;[7]
    - a child protection worker;[8]
    - the Northern Territory Alcohol Mandatory Treatment Tribunal (NT AMT Tribunal);[9]

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5 See *Social Security Legislation Amendment Act 2012*.

6 It currently applies in the Perth Metropolitan, Peel and Kimberley regions, Laverton, Kiwirrkurra and Ngaanyatjarra Lands in Western Australia; Anangu Pitjantjatjara Yankunytjatjara Lands, Ceduna, Playford and Greater Adelaide in South Australia; Cape York, Rockhampton, Livingstone and Logan in Queensland; Bankstown in New South Wales; Greater Shepparton in Victoria; and in the NT.

7 Centrelink, in deciding whether a customer should be income managed, will consider whether the person is in financial hardship, whether the person may be subject to financial exploitation, whether the person is failing to undertake reasonable self-care or is homeless or at risk of homelessness.

8 This applies in the case of child neglect, not child abuse. In deciding whether to refer someone the caseworker is required to consider the best interests of the child, the manner in which Centrelink benefits are being used; the availability of additional support services such as financial management services; and whether income management will improve their circumstances.

9 The NT AMT Tribunal issues income management orders for up to 12 months to people who have been placed in mandatory treatment for alcohol related issues.

- *Automatic vulnerable income management for young people* for:
  - those aged under 16 years receiving Special Benefit;
  - those aged between 16 and 24 years who have been granted a level of Youth Allowance at the Unreasonable to Live at Home level of payment;
  - those aged under 25 years who have received Crisis Payment on release from prison or psychiatric confinement.

4.8 Although income management applies to 15 locations outside of the NT, it is only the NT program that primarily involves people subject to income management because of the length of time they have been receiving benefits (long-term welfare recipients and disengaged youth).

4.9 Income management limits the amount of income support a person will be directly paid and restricts how the remainder of the income support payment can be spent. Most people subject to income management have 50 per cent of their Centrelink payments income managed, but this rises to 70 per cent for those on Child Protection Income Management.

4.10 Income managed funds can be subject to automatic deductions to meet 'priority needs'. Priority needs' are defined as:

- Food, non-alcoholic beverages, clothing, footwear, basic personal hygiene items, and basic household items;
- Housing (including rent, home loan repayments, repairs, and maintenance), household utilities (including electricity, gas, water, sewerage, garbage collection, and fixed-line telephone), rates and land tax;
- health (including medical, nursing, dental or other health services, pharmacy items (the testing of eyes, the prescribing of spectacles or contact lenses, the supply of spectacles or contact lenses); the management of a disability; child care and development, and the supply, alteration or repair of artificial teeth, artificial limb (or part of a limb), artificial eye or hearing aid, or of a medical or surgical appliance);
- education and training;
- items required for the purposes of the person's employment (including a uniform or other occupational clothing, protective footwear, and tools of trade);
- funerals;
- public transport services, where the services are used wholly or partly for purposes in connection with any of the above needs;

- the acquisition, repair, maintenance or operation of a motor vehicle, a motor cycle, or a bicycle that is used wholly or partly for purposes in connection with any of the above needs; and
- anything else specified in a legislative instrument made by the minister.[10]

4.11 The remainder of the restricted funds can only be accessed using a 'BasicsCard' which allows funds to be spent in stores that accept the card on essential 'basic' items and not on 'excluded goods' or 'excluded services'. Excluded goods are alcoholic beverages, tobacco products, pornographic material, and goods specified in a legislative instrument made by the minister.[11] 'Excluded services' are gambling or a service specified in a legislative instrument made by the minister.[12]

4.12 Around 90 percent of those subject to income management in the NT are Indigenous (around 60 per cent are female),[13] with estimates that just over one-third of the total Indigenous population is subject to income management.[14] Around 78 per cent of all people on income management are on compulsory income management.[15]

4.13 The largest numbers of people subject to income management are on Newstart, Disability Support Pension, Parenting Payments and Youth Allowance.[16] A person subject to compulsory income management because they are considered to be a long-term welfare payment recipient or a disengaged youth can seek an exemption for 12 months from income management if they meet specified criteria. However, very few exemptions from income management have been granted, with most being obtained by non-Indigenous people (the exemption rate for non-Indigenous people is 36.3 per cent compared to 4.9 per cent for Indigenous people).[17]

4.14 As noted above at paragraph [4.7], in the NT there are three categories of vulnerable income management referrals; referral by: a Centrelink social worker; a child protection worker; and, the NT AMT Tribunal.

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10 *Social Security Administration Act 1999*, section 123TH.

11 *Social Security Administration Act 1999*, section 123TI(1).

12 *Social Security Administration Act 1999*, section 123TI(2).

13 See Bray, JR, Gray, M, Hand, K, & Katz, I, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report*, September 2014 (SPRC Report 25/2014) 53 ('Final Evaluation Report'); Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) Attachment A.

14 Final Evaluation Report 72 and 55.

15 Final Evaluation Report 50.

16 Final Evaluation Report 67.

17 Final Evaluation Report 98.

4.15 A person may be placed on income management via referral by a Centrelink social worker where the worker assesses the person as being vulnerable to financial crisis. This could include people referred to state housing authorities because they are at risk of homelessness due to rental arrears.

4.16 A person may be referred by a case worker from a child protection authority where the case worker believes that income management can help the person and her/his family. In these cases, income management will run for an initial period of three to 12 months, and following assessment of a person's progress, may be extended for another three to 12 months. No exemptions are possible but a person may appeal the decision of a child protection case worker.

4.17 Referral by the NT AMT Tribunal was introduced with the Stronger Futures measures. Under this process, a person receiving welfare will also be subject to income management if the NT AMT Tribunal makes a mandatory treatment order in relation to that person.[18] A mandatory treatment order will be made when the NT AMT Tribunal considers that an adult is misusing alcohol, has lost the capacity to make appropriate decisions about their alcohol use or personal welfare and the misuse is a risk to their health, safety or welfare or to others. A person affected by the decision can make an application to the NT AMT Tribunal for it to vary, revoke or replace the income management order, but there is no access to independent merits review of the NT AMT Tribunal's decision (appeals can only be made to the Local Court on questions of law).[19]

4.18 The Senate Community Affairs Legislation Committee, in its report on the Stronger Futures measures, recommended that the legislation be amended so that only agencies that have in place appropriate internal and external review and appeal processes are able to refer people for income management.[20]

4.19 The government has committed to extending the income management program. In the 2015-16 Budget, funding was provided to extend income management for a further two years. Unspecified funding was also provided for a trial to evaluate the effectiveness of restricted debit card arrangements, which will limit access to discretionary cash for certain welfare recipients. This is based on the recommendation made in the Creating Parity report (the Forrest Review), that a Healthy Welfare Card should be introduced preventing welfare recipients from accessing any cash and restricting purchases that can be made using their welfare payments.[21]

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18 Section 34 of the *Alcohol Mandatory Treatment Act* (NT).

19 Section 51 of the *Alcohol Mandatory Treatment Act* (NT).

20 See Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012), recommendation 6, paragraph [3.28].

21 Andrew Forrest, *Creating Parity: the Forrest Review* (2014), Recommendation 5: Healthy Welfare Card, 28-29.

4.20 In light of the government's commitment to extend the income management regime, the report of this committee is particularly vital.

Findings of the 2013 report on income management

4.21 The committee's 2013 report found that the income management regime in the NT overwhelmingly applies to Aboriginal communities and so engages the right to equality and non-discrimination. That report also found that the income management regime limits the right to social security, the right to an adequate standard of living, and the right not to have one's privacy, family and home unlawfully or arbitrarily interfered with.

4.22 The 2013 report considered that the regime pursued a legitimate objective, but questioned whether the measures were rationally connected to achieving the stated objective and proportionate.

4.23 The 2013 report concluded that the government had not yet clearly demonstrated that:

- to the extent that the regime may have a differential impact based on race, it is reasonable and proportionate and therefore not discriminatory; and
- the regime is a justifiable limit on the right to social security and the right to privacy and family.

New information post-2013 report

4.24 Since the committee's 2013 report, three significant reports commissioned by the Australian government evaluating the effectiveness of the income management regime have been released, though only one examines its operation in the NT. These reports are the Social Policy Research Centre's Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, and Deloitte Access Economics' Placed Based Income Management Evaluation, which examined how income management operated in five disadvantaged locations across Australia since July 2012: Logan (Qld), Rockhampton (Qld), Shepparton (Vic), Bankstown (NSW) and Playford (SA).

4.25 The third report, also conducted by the Social Policy Research Centre, examined the operation of income management in the NT, and is titled Evaluating New Income Management in the Northern Territory: Final Evaluation Report (Final Evaluation Report). The committee relies on these detailed evaluations, as well as correspondence with the current and former ministers, and submissions to this inquiry for its present review.

Rights engaged

4.26 The government has stated that the goals of income management are to achieve results that would advance the enjoyment of a number of rights. Quarantining income support payments of vulnerable individuals and families to ensure that a portion of a person's income support payments are spent on essential

needs, and limiting expenditure on excluded items, including alcohol, may contribute to the enhanced enjoyment of a number of rights. In particular, the right to housing[22] may be advanced by helping to ensure that a portion of a person's income support payments is spent on rent. In addition, the right of children to benefit from social security,[23] the right of children to the highest attainable standard of health,[24] and to an adequate standard of living,[25] will all likely be advanced by income management as income support payments are used to cover minimum basic essential goods and services necessary for the full development of the child.

However, in addition to seeking to promote these rights, the committee considers that the income management regime engages and limits the following rights:

- the right to equality and non-discrimination;[26]
- the right to social security;[27]
- the right to an adequate standard of living;[28] and
- the right to privacy.[29]

Compatibility of the measures with multiple rights

Right to equality and non-discrimination

4.27 The government maintains that the income management regime does not involve racial discrimination on two grounds. First, because the income management regime makes no reference to race in the criteria for those who are liable to be subjected to compulsory income management or who may elect voluntary income management, the measures do not involve differential treatment that is racially based. Second, in any case, income management does not breach the right to equality and non-discrimination because it is a reasonable and proportionate means of ensuring the well-being of vulnerable individuals and families.

4.28 The former minister explained:

> Income management, including as amended by this Bill, is consistent with the obligation of the State to undertake not to engage in any act or practice of 'racial discrimination' against persons, groups of persons or institutions (art 2(1)(a) of the ICERD).

22 ICESCR, article 11(1); CRPD, article 28; CERD, article 5(e)(iii), CRC, article 27(3).

23 CRC, article 26.

24 CRC, article 24.

25 CRC, article 27.

26 ICCPR, article 2 and 26; ICESCR, article 2.2; ICERD, articles 1, 2, 4 and 5; CRC, article 2.

27 ICESCR, article 9.

28 ICESCR, article 11.

29 ICCPR, article 17.

> Income management applies in the same way to any person receiving a social security payment in a designated income management area regardless of race.
>
> Income management does not apply in every part of Australia, although its operation is being expanded, and the legislation is capable of national application. The areas into which the measure will be expanded from 1 July 2012 were chosen having regard to a range of objective, non race-based criteria, including unemployment levels, youth unemployment, skills gaps, the number of people receiving welfare payments, and the length of time people have been on income support payments.[30]

4.29 The former minister reiterated this position:

> In areas where income management applies or will apply, it is and will be applied to income support recipients on the basis of non race-based criteria related to indicators of risk for the welfare recipient or to children in their care; following assessment by a delegate; or following assessment by a state or territory body exercising a discretionary power to apply income management.[31]

4.30 The current minister has made a similar argument. In a letter to the committee, the current minister noted that 'income management is not an Indigenous-specific measure'.[32] This is true, and the expansion of the income management regime to communities outside the NT is further evidence of this fact.

4.31 However, even though the income management regime is not based on race, many submissions to this inquiry noted that it appears to apply overwhelmingly to Indigenous people. For example, in a joint submission, the Australian Council of Social Service and the Northern Territory Council of Social Service explained that 'despite amendments to achieve compliance with the RDA [*Racial Discrimination Act 1975*]', they remained concerned that 'the policy's design and implementation ensures its disproportionate impact on Aboriginal and Torres Strait Islander peoples'.[33]

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30 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

31 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 4.

32 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

33 Australian Council of Social Service (ACOSS) & Northern Territory Council of Social Service (NTCOSS), Submission 12, 1.

4.32 The former minister recognised that the income management regime may disproportionately affect Indigenous Australians. However, the former minister explained that, rather than a result of design, this fact simply:

> …reflects the fact that the proportion of Indigenous people in the Northern Territory on income support payments is high; and also reflects the fact that of the 4,096 people who chose voluntary income management in the Northern Territory, more than 98 per cent are Indigenous.[34]

4.33 This has not changed in the intervening period. Indeed, the current minister has acknowledged that the additional sites where income management applies are predominately Indigenous communities:

> Of the income management sites outside the NT, the majority of the population (exact percentages are not disclosed) is Indigenous in the four Cape York communities, APY Lands, Ng Lands (including Kiwirrkurra) and Ceduna. In Perth Metro and the Kimberly, 63 per cent of the population is Indigenous and in locations where place-based income management is implemented (Bankstown, Greater Shepparton, Logan, Playford, Rockhampton) 18 per cent of the population is Indigenous.[35]

4.34 Data, current as at 28 August 2015, collected by the Department of Social Services and provided by the current minister to the committee indicates that, in the NT, 88 per cent of people on income management are Indigenous. Across Australia, 78 per cent of people on income management are Indigenous.[36]

4.35 The ICCPR defines 'discrimination' as a distinction based on a personal attribute (for example, race, sex or religion),[37] which has either the purpose (called 'direct' discrimination), or the effect (called 'indirect' discrimination), of adversely affecting human rights.[38] The UN Human Rights Committee has explained that indirect discrimination is 'a rule or measure that is neutral on its face or without

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34 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

35 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

36 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015).

37 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

38 UN Human Rights Committee, *General Comment 18*, Non-discrimination (1989). See also ICERD, article 1.

intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.[39]

4.36 This understanding is congruent with the definition of racial discrimination in article 1 of the ICERD, which refers to measures as racially discriminatory if they have 'the purpose or effect' of restricting the enjoyment of human rights.

4.37 As such, in order to be non-discriminatory the income management measures will need to be shown to be based on objective and reasonable grounds and be a proportionate measure in pursuit of a legitimate objective. The analysis conducted under this test is essentially similar to that considered when assessing whether a limitation on a right is permissible.

Right to social security

4.38 The right to social security is protected by article 9 of the ICESCR. This right recognises the importance of adequate social benefits in reducing the effects of poverty and plays an important role in realising many other economic, social and cultural rights, particularly the right to an adequate standard of living and the right to health.

4.39 Access to social security is required when a person has no other income and has insufficient means to support themselves and their dependents. Enjoyment of the right requires that sustainable social support schemes are:

- available to people in need;
- adequate to support an adequate standard of living and health care;
- accessible (providing universal coverage without discrimination and qualifying and withdrawal conditions that are lawful, reasonable, proportionate and transparent; and
- affordable (where contributions are required).

Right to an adequate standard of living

4.40 The right to an adequate standard of living is described above at paragraphs [2.31] to [2.32].

Right to privacy

4.41 Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home. However, this right may be subject to permissible limitations which are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to achieving that objective.

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39 *Althammer v Austria* HRC 998/01, [10.2].

4.42 Privacy is linked to notions of personal autonomy and human dignity: it includes the idea that individuals should have an area of autonomous development; a 'private sphere' free from government intervention and excessive unsolicited intervention by others. The right to privacy requires that the state does not arbitrarily interfere with a person's private and home life.

Compatibility of the measure with these rights

4.43 In its 2013 report the committee found that the income management regime limits the right to social security, the right to an adequate standard of living, and the right to privacy. In particular, the committee held that the regime involves:

> a significant intrusion into the freedom and autonomy of individuals to organise their private and family lives by making their own decisions about the way in which they use their social security payments.[40]

4.44 In introducing the Stronger Futures measures, the former minister argued that the income management regime is consistent with the right to social security, noting that:

- income management does not limit access to social security, nor does it reduce the amount of the benefit provided. Rather, it provides that the benefit is provided in a particular way; and
- the Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'.[41]

4.45 The committee agrees with this analysis. However, the Committee on Economic, Social and Cultural Rights has also stated that the provision of social security should aim to prevent social exclusion and promote social inclusion.[42] Evidence indicates that despite some mixed support for the system, the income management regime fails to promote social inclusion, but rather stigmatises individuals, and as such, limits the enjoyment of the right to social security, an adequate standard of living and privacy. This evidence will be examined below.

4.46 Accordingly, it is necessary to justify that the measure pursues a legitimate objective, is rationally connected to achieving that objective, and that it imposes only a proportionate limitation on these rights.

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40 See 2013 report, 60, paragraph [1.215].

41 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 2. Citing Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art 9)* (23 November 2007), UN Doc. E/C.12/GC/19, paragraph [2].

42 Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art 9)* (23 November 2007), UN Doc. E/C.12/GC/19, paragraph [3].

Legitimate objective

4.47 The rationale for the income management regime has been set out in a number of explanatory memoranda and statements accompanying the Stronger Futures legislative measures. For example, the statement of compatibility relating to one of the more recent legislative instruments made under the Stronger Futures legislation states that the key objectives of income management are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependants;
- help affected welfare payment recipients to budget so that they can meet their priority needs;
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments; and
- encourage socially responsible behaviour, particularly in the care and education of children.[43]

4.48 As noted above at paragraph [4.26], the income management regime is also intended to advance a number of other rights, including the right to housing and the rights of children to: benefit from social security; an adequate standard of living; and the highest attainable standard of health. The former minister identified this and reiterated that the 'central purpose' of income management is to:

> …ensure that a portion of income support payments are used to cover minimum basic essential goods and services, including food, rent and utilities. This improves living conditions for the children of income support recipients subject to income management.[44]

4.49 In its 2013 report, the committee accepted that the objective of income management is to support vulnerable individuals and families by helping to ensure that a portion of a person's income support and family payments is spent on essential needs, and limiting expenditure on excluded items, including alcohol, tobacco, pornography and gambling goods and activities. The committee remains convinced that improving living conditions for the children of income support recipients, encouraging socially responsible behaviour and reducing harassment and

43 Social Security (Administration) (Declared income management areas – Ceduna and Surrounding Region) Determination 2014 [F2014L00777], statement of compatibility 7.

44 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

abuse of income support payment recipients is an important and worthwhile objective.

Rational connection

4.50 In terms of rational connection, the key question is whether the measures are likely to be effective in achieving the objective. On that basis, the committee must assess whether the income management regime is likely to be effective in achieving the aim of supporting budgeting skills and financial acumen, ensuring that the priority needs of housing and food are met, and increasing socially responsible behaviour, including care and education of children.

4.51 When introducing the Stronger Futures legislative measures to amend the operation of the income management regime, the former minister argued that the regime was achieving its objectives:

> Evaluations in the NT and WA indicate that income management is having a positive effect on the lives of many individuals. In a WA evaluation a majority of participants believed income management has had a positive impact on the wellbeing of individuals, children and families. In relation to income management's application in the NT, there is evidence that income management is achieving positive outcomes, particularly for children.[45]

4.52 Noting this statement, the committee's 2013 interim report found that there is 'a range of evidence available on the effects, positive and negative, of income management'.[46]

4.53 Indeed, some evidence suggested that income management was having a minimal effect on limiting purchases of excluded goods and increasing purchases of 'beneficial' goods. For example the Menzies School of Medical Research compared expenditure patterns of stores in the NT from 2006 to 2009. It found that income management 'appeared to have no effect on total store sales, food and drink sales, tobacco sales, and fruit and vegetable sales, independent of the government stimulus payment'.[47]

4.54 At the time of the committee's interim report, the First Evaluation Report commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs had been published. This report examined income management in the NT up until October 2011 and found diverse impacts across the schemes, both in how those subject to income management viewed and experienced the process and

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45 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 4.

46 See 2013 report, 53, paragraph [1.189].

47 Julie Brimblecombe et al, 'Impact of income management on store sales in the Northern Territory' (2010) 192:10 *Medical Journal of Australia* 549, 552.

also in the effect it had on their lives so far as ensuring that the priority needs of themselves and their families were concerned. That study concluded:

> The evidence gathered to date for this evaluation suggests that NIM [New Income Management] has had a diverse set of impacts. For some it has been positive, for others negative and for others it has had little impact. Taken as a whole there is not strong evidence that, at this stage, the program has had a major impact on outcomes overall. Although many individuals report some gains, others report more negative effects.[48]

4.55 In terms of potential long-term impact, the report found:

> There is little evidence to date that income management is resulting in widespread behaviour change, either with respect to building an ability to effectively manage money or in building 'socially responsible behaviour' beyond the direct impact of limiting the amount that can be spent on some items. As such, the early indications are that income management operates more as a control or protective mechanism than as an intervention which increases capabilities.[49]

4.56 As noted above at paragraph [4.25], since the committee's 2013 report, the Final Evaluation Report into income management in the NT has been published. This substantial report provides detailed evaluation of the effectiveness of the income management regime and has found that it has been of mixed success.

4.57 In particular, for persons subject to compulsory income management, the Final Evaluation Report found no evidence that income management has achieved its intended outcomes. Rather than promoting independence and building skills and capabilities, it appears to have 'encouraged increasing dependence upon the welfare system', and there is no evidence to indicate its effectiveness at the community level or that it facilitates long-term behaviour change. [50] The evaluation found further that:

- income management has been relatively successful in ensuring income managed funds are not spent on proscribed items;
- there is little evidence to show funds have been used simply for priority needs (for example, spending on fruit and vegetables on the BasicsCard is very low);
- significant problems have been reported with the BasicsCard (such as not supporting the payment of rent in group housing situations requiring cash payments, and the limited number of outlets at which it can be used), although some people value the fee-free banking service it provides;

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48 J Rob Bray et al, Social Policy Research Centre, UNSW, Australian National University and Australian Institute of Family Studies, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (July 2012) 266 ('First Evaluation Report').

49 First Evaluation Report xix.

50 Final Evaluation Report 320.

- around two-fifths of people on income management thought it had made things better for them, about one-third thought it had made no difference and about one-quarter thought it had made things worse for them;
- a substantial group of people felt that income management is unfair, embarrassing and discriminatory;
- there was no substantive evidence that the program had made significant changes, including changing people's behaviour;
- there was no evidence of changes in spending patterns, other than a slight possible improvement in the incidence of running out of food for those on voluntary income management;
- there was no evidence of overall improvement in financial wellbeing;
- there were some positive outcomes for those assessed as vulnerable income management (referred by a Centrelink social worker); and
- many of those on income management want to remain on it indefinitely as it was easier to stay on; therefore, rather than building capacity and independence, the program has made many people more dependent on welfare.[51]

4.58 Taken holistically, the Final Evaluation Report indicates that income management is most effective when it is applied to participants after considering their individual circumstances, rather than applied coercively and compulsorily.[52]

4.59 Consistent with the findings of the Final Evaluation Report, is an August 2014 evaluation of the Place-based income management sites (at the time: Playford, Greater Shepparton, Bankstown, Rockhampton and Logan). This report found that while voluntary income management participants benefited from the scheme, persons referred to income management based on their membership of a category (i.e. compulsory income management participants) did not show positive improvements in financial stress indicators, or in expenditure on tobacco or alcohol.[53]

4.60 A third report, evaluating income management in the Anangu Pitjantjatjara Yankunytjatjara Lands was more positive. This report found that a majority of community members and other stakeholders who participated in the study were positive about the introduction of income management. The report found further that income management may have made a 'modest contribution' to addressing challenges within the community, but that responses were mixed in relation to its

51 Final Evaluation Report xxi-xxii.

52 Final Evaluation Report 320.

53 Deloitte Access Economics, *Place Based Income Management – Process and short term outcomes evaluation* (Department of Social Services, August 2014) 103-104.

impact on the wellbeing of the community as a whole.[54] However, critically, the report notes that 'the fact that the communities had requested income management, and had been consulted about its introduction, appears to have had a major influence on the communities' view of income management'.[55]

4.61 Significantly, the design of a compulsory income management regime appears to hamper its possible effectiveness, by failing to properly target those who would be assisted by income management. The Final Evaluation Report noted that the targeting strategies employed under the income management regime were not appropriately adapted to achieving its objectives:

> There was no evidence that targeting income management on the basis of duration in receipt of income support payment provides an effective basis for identifying those with particular vulnerabilities or a low level of money management skills. Similarly, there is no evidence that the range of income support payments at which Compulsory Income Management is targeted reflects the groups at highest risk. Compulsory Income Management is imposed upon a large group of people whom income management does not assist. This imposes costs upon those subject to income management and to the government.[56]

4.62 This is consistent with the report's findings that individual consideration, rather than blanket application of a rule, is integral to building financial capability and ultimately ensuring that sufficient levels of income support payments are used to cover minimum basic essential goods and services—the aims of the program.

4.63 On the basis of these three reports, the compulsory income management regime does not appear to be an effective approach to addressing issues of budgeting skills and ensuring that an adequate amount of income support payments is spent on priority needs. While the income management regime may be of some benefit to those who voluntarily enter the program, it has limited effectiveness for the vast majority of people who are compelled to be part of it.

Proportionality

4.64 In assessing whether a measure is proportionate some of the relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the merits of an individual case, whether affected groups are particularly vulnerable, and whether there are other less restrictive ways to achieve the same aim. It is also

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54 Ilan Katz and Shona Bates, Social Policy Research Centre, UNSW, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (September 2014) 1-2.

55 Ilan Katz and Shona Bates, Social Policy Research Centre, UNSW, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (September 2014) 41. See also Dr Shelly Bielefeld, Submission 10, 3.

56 Final Evaluation Report 319.

relevant to consider whether the communities affected by the measure have been consulted and agree to the measures imposed.

4.65 The government maintains that the income management regime is a reasonable and proportionate means of promoting the right to housing as well as the rights of children to: benefit from social security; the highest attainable standard of health; and an adequate standard of living. This position is neatly encapsulated in explanatory statements accompanying a number of the legislative instruments adopted to implement the *Stronger Futures* measures. For example, in relation to declarations of voluntary income management that specify the Greater Adelaide region, the explanatory statement provided:

> The Determination is compatible with human rights. Income management will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependants whilst also helping to improve their budgeting skills so they can meet their priority needs. To the extent that they may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.[57]

4.66 This position has not substantially changed from 2012, when the former minister explained that:

> Substantial benefits can be achieved for individuals through income management, including ensuring that sufficient food is available to recipients and dependents, stable and adequate housing is secured, access to essential utilities is maintained and harassment is minimised.[58]

4.67 However, stakeholders and submitters to this inquiry questioned this view. In particular, many individuals and organisations were concerned with: the compulsory aspects of the regime and the difficulty of obtaining exemptions or exceptions; the particular effect on Indigenous Australians; and whether less rights restrictive measures may offer a clearer path to achieving the objectives of income management. Indeed, the joint submission of the Australian Council of Social Service and the Northern Territory Council of Social Service, spoke for many when it noted

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57 Explanatory statement, Social Security (Administration) (Declared voluntary income management areas – New South Wales, Queensland, South Australia and Victoria) Amendment Declaration 2015 [F2015L01511] 7.

58 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

its concern that 'compulsory income management is a crude, stigmatising and ineffective policy response to a range of complex social problems'.[59]

Insufficient flexibility

4.68 As noted above at paragraph [4.7], a major aspect of the income management regime is that it is compulsory.

4.69 The blanket imposition of income management based on a person's membership of a category significantly curtails the flexibility of the program. This is particularly problematic as, as noted above at paragraphs [4.57] to [4.62], research evaluating the effectiveness of the program demonstrates that compulsory income management does not produce beneficial results. This research indicates that income management is most effective when it is voluntary, or when it is applied to individuals after considering their particular circumstances—that is, when it is applied flexibly.

4.70 Of course, the process is not entirely inflexible and exemptions from the compulsory income management regime are possible if a person is able to demonstrate certain behaviour. However, the process of applying for and obtaining exemptions is also problematic and appears to discriminate in effect against Indigenous Australians.

4.71 The Final Evaluation Report recorded that the exemption rate between August 2011 and December 2013 was steady at around 1600 people. Likewise, the exemption rate has also remained steady at approximately 10 per cent.[60] However, as the report notes (and is illustrated in Table 4.1 set out below), this relatively low exemption rate obscures dramatic variation by both gender and Indigenous status.[61]

Table 4.1 Exemption rates by gender and Indigeneity as at December 2013

	Non-Indigenous			**Indigenous**		
	Male	**Female**	**Total**	**Male**	**Female**	**Total**
Total	7.8%	51.4%	36.3%	0.4%	7.6%	4.9%

4.72 The very low rate of exemptions among Indigenous peoples can somewhat be explained by a lower application rate. The National Welfare Rights Network examined income management appeal data obtained through Senate Estimates and

59 Australian Council of Social Service (ACOSS) & Northern Territory Council of Social Service (NTCOSS), Submission 12, 1.

60 Final Evaluation Report 96.

61 Final Evaluation Report 98.

found that despite making up approximately 90 per cent of those on income management, Indigenous people accounted for only one-third of those lodging appeals.[62] This finding accords with that of the Final Evaluation Report.[63]

4.73 In its submission to this inquiry, the North Australian Aboriginal Justice Agency (NAAJA) argued that barriers to accessing exemptions, appeals and information is a critical reason for the low application and low exemption rates of Indigenous Australians. NAAJA explained:

> …someone without dependent children has to be working 15 hours a week for six months, or engaged in fulltime study to obtain a 12 month exemption from income management. This is nearly impossible in remote communities because of limited access to employment and educational opportunities and entrenched barriers to participation in the few jobs or fulltime study opportunities that arise (e.g. low literacy and numeracy skills, poor health, inadequate housing and cultural and language differences).[64]

4.74 NAAJA informed the committee that it has previously raised its concerns with the exemption process with the Department of Human Services. In its view, 'the process itself was contributing to the low rate of exemptions amongst Aboriginal people in the NT', in particular:

- the lack of accessibility of the exemption process, particularly for remote clients;
- the lack of information about exemptions in remote communities; and
- the lack of clear information about Centrelink's decisions provided to remote Aboriginal customers in exemption rejection letters.[65]

4.75 In her submission to this inquiry, the Northern Territory Anti-Discrimination Commissioner agreed with NAAJA, describing the exemption system as 'discriminatory' because it 'includes numerous structural and systemic barriers for Aboriginal people living in remote communities of the Northern Territory'.[66]

4.76 The Final Evaluation Report noted similar problems:

> A very clear theme in views around the experience of trying to obtain an exemption concerned the amount of paperwork people were required to complete and records they had to obtain. In some cases this resulted in people simply walking away from the process. This problem was often compounded by the fact that English was not their first spoken language…

62 National Welfare Rights Network, Submission 14, 12.

63 Final Evaluation Report 106.

64 NAAJA, Submission 20, 8.

65 NAAJA, Submission 20, 9.

66 Northern Territory Anti-Discrimination Commissioner, Submission 21, 1-2.

> A particular issue raised by many was the reliance by Centrelink on a centralised exemptions team that people had to deal with by phone. This presented a range of problems for some, including: the cost of contact, difficulties relating to language, and cultural preferences to deal with people face-to-face.[67]

4.77 The Final Evaluation Report's conclusions demonstrate that the exemption process is not working effectively:

> Exemptions constitute a mechanism that is disproportionately used by non-Indigenous people with children, most of whom are never actually placed on income management. Access to exemptions by Indigenous Australians is low and there is no evidence of the gap closing, nor is there evidence of access to exemptions operating as an incentive for changing behaviours, or of income management playing a role in preparing people to be in a situation in which they can gain an exemption.[68]

4.78 The compulsory income management regime does not operate in a flexible manner. Evidence indicates that the blanket application of the regime disproportionately affects Indigenous Australians and the exemption process is not conducive to allowing Indigenous Australians to apply for an exemption and to succeed in that application. This indicates that the income management regime may be a disproportionate measure and therefore incompatible with Australia's international human rights law obligations.

Vulnerability of particular groups

4.79 As discussed above at paragraphs [4.35] to [4.37], a measure can be indirectly discriminatory if, though neutral on its face, it disproportionally affects people with a particular personal attribute, such as race. In order to be non-discriminatory the government must demonstrate that the regime is based on objective and reasonable grounds and is a proportionate measure in pursuit of a legitimate objective.

4.80 Although the income management regime is not an Indigenous specific measure, the 2014 Final Evaluation Report noted that around 90 percent of those subject to income management in the NT are Indigenous (around 60 per cent are female),[69] with estimates that just over one-third of the total Indigenous population is subject to income management.[70] Across all sites around the country, approximately 78 per cent of people on income management are Indigenous.[71] The

67 Final Evaluation Report 112.

68 Final Evaluation Report 117.

69 Final Evaluation Report 53.

70 Final Evaluation Report 72 and 55.

71 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) Attachment A, 1.

Northern Territory Anti-Discrimination Commissioner has described this as an 'ongoing concern'.[72]

4.81 In addition, as noted above at paragraphs [4.71] to [4.77], the exemption process seems to result in a disproportionately lower number of Indigenous Australians succeeding in obtaining an exemption from the compulsory income management regime (or even applying for an exemption). Indeed, the particular vulnerabilities of Indigenous Australians subject to compulsory income management, such as language barriers and remote location, do not appear to have been considered in developing the measure.

Less restrictive ways to achieve the same aim

4.82 Another important factor in assessing the proportionality of a measure is whether there are less rights restrictive ways to achieve the same objective. As the committee has already noted, quarantining income support payments and precluding the purchase of proscribed items on the basis of a category or place limits a number of human rights.

4.83 This is significant because, as the committee noted at paragraphs [4.59] to [4.62], evidence from two Department of Social Services' commissioned reports (the Final Evaluation Report and the Place Based Income Management Report) indicate that compulsory income management does not produce beneficial results.

4.84 Indeed, both reports found that compulsory income management, rather than encouraging individuals to take control of their financial wellbeing, may produce negative effects. The Place Based Income Management Report noted that people on compulsory income management reported 'more negative experiences' as a result of their participation, including 'a greater proportion feeling judged and embarrassed when they use the BasicsCard'.[73]

4.85 The First Evaluation Report found that people commonly associated embarrassment and stigma with using the BasicsCard.[74] Qualitative interviews of people subject to income management, Centrelink staff, service providers, and merchants indicated that this stigma is widespread, compromising a person's right to social security as well as privacy. The report observed that BasicsCard users reported:

- being told by shop assistants that their choice of purchases is inappropriate, even though it did not fall within the list of excluded items;
- feelings of stigmatisation surrounding identification as 'deficient' or as 'bad mothers';

72 Northern Territory Anti-Discrimination Commissioner, Submission 21, 1.

73 Deloitte Access Economics, *Place Based Income Management – Process and short term outcomes evaluation* (Department of Social Services, August 2014) 96.

74 First Evaluation Report 93.

- being repeatedly asked by shop assistants whether they have sufficient balance; and
- that going to the supermarket can be a 'shame job', especially where they do not know or have miscalculated their balance, forcing some people to shop in a suburb away from their home to avoid being seen using it.[75]

4.86 In its submission to this inquiry, NAAJA reiterated these observations. NAAJA explained that it has:

> …lodged complaints on behalf of people discriminated against in shops because they are BasicsCard customers. We have witnessed customers being publically humiliated by supermarket staff and noticed a marked difference in the treatment given to Aboriginal customers paying with a BasicsCard and the treatment of non-BasicsCard customers.[76]

4.87 Many submissions to this inquiry noted that the focus on quarantining income support payments was misguided. In the view of these submitters, entrenched disadvantage and structural barriers that Indigenous Australians face and contend with are the root cause of disadvantage. For example, NAAJA explained:

> The idea that quarantining the income support payments of individuals can address the root causes of Aboriginal intergenerational disadvantage, in the context of significant structural barriers to economic development, is simplistic and naïve. Addressing entrenched social disadvantage requires sustained investment into community driven initiatives and support services that promote self-determination and autonomy rather than control and punishment.[77]

4.88 NAAJA continued:

> There is no guarantee that a person who has their income managed will use their money 'responsibly'. Consumption and spending patterns do not change based on income source – they are connected to availability of fresh food, access to alternatives and education levels. Factors such as substandard housing and overcrowding, poor health, domestic violence and geographic isolation adversely affect child health outcomes and school attendance and educational outcomes. These can be factors that parents have limited ability to control.[78]

4.89 NAAJA reiterated these comments throughout its submission:

> Income management does not create employment or education opportunities or address barriers to employment.[79]

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75 First Evaluation Report 93-94.

76 NAAJA, Submission 20, 7.

77 NAAJA, Submission 20, 13.

78 NAAJA, Submission 20, 17.

79 NAAJA, Submission 20, 17.

> There is limited access to financial support and counselling in remote communities. IM [income management] will not increase financial literacy, without specific investment into culturally competent services.[80]

4.90 The February 2015 Report of the Reference Group on Welfare Reform to the Minister for Social Services also agreed. This report urged that a cautious approach should be taken to expanding income management, noting that it should be used 'judiciously' and delivered 'in conjunction with financial capability and other support services'.[81] It is likely that these complementary services will produce greater benefits than the current income management regime.

4.91 This is significant as the current income management regime is expensive. In a 2014 article in the Sydney Law Review, Dr Shelly Bielefeld noted:

> Buckmaster and others estimate that the implementation of the income management scheme will cost the government 'in the range of $1 billion' between '2005-06 to 2014-15'. The Australian National Audit Office estimates that income management for welfare recipients living in remote areas costs approximately '$6600 to $7900 per annum', which is equal to 62 per cent of the $246-a-week Newstart Payment'. The finances currently allocated to resourcing the compulsory income management system could arguably be better spent on providing necessary social services to effectively assist these welfare recipients in a culturally appropriate manner.[82]

4.92 Indeed, the Social Policy Research Centre's *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* report noted that a range of voluntary measures designed to allow people to allocate money for specific purposes existed prior (and as an alternative) to the introduction of the BasicsCard.[83]

4.93 At least in the APY lands, these budgetary measures were seen as beneficial in helping individuals manage their finances. The committee considers that it is likely similar approaches in other communities would produce beneficial results without the stigmatising impact of compulsory income management. The National Welfare Rights Network agrees, noting that weekly payments of Centrelink benefits, 'an option that is currently used by around 20,000 vulnerable social security recipients' could also assist people with budgeting.[84]

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80 NAAJA, Submission 20, 16.

81 Report of the Reference Group on Welfare Reform to the Minister for Social Services, *A New System for Better Employment and Social Outcomes* (February 2015) 24.

82 Shelly Bielefeld, 'Compulsory Income Management and Indigenous Peoples – Exploring Counter Narratives amidst Colonial Constructions of 'Vulnerability' (2014) 36 *Sydney Law Review* 695, 716.

83 Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands*, 18-19.

84 National Welfare Rights Network, Submission 14, 13.

Consultation with affected communities

4.94 Finally, as noted in the committee's 2013 report, one of the much criticised features of the 2007 NTNER was the failure to consult with the communities and groups affected by the measures introduced.[85] The 2013 report acknowledged that in developing and introducing the Stronger Futures measures the government went to considerable effort to consult with Indigenous communities and other stakeholders around many aspects of the proposed measures.[86] However, as stated by the Senate Community Affairs Legislation Committee, notwithstanding this, there remained much confusion and frustration in many communities over the measures.[87]

4.95 Income management in the NT has never been implemented with the agreement of, or following consultation with, the communities in which it applies. As noted above at paragraph [4.60], consultation is recognised as critical in the effectiveness of any income management regime.

Committee view

4.96 In its 2013 report, the committee found that even though the income management regime is formulated without explicit reference to the race or ethnic origin of the potential participants, the history of the measure and the fact that it appears to apply overwhelmingly to Indigenous Australians suggest that it should be characterised as a measure that has the purpose or effect of limiting the rights of persons of a particular race or ethnic origin within the meaning of article 1 of the ICERD. No evidence since the 2013 report suggests that this finding should be revisited. The income management regime continues to overwhelmingly affect Indigenous Australians.

4.97 Additionally, despite having the potential to advance a number of human rights, the income management regime also engages and limits the right to social security, an adequate standard of living, and to privacy. Accordingly, it must be closely scrutinised and the onus is on the government to demonstrate clearly that it pursues a legitimate objective and is rationally connected to achieving that objective, as well as a proportionate measure.

4.98 The committee accepts that the objectives of the income management regime are legitimate. Improving the living conditions of children of income support recipients, reducing harassment and abuse and encouraging socially responsible behaviour are worthy and important goals.

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85 See 2013 report, 31.

86 See 2013 report, 31.

87 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) 62-63.

4.99 However, the committee is concerned that the income management regime is not rationally connected to achieving its objectives. Since the committee's 2013 report, three substantial evaluations of different aspects of the income management regime have been released. These reports demonstrate that income management is effective only when it is applied to participants after considering their individual circumstances, rather than applied coercively and compulsorily.

4.100 In any case, the committee considers that compulsory income management is a disproportionate measure. The imposition of significant conditions on the provision of income support payments, including what goods or services may be purchased and where, is an intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life.

4.101 The compulsory income management provisions operate inflexibly raising the risk that people who do not need assistance managing their budget will be caught up in the regime. This concern is heightened by the exemptions process which appears to discriminate in effect against Indigenous Australians.

4.102 Indeed, given the disparate impact on Indigenous people, the committee considers that the measures may be viewed as racially based differential treatment within the meaning of article 1 of the ICERD. Further, in light of the fact that there is some evidence to suggest that the majority of persons subject to income management are women, concerns also arise as to the consistency of the measure with guarantees against non-discrimination on the basis of sex.

4.103 The committee considers that a host of less rights restrictive measures may be developed and implemented in place of compulsory income management. Chief among these is removing the compulsory categories of income management and trialling a voluntary program across all current sites.

4.104 **The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family. Although the committee considers that under certain conditions income management is a legitimate and effective mechanism, evidence before the committee indicates that compulsory income management is not effective in achieving its stated objective of supporting vulnerable individuals and families. The committee considers that this objective remains an important and legitimate goal.**

4.105 **A human rights compliant approach requires that any measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The current approach to income management falls short of this standard. As such the committee makes the following recommendations in order to improve the human rights compatibility of the measures:**

Recommendation 4

- **The committee recommends the continuation of community led income management where there has been a formal request for income management in a particular community following effective consultation on the particular modalities of its operation, including whether it should be a voluntary program.**

Recommendation 5

- **The committee recommends that income management should be imposed on a person only when that person has been individually assessed as not able to appropriately manage their income support payments. Information concerning rights and processes of appeal should be provided to the person immediately and in a language that they understand.**

Chapter 5

School Enrolment and Attendance through Welfare Reform Measure

Background

5.1 The 2007 Little Children are Sacred report highlighted poor school attendance in the NT. The Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse lamented the 'miserable school attendance rates for Aboriginal children' and emphasised that education that addresses the needs of the local community 'provides the path to success'.[1]

5.2 In response, in 2009 the Australian government announced the School Enrolment and Attendance through Welfare Reform Measure (SEAM). In order to better encourage school enrolment and attendance, SEAM requires parents or carers, as a condition of their income support payments, to ensure their children are enrolled in and attending school. To be in-scope for SEAM, a person must:

- live in a SEAM location;
- have at least 14 per cent care of a child of compulsory school age; and
- receive or have claimed one of the following income support payments:
    - Age pension;
    - Austudy;
    - Bereavement allowance;
    - Carer Payment;
    - Disability Support Pension;
    - Mature Age Allowance;
    - Mature Age Partner Allowance;
    - Newstart Allowance;
    - Parenting Payment Partnered;
    - Parenting Payment Single;
    - Disability Wage Supplement;
    - Wife Pension;
    - Partner Allowance;

1 NT Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007) 18.

- Sickness Allowance;
- Special Benefit;
- Widow Allowance;
- Widow B Pension; or
- Youth Allowance.

5.3 SEAM offers social work support to help parents overcome barriers to school enrolment and attendance. As a last resort, parents may have their welfare payments suspended or cancelled. SEAM currently operates in specific sites and schools in the NT, including a number of predominantly Indigenous communities.

5.4 SEAM originally commenced in six sites involving 14 schools in the NT. For three years it also applied to a further six sites in Queensland involving 30 schools; however, in 2012 the Queensland Government elected not to proceed with SEAM as it did not consider the model had been effective in that jurisdiction.[2]

5.5 In 2013, following a three and half year trial, the Australian government allocated $107.5 million over ten years to implement a revised model of SEAM under the Stronger Futures in the NT budget measure. SEAM is currently operating in 23 NT communities covering 52 schools,[3] and is planned to continue until 2022.

5.6 SEAM has two main elements:

- increasing the number of children of compulsory school-age being enrolled in school; and
- identifying children who are enrolled at school but have problems with attendance and putting in place strategies to address these issues.

5.7 Where a child in one of the SEAM communities is not enrolled in school, welfare payments may be suspended if parents fail to provide information about their children's enrolment to the Department of Human Services and do not have a reasonable excuse for doing so.

5.8 Where a child in one of the SEAM communities is not attending school regularly (at least 80 per cent of the time), parents are required to participate in a compulsory conference and agree to enter into a school attendance plan. Where parents fail to attend the conference, enter into a plan, or comply with the agreed

2 Australian National Audit Office, *The Improving School Enrolment and Attendance through Welfare Reform Measure: Department of the Prime Minister and Cabinet, Department of Human Services*, Audit Report No. 51 2013-14, Performance Audit (2014) 27 ('ANAO report').

3 ANAO report 31. Note, SEAM originally started as a pilot but in 2013 funding was provided to continue the measure for ten years as part of the agreement between the Australian and NT governments—the *National Partnership on Stronger Futures in the Northern Territory*.

plan, they may be issued with a formal compliance notice which can lead to the suspension of income support payments.

5.9 The access and provision of social work is recognised as a key feature of SEAM. The suspension or cancellation of income support benefits cannot occur without proper assessment and understanding of family circumstances and before appropriate support is put in place. Social workers are required to contact parents who received an attendance notice within seven business days. Once contact is made, compulsory conferences to develop a school attendance plan, other forms of assistance, referrals to other services, and/or further contact is provided to assist families overcome barriers to attendance and comply with the requirements under SEAM.

5.10 If the parent does not comply within 13 weeks after payment is suspended they may face cancellation of their income support payments. If the parent does comply within 13 weeks the suspension is lifted and back pay is provided. Payments may be suspended more than once.

5.11 There were 2605 parents and 4214 children in-scope for the attendance component of SEAM.[4] The vast majority of parents and children subject to SEAM are Indigenous—in 2013 the Department of Human Services advised that 98 per cent of parents who attended a compulsory conference had identified as Indigenous.[5]

Findings of the 2013 report on SEAM

5.12 The committee's 2013 report found that SEAM overwhelmingly applies to Aboriginal communities and so engages the right to equality and non-discrimination. The committee also considered that the measures limit the right to social security, the right to an adequate standard of living and the right to privacy.

5.13 The 2013 report considered that the regime pursued the legitimate objective of improving school enrolment and attendance.

5.14 However, it questioned whether the measures were rationally connected to achieving the stated objective as there was debate over whether SEAM had a significant impact on school attendance, and whether the suspension and cancellation of welfare payments was proportionate.

5.15 The committee concluded that the government had not yet clearly demonstrated that:

- to the extent that SEAM may have a differential impact based on race, that it is reasonable and proportionate and therefore not discriminatory; and

4 As at 19 June 2015: Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 2.

5 ANAO report 58.

- that the regime is a justifiable limit on the right to social security, the right to privacy and family, the right to an adequate standard of living and the rights of the child.

5.16 The committee's 2013 report acknowledged that the process of evaluating SEAM was continuing, but that to date it had not clearly demonstrated that SEAM had a significant impact on reducing low school attendance. Therefore the report was not able to conclude that the government had shown that the interference with human rights was justified.

New information post-2013 report

5.17 Since the committee's 2013 report, two substantial evaluations of SEAM have been completed:

- The Australian National Audit Office (ANAO) conducted an independent performance audit of the Department of the Prime Minister and Cabinet (PM&C) and the Department of Human Services in relation to SEAM (ANAO report); and
- The PM&C undertook an evaluation report of the SEAM trial between 2012 and 2014 (PM&C report).

5.18 This report relies on the evaluation conducted by the ANAO and the PM&C and submissions to this committee's present review.

Rights engaged

5.19 It is clear that the level of school attendance in remote areas of Australia is a major concern. As such, improving school enrolment and attendance would contribute to the enhanced enjoyment of the right to education.[6] However, in addition to seeking to promote this right, the committee considers that imposing conditions on parents in receipt of social security in designated SEAM areas engages and limits the following rights:

- the right to equality and non-discrimination;[7]
- the right to social security;[8]
- the right to an adequate standard of living;[9]
- the right to privacy;[10] and
- the right to culture;[11]

6 ICESCR, article 13 and CRC, article 28.

7 ICCPR, article 2 and 26; ICESCR, article 2.2; ICERD, articles 1, 2, 4 and 5; CRC, article 2.

8 ICESCR, article 9.

9 ICESCR, article 11.

10 ICCPR, article 17.

Compatibility of the measures with multiple rights

Right to equality and non-discrimination

5.20 The government explains that SEAM is consistent with Australia's obligations of equality and non-discrimination. First, SEAM applies to all people receiving relevant income support payments in a SEAM area, regardless of race. Second, SEAM areas have been designated as such on the basis of a range of non-race-based criteria, 'including very poor school attendance and the likely effectiveness of funding the measure in that area'.[12]

5.21 Nevertheless, the communities chosen for SEAM all have a high proportion of residents who are Indigenous Australians. The former minister sought to explain:

> As a key criterion is poor school attendance, this is consistent with evidence that school attendance declines with remoteness, that there is a higher proportion of Indigenous people living in remote communities, and that there is a recognised gap in educational attainment between Indigenous and non-Indigenous Australians.[13]

5.22 The former minister continued:

> The Northern Territory has the lowest school attendance rates in Australia. In remote areas of the Northern Territory, school attendance is unacceptably low. The average primary school attendance is 60%, which equates to children missing two school days every week.[14]

5.23 The current minister reiterated these comments, explaining that SEAM 'is not an Indigenous-specific measure'.[15]

5.24 Even though SEAM is not expressly based on race, it applies overwhelmingly to Aboriginal communities. The current minister noted that while 'data on the percentage of Indigenous parents that are in-scope is not collected…given that SEAM is operational in remote communities in the NT, it is understood that a large

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11 ICCPR, article 27; ICESCR, article 15; CRC, article 30.

12 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

13 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011',7.

14 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011',7.

15 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

percentage of parents in-scope are Indigenous'.[16] As noted above, in 2013, '98 per cent of parents who attended a compulsory conference had identified as Indigenous'.[17]

5.25 As described above, indirect discrimination may comprise 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.[18]

5.26 In order to be non-discriminatory, such a measure will need to be shown to be based on objective and reasonable grounds and be a proportionate measure in pursuit of a legitimate objective. The analysis conducted under this test is essentially similar to that considered when assessing whether a limitation on a right is permissible.

Right to social security, adequate standard of living and privacy

5.27 SEAM involves an intervention into the family life of persons by requiring a child and parent or carer to adopt particular conduct, subjecting the person to a series of regulatory measures to encourage compliance, and providing for a sanction if the person fails to conform to the conduct stipulated. Insofar as the sanction of suspension or cancellation of income support benefits is concerned, that may also have an impact on the right to family life to the extent that it limits the economic resources that may be available to support members of the family, including family members who have no connection with any failure to take steps to address the unsatisfactory school attendance.

5.28 Limiting the payment of social security benefits when the conditions provided for under the legislation are satisfied will also potentially limit the right to an adequate standard of living as a family subject to suspension or cancellation of benefits will be forced to survive on limited means. Although SEAM 'does not apply to family payments', such as the Family Tax Benefit and Child Care Benefit, or to Carer's Allowance and Mobility Allowance, and these payments 'will continue to be paid during any suspension of income support payments', the loss of income support payments may potentially be quite significant.

5.29 The government states that SEAM is consistent with the right to social security, noting that 'SEAM does not make people ineligible for welfare payments, or reduce the amount paid, but places a condition on the receipt of payment'.[19] However, notwithstanding this, placing a condition on the payment of income

16 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3.

17 ANAO report 58.

18 *Althammer v Austria* HRC 998/01, [10.2].

19 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

support benefits is sufficient to constitute a limitation on the enjoyment of the right to social security.

5.30 Accordingly, it is incumbent on the government to justify the limitation. The government must satisfy the committee that the limitation pursues a legitimate objective, is rationally connected to achieving that objective, and is a reasonably and proportionate means.

Right to culture

5.31 The right to culture is contained in article 15 of the ICESCR, article 27 of the ICCPR and article 30 of the CRC. The right provides that all people have the right to benefit from and take part in cultural life.

5.32 Individuals belonging to minority groups have additional protections to enjoy their own culture, religion and language. The right applies to people who belong to minority groups in a state sharing a common culture, religion and/or language.

5.33 In its 2013 report the committee did not identify the right to culture as engaged by SEAM. However, it is clear that SEAM may inhibit Indigenous children from participating fully and benefiting from their cultural life. Attendance at cultural events, including sorry business, may conflict with conditions imposed on children to attend school.

5.34 Under article 4 of the ICESCR, economic, social and cultural rights may be subject only to such limitations as are determined by law and compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportionate to the achievement of a legitimate objective, and must be the least restrictive alternative where several types of limitations are available.

Legitimate objective

5.35 In its 2013 report, the committee accepted that improved school engagement is a legitimate objective. The committee remains convinced of this view.

5.36 The PM&C report explains that there is evidence that supports the existence of a 'negative cycle' whereby poor school attendance (which is associated with low socioeconomic status, Indigenous status and remoteness) is likely to result in poor education outcomes, which in turn are related to an increased likelihood of welfare dependency and unemployment.[20] Improved school enrolment and attendance has the potential to break this cycle.

5.37 In 2012, the former minister informed the committee that the policy objective of SEAM is to 'improve school enrolment and attendance in areas where

20 Department of the Prime Minister and Cabinet, *Improving School Enrolment and Attendance through Welfare Reform Measures (SEAM) Trial (2009-2012): Final Evaluation Report* (May 2014) 2 ('PM&C report').

school attendance and enrolment is very low'.[21] The former minister explained that the NT has the lowest school attendance rates in Australia, and in remote areas of the Territory, primary school attendance is 'unacceptably low' at 60 per cent.[22]

5.38 As the committee noted in its 2013 report, submissions made to the Senate Community Affairs Legislation Committee inquiry into the Stronger Futures Bill generally agreed on the importance of improving access to and the quality of education for Indigenous children in areas where there were low levels of school attendance.[23]

Rational connection

5.39 In order to determine whether the measures are rationally connected to the legitimate objective, the committee must assess whether SEAM is effective in achieving the aim of increasing the number of children of compulsory school-age enrolling in, and attending, school.

5.40 A number of submissions to this inquiry indicated their concern that SEAM is not effective in remedying poor school enrolment and attendance. For example, many submissions noted that there is:

> …little evidence demonstrating whether the link of welfare payments to truancy is effective in increasing school attendance or for that matter improving education outcomes for aboriginal children in the Northern Territory.[24]

5.41 In its 2013 report this committee noted that there was debate over whether SEAM has had a significant impact on school enrolment and attendance.[25] However, since that report was delivered, two evaluations of the SEAM trial have been conducted: one by the ANAO; and a second by the PM&C.

5.42 These reports paint a mixed picture of SEAM's effectiveness.[26] This finding is consistent with the current minister's explanation that SEAM has had a 'minimal to modest impact on reducing unauthorised absences'.[27]

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21 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 5.

22 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

23 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) paragraph [3.136].

24 Aboriginal Peak Organisations Northern Territory, Submission 22, 13. See further: NAAJA, Submission 20, 20; UnitingJustice Australia, Submission 15, 10.

25 2013 report, 67.

26 PM&C report 15.

Enrolment

5.43 The PM&C report found that SEAM was limited in its ability to resolve non-enrolment issues in the trial sites. While parents and children within scope for SEAM generally complied with the requirement of providing enrolment details at a once-a-year verification process, no mechanisms existed 'to ensure that all SEAM-eligible children remained at a school or eligible education alternative throughout the year'.[28]

5.44 The report found that a sizeable proportion of students' enrolment details were not recorded for the full year. Therefore, although SEAM 'was effective in identifying non-enrolment at a particular point in time' the report noted that 'without a consistent and robust national student data tracking system…SEAM was not the solution/mechanism to resolve non-enrolment'.[29]

5.45 While acknowledging that the process has improved, the ANAO found that the SEAM enrolment process is too slow:

> …if a child was not enrolled for school in term one, the SEAM enrolment process may not take action to encourage their enrolment until a week or two into the second term of the school year. This means that the child may have missed an entire term of school before action is taken.[30]

5.46 Both reports noted that it was difficult to assess whether SEAM has stimulated an increase in enrolment levels. While approximately 10 per cent of parents had payments temporarily suspended for non-compliance with enrolment requirements, in most cases these payments were promptly restored and no parent had their payment cancelled. According to the ANAO, this is indicative of the fact that 'a significant proportion of the enrolment activity is simply requiring parents who had already enrolled their children to contact the Education Department'.[31]

5.47 The PM&C report reiterated this finding, noting that there is 'qualitative evidence to suggest that some children in the NT may not be identified/captured in income support/schooling records' and that SEAM was not designed to resolve this issue.[32]

Attendance

5.48 The PM&C Final Evaluation Report found that the attendance component of SEAM had a mixed impact across government and non-government schools in the NT

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27 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3.

28 PM&C report 46.

29 PM&C report 46.

30 ANAO report 17.

31 ANAO report 16.

32 PM&C report 37, 42.

and a modest positive impact across all sites in Queensland. However, it also found that the suspension of income support payments did not generally lead to a lasting reduction in unauthorised absences.

5.49 In relation to government schools in the NT, the report found that the SEAM trial had no statistically significant effect on reducing the rate of unauthorised absences 'for the first year of the trial and over the trial period'.[33] In fact, it appears that SEAM had a negative impact on reducing unauthorised absences. The report assessed SEAM's impact against a comparison group of students. Against this comparison group, the report found that:

> …the average rate of unauthorised absences reduced by 3.64 percentage points for SEAM students and by 4.29 percentage points for comparison students in the first year of the trial, compared to the pre-trial period (i.e. 2008). Over the trial period, the average rate of unauthorised absences was *higher* than in 2008 by 1.81 percentage points for SEAM students, but reduced by 0.17 percentage points for comparison students.[34]

5.50 In contrast, the report found that the SEAM trial had a statistically significant effect on reducing the rate of unauthorised absences among non-government Catholic schools in the NT. However, the SEAM trial did not reduce the overall level of unauthorised absences, which increased among both SEAM students and the comparison group.[35]

5.51 The report suggests two reasons for SEAM's mixed impact among government and non-government schools: that SEAM was trialled in fewer, more homogenous Catholic schools which were more supportive of SEAM than government schools; and that a higher proportion of Catholic school students who were issued with an attendance notice also received social work support compared to government school students (69.4 per cent to 55.5 per cent).[36] This is significant, as the report notes that 'social work appears to be a critical factor in reducing unauthorised absences'.[37] As will be examined below, the threat of sanctions also proved decisive.

5.52 However, the report indicates that these figures should be treated with some degree of caution as evidence suggests that the gains made through SEAM may not be sustained.[38]

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33 PM&C report 64.

34 PM&C report 65 (emphasis added).

35 PM&C report 65.

36 PM&C report 80.

37 PM&C report 48.

38 PM&C report 73.

5.53 In contrast to the experience in the NT, in the Queensland trial sites SEAM had a statistically significant impact in reducing unauthorised absences in both Logan and remote sites.

5.54 In Logan, unauthorised absences dropped by 0.25 per cent in the first year of the trial and by 0.37 per cent across the trial period, compared to 2008. This compares favourably to the average rate of unauthorised absences for comparison students, which increased by 0.94 per cent for the first year and 0.54 per cent over the entire trial period.[39]

5.55 When an attendance notice was issued, indicating an escalation in the process, the rate of unauthorised absences reduced by 1.75 per cent in the first year, and 1.32 per cent over the trial period.[40] However, reflecting on the significance of the threat effect, in schools which did not issue an attendance notice, the rate of unauthorised absences actually increased for SEAM students, compared to comparison students. As the report explains:

> The analysis shows that the SEAM effect was substantial and sustained for SEAM students in SEAM schools that had used SEAM as one of their strategies (i.e. issuing SEAM attendance notices). But SEAM was unlikely to have had an impact on reducing the rate of unauthorised absences for SEAM students in schools which were not actively participating in SEAM (i.e. no attendance notices were issued).[41]

5.56 In remote areas in Queensland, the PM&C report found that SEAM had an impact in reducing unauthorised absences. For SEAM students the rate of unauthorised absences reduced by 8.40 per cent in the first year and 5.31 per cent over the trial; for comparison students, the rate of unauthorised absences increased by 5.14 per cent in the first year, and 2.61 per cent over the trial.[42]

5.57 As noted above, the suspension of income support payments to address unauthorised absences was a last resort. If parents did not take reasonable steps to ensure that their children attended school regularly, after all attempts were exhausted including consideration as to whether to grant a special circumstance exception or reasonable excuse, a decision would be made about suspension of income support payments.

5.58 The PM&C report noted that over the trial period, 119 parents (with respect to 162 children) in the NT had been suspended for failing to comply with the

39 PM&C report 67.

40 PM&C report 68.

41 PM&C report 69.

42 PM&C report 69.

attendance requirement of SEAM. In contrast, in Queensland only 3 parents (with respect to 6 children) had their payments suspended.[43]

5.59 The PM&C report assessed the impact of income payment suspension on unauthorised absences for NT students.[44] The report's findings indicate that, generally, suspension did not have a lasting, positive effect on increasing school attendance:

> …the pattern of unauthorised absences for selected referred students was highly variable during the suspension period, and three months before and after suspension. No clear trend was observed in the change of unauthorised absences in response to income support payment suspension for these students. For the most part, unauthorised absences were lowest during the suspension period.
>
> In most cases, however, relapse was observed within three months after suspension, despite unauthorised absences being lower on average than they were prior to the suspension. The observed relapse suggests that the suspension was unlikely to lead to permanent improvements as affected families faced complex circumstances which may have thwarted their attempts to address attendance issues.[45]

Overall effectiveness

5.60 Despite clear challenges facing SEAM, particularly in regards to enrolment across all sites, and attendance in the NT, the PM&C report indicated that SEAM was effective in focusing attention of parents on the importance of education.

5.61 The PM&C report noted that principals and staff from both NT and Queensland schools reported that families with chronic attendance problems responded to SEAM by 'making more effort to send their children to school'.[46] In Queensland in particular, 49 per cent of parents reported that the implementation of the trial had made them think about the importance of their child's schooling, with a further 29 per cent noting that it had encouraged them to make more effort to address their child's attendance issues.[47]

5.62 However, the report also found that parents and communities generally had 'limited understanding of the details of SEAM, and in some cases, were confused about the aims of SEAM and their role in SEAM'.[48]

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43 PM&C report 91.

44 It is difficult to draw any broader conclusions from the Queensland sample group because of the low numbers of families who had their income support payments suspended.

45 PM&C report 92.

46 PM&C report 77.

47 PM&C report 35.

48 PM&C report 29.

5.63 On the basis of the ANAO and PM&C reports, SEAM does not appear to be an effective approach to addressing issues of low school enrolment and attendance. While SEAM may have led parents to reflect on the importance of schooling, it did not adequately address unauthorised absences in NT government schools, and had no lasting impact on attendance rates across private and public schools in the NT.

Proportionality

5.64 In assessing whether a measure is proportionate some of the relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the merits of an individual case, whether affected groups are particularly vulnerable, and whether there are other less restrictive ways to achieve the same aim.

5.65 The government maintains that SEAM is a reasonable and proportionate means of promoting the right to education. In 2012, the former minister for Indigenous Affairs explained that the 'qualifying condition is both reasonable and proportionate', since it is compulsory for school aged children to be enrolled and attend school; there are a number of steps before payment is suspended or cancelled, including the provision of social work assistance; and because there are appeal and review mechanisms in place.[49] The former minister continued:

> The conditions imposed on parents in receipt of social security in designated SEAM areas are reasonable taking into account the importance of children attending school, the evidence that SEAM improves educational outcomes, the support made available through SEAM such as school conferences and social work support, and the protection and review rights that are in place under the Social Security Law.[50]

5.66 The current minister agrees with his predecessor. The current minister maintains that the SEAM program has 'the flexibility to respond to circumstances outside a family's control', including granting an exemption to the suspension or cancellation of payments where social workers consider special circumstances exist, including for cases of domestic violence, serious illness or where a parent is unable to comprehend a notice about complying with SEAM. Further, a range of social security payments are available to families experiencing severe financial hardship.[51]

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49 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 6.

50 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 7.

51 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 3-4.

Insufficient flexibility

5.67 As was noted above at paragraph [5.8], a parent is only liable to have their income support payment suspended or cancelled if a child of theirs fails to meet the attendance benchmark. This benchmark requires that a child must attend at least 80 per cent of school days over a 10 week period. This benchmark is flexible in the sense that SEAM only addresses 'unauthorised' absences and 'reasonable' absences are not affected. Thus, a child may attend less than 80 per cent of school days over a 10 week period but not be affected by SEAM because some or all or their absences are 'reasonable'. This in-built flexibility offers scope for Indigenous children to attend cultural events.

5.68 Further, as noted above at paragraph [5.66], social workers may grant an exemption to the suspension or cancellation of payments where they consider special circumstances exist. This offers an additional avenue for the right to culture and social security to be protected. However, some problems exist with these approaches.

5.69 First, the PM&C report noted that the purpose and process of SEAM was poorly understood by in-scope parents. Indeed, the report noted that there was confusion among parents that SEAM was only meant to address 'unauthorised' absences and that 'reasonable' absences were not affected:

> Examples of this included concerns of some parents that a sick child should be sent to school in case the parent is 'reported', and other parents were concerned about tensions arising between meeting their cultural obligations and complying with school attendance requirements.[52]

5.70 In cases where the requirements of SEAM were not adequately explained, parents faced the impossible task of having to choose between exercising their right to culture or to enjoy their right to social security and right to an adequate standard of living.

5.71 Second, parents of children identified as not meeting attendance standards must attend a compulsory conference and agree upon a school attendance plan. The benchmark for improvement specified in attendance plans was that students attend school every day, unless an appropriate reason was provided. While this requirement reflects the compulsory nature of school attendance, the ANAO report noted concerns from social workers that in the context of very low attendance levels, this requirement 'could set parents up to "fail"'.[53] Further, the report noted that in some cases parents had been advised that 'reasonable' improvements in attendance would be sufficient to avoid income support cancellation. The mixed messages that some parents received would have placed them in a difficult position, and potentially have resulted in an unforeseen and unexpected suspension of payments.

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52 PM&C report 32.

53 ANAO report 56.

5.72 Third, the attendance component of SEAM was implemented differently in the NT and Queensland over the trial period, with significant consequences for individuals concerned. The Queensland attendance referral model gave school principals discretionary powers to determine whether to refer a child/parent under SEAM, based on their understanding of the particular issues and their knowledge of the family situation.

5.73 Prior to July 2010, the NT attendance referral process was the same as in Queensland, that is, at the discretion of school principals. However, in contrast, after July 2010 the attendance referral process in the NT was changed to an automatic fortnightly referral process with a fixed benchmark. In limiting the discretion of school principals, the referral process operated with reduced flexibility, and meant that 'substantially more' SEAM parents in the NT had income support payments suspended,[54] limiting their right to social security and an adequate standard of living.

5.74 In a situation where parents were already uncertain of the requirements of SEAM, the absence of discretion would also clearly have affected the ability of Indigenous children and families to exercise their right to culture. In addition, as Indigenous people were more likely to live in NT trial sites, the automatic referral process engaged and limited the right to equality.

5.75 The PM&C report notes that the automatic referral process in the NT was intended to serve two goals: consistency in treatment;[55] and to stop repercussions against school staff in the community by ensuring that schools were not seen by families as responsible for any payment suspension.[56] While the committee agrees that these are worthy goals, it is likely that they could be achieved in a less rights restrictive manner. In particular, a more carefully calibrated and implemented process that explained how SEAM would operate would likely have contributed to this objective. Indeed, it appears that greater effort in explaining the operation of SEAM in the Queensland trial sites meant that an automatic referral process was not utilised.

5.76 Finally, while the committee acknowledges that social workers have the authority to exempt parents from income suspension where they consider special circumstances exist, the committee has long noted its concern with administrative and discretionary safeguards.

Vulnerability of particular groups

5.77 Although SEAM is not an Indigenous specific measure, both the ANAO and PM&C reports acknowledge that it has been introduced in areas with mainly

54 PM&C report 24.

55 PM&C report 47.

56 PM&C report 53.

Indigenous populations.[57] The PM&C report notes that 'nearly 90 per cent of SEAM parents in the NT were identified with Indigenous status and all of them resided in a remote or very remote community'.[58] In contrast, however, fewer than 20 per cent of SEAM parents in Queensland identified as Indigenous, and nearly 90 percent lived in a suburban community.[59]

5.78 As was noted above at paragraphs [5.35] and [5.38], while poor school attendance is associated with Indigenous status, it is also associated with low socioeconomic status and remoteness. SEAM was designed to break the negative cycle of poor school attendance to poor education outcomes, welfare dependency and unemployment. As such, it is targeted at communities with a high prevalence of these factors, and in fact, the PM&C report noted that the selection of sites was 'appropriately targeted' to the problem of unauthorised absences.[60]

5.79 Nevertheless, as discussed above at paragraphs [4.35] to [4.37], a measure can be indirectly discriminatory if though neutral on its face, it disproportionately affects people with a peculiar personal attribute, such as race.

5.80 The committee has already noted that the automatic referral process in the NT placed more significant pressures on Indigenous peoples, and led to substantially more individuals (who are likely to have been Indigenous) having their payments suspended. The committee acknowledges that this decision was taken to protect school staff from being blamed for payment suspensions, but questions why the approach was necessarily different from that at trial sites in Queensland, in which non-Indigenous peoples predominated. There is no discussion in the PM&C report, the ANAO report, or any statement by the Minister for Indigenous Affairs, as to why the approach taken in Queensland could not have been followed in the NT.

5.81 It appears that the major reason for the change to an automatic referral process in the NT was due to the inadequate implementation of SEAM in these sites, which left parents, communities and schools uncertain of SEAM's requirements. The PM&C report notes many parents in the NT thought that SEAM was 'directed only at Indigenous children in remote areas'.[61]

5.82 Greater effort in educating NT communities about SEAM and its requirements, including for example that: SEAM was not focused on Indigenous communities; attending cultural obligations would not adversely affect a person's income support payments; and school staff were not responsible for the possible suspension of payments, would have gone some way to achieving the objective sought without removing any discretion.

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57 PM&C report 7 and 2. ANAO report 14.

58 PM&C report 21.

59 PM&C report 21.

60 PM&C report 11.

61 PM&C report 29.

Less restrictive ways to achieve the same aim

5.83 Another important factor in assessing the proportionality of a measure is whether there are less rights restrictive ways to achieve the same objective. Many submissions to this inquiry considered that the suspension or cancellation of income support payments as a result of failing to improve school enrolment or attendance is 'punitive' and limits a number of human rights.[62]

5.84 However, research indicates that sanctions are particularly effective in ensuring compliance with regulatory or legislative aims. The PM&C report quoted from a 2009 report by Access Economics entitled 'School Attendance Project'. This report identified four key elements for a successful program aimed to improve school attendance:

> Successful programmes appear to have four elements: ongoing tracking (data requirements); rapid response time (effective process); education of parents and students on the importance of school attendance (parental and student attitude); application of sanctions when all else has failed and follow-up support to students where sanctions have been applied (punitive measure and support).[63]

5.85 Significantly, the ANAO report and the PM&C report indicate that the threat of sanctions was the most effective element in improving school attendance. The PM&C report noted that 'results from both the quantitative and qualitative analysis confirmed that the SEAM effect on reducing unauthorised absences was largely attributed to the threat effect under SEAM'.[64] The report noted further that:

> …knowledge of a suspension occurring in the community seemed to have an effect on other families in complying with their requirements for school attendance. But when suspensions did not occur at the time they were needed, then the threat effect arising from SEAM diminished, as it was seen as not being backed up by action.[65]

5.86 The ANAO report noted that those implementing the program recognised sanctions as particularly effective:

> In discussions with the ANAO, Department of Human Service and Northern Territory Department of Education staff in the Northern Territory emphasised that SEAM needed to be swiftly and consistently applied to ensure that the threat of payment suspension is sustained over time, as this could drive longer-term behavioural change in school attendance.[66]

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62 Aboriginal Peak Organisations Northern Territory, Submission 22, 13; National Welfare Rights Network, Submission 14, 14; NAAJA, Submission 20, 19.

63 PM&C report 46.

64 PM&C report 49, 76-78.

65 PM&C report 94.

66 ANAO report 51.

5.87 These findings accord with research by Moshe Justman and Kyle Peyton from the Melbourne Institute of Applied Economic and Social Research. In analysing SEAM's effect on NAPLAN test results, Justman and Peyton demonstrate that 'a credible threat to link welfare payments to school attendance can substantially raise participation rates and learning achievement'.[67]

5.88 Nevertheless, notwithstanding the fact that sanctions are effective in ensuring compliance, evidence suggests that there are other less rights restrictive ways to promote school enrolment and attendance. These less rights restrictive measures begin by identifying the causal barriers that prevent Indigenous Australians from enrolling or attending school in the first place.

5.89 Many submitters identified significant barriers to enrolment and regular attendance affecting Indigenous Australians. For example, the National Welfare Rights Network explained that there are 'a broad range of complex factors that lead to low school attendance', which SEAM does not appear tailored to effectively deal with. These factors include: inadequate housing and health care; mental health issues; family violence; overcrowding; and generational unemployment.[68]

5.90 The North Australian Aboriginal Justice Agency identified these and additional factors, including:

- lack of relevance to Indigenous needs, culture, and experience;
- failure to involve parents and communities in their children's education;
- inadequate number of teachers with appropriate cultural knowledge and skills, and lack of facilities available in remote areas;
- bullying; and
- lack of transportation.[69]

5.91 The ANAO report also noted that a range of barriers exist that must be identified before an effective measure to improve school enrolment and attendance is developed. The ANAO report explained that these barriers to regular attendance are 'varied, often complex and at times deeply entrenched',[70] and identified common barriers to school attendance encountered under SEAM:

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67 Moshe Justman and Kyle Peyton, 'Enforcing Compulsory Schooling by Linking Welfare Payments to School Attendance: Lessons from Australia's Northern Territory' (University of Melbourne, Melbourne Institute Working Paper Series, Working Paper No. 19/14) 4.

68 National Welfare Rights Network, Submission 14, 13-14.

69 NAAJA, Submission 20, 22, citing the Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian Students' (September 2010) and Larissa Behrendt and Ruth McCausland, Jumbunna House of Learning, University of Technology Sydney, 'Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education' (August 2008) 27.

70 ANAO report 61.

- parental authority and/or parenting skills;
- transportation issues;
- bullying and teasing;
- factors associated with significant overnight disturbance which affected sleeping patterns and caused children and/or parents to sleep in and miss school including:
    - overcrowded housing;
    - domestic violence;
    - alcohol and substance abuse; and
    - gambling.[71]

5.92 There is evidence to suggest that these barriers are causally related to poor school outcomes. For example, the Menzies Centre for Child Development and Education has found a strong correlation between overcrowding in housing and school attendance. Their research indicates that measures that address overcrowding are likely to be successful in improving school attendance.[72]

5.93 In its submission to this inquiry, UnitingJustice Australia identified an alternative measure that may also improve school enrolment and attendance: own-language instruction. UnitingJustice Australia explained:

> It is vitally important for children to learn in their first language. For Aboriginal and Torres Strait Islander children in Australia, this means that education in their mother tongue has seen better educational results later in life. In the Northern Territory, the language used at school is rarely the language spoken at home, making educational advances difficult. The World Bank found that, in relation to educating children in their own language; children learn better, they stay in school longer, they reach higher levels of education, and increase their social mobility. First language teaching has been linked to higher levels of literacy, reduced drop-out rates, and increased adult literacy levels.[73]

5.94 The New South Wales government has also identified own language instruction has leading to improved school attendance rates:

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71 ANAO report 55.

72 Sven Silburn et al, 'Unpacking Educational Inequality in the Northern Territory' (2014) *ACER Research Conference 2014*, 92-97.

73 UnitingJustice Australia, Submission 15, 10; citing Charles Grimes, *Indigenous Languages in education: What the research actually shows*, Australian Society for Indigenous Languages (2009); World Bank, 'In their own language…education for all' (2005).

> Reclaiming and maintaining Aboriginal language and culture is imperative, as it instils a greater sense of identity, pride and confidence in people and leads to increased school attendance and participation.[74]

5.95 SEAM does not address these broader issues relating to unauthorised absences but focuses primarily on the action of children—that is, whether a child improves his or her attendance. In doing so, SEAM runs the risk of ignoring significant reasons for truancy, substantially limiting its effectiveness. Indeed, the PM&C report noted that families who had their income-support payments suspended:

> …were likely to have faced complex barriers which had been entrenched for a long period. Therefore, any impact from a suspension tended to be sustained for a short period.[75]

5.96 This is a critical finding, indicating that social support is integral to SEAM's effectiveness. This is the case because only the provision of social work under SEAM has the potential to identify and overcome broader barriers to school enrolment and attendance and ensure that these gains are sustainable over a long period.

5.97 The PM&C report noted that Department of Human Services social workers and education authorities involved in the SEAM trial considered the social work contact provided under SEAM as 'critical and intensive'.[76] As noted above at paragraph [5.51], the report found that unauthorised absences were more likely to be reduced 'when a high level of social work support was provided'.[77]

5.98 However two problems persist. First, despite the importance placed on social work contact, the ANAO report noted that social workers were often unable to attend to all relevant families. The ANAO report noted that during 2013:

> …an estimated 1300 children of in-scope parents were identified as having low school attendance, and as such, should have been afforded attention under the attendance element. However, SEAM was applied inconsistently or narrowly in 2013; with only one quarter of these children (331) being the subject of a compulsory conference.[78]

5.99 Therefore, despite the recognised value of social work support it appears that a lower emphasis was placed on ensuring that that support was provided for

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74 Victor Dominello, NSW Minister for Aboriginal Affairs, Media release (20 July 2011) *NSW Government Announces Funding for Aboriginal language Centre*.

75 PM&C report 93.

76 PM&C report 79. The PM&C report also noted that SEAM was particularly effective in increasing engagement between social workers and families: 'It was noted by interviewed social workers that the DHS social work contact provided under SEAM resulted in increased engagement by families who would normally avoid contact with services or may not come to the attention of social workers'. It seems that for many of these families, SEAM acted as a trigger for social work contact.

77 PM&C report 81.

78 ANAO report 62.

relevant individuals. A revamped SEAM that focused holistically on social work support rather than punitively on sanctions may be more likely to achieve lasting beneficial results.

5.100 Second, and more significantly, social work support can only address issues on the family side of the equation; it cannot (for example) ensure that the school curriculum is relevant to Indigenous needs, culture and experience. SEAM makes no effort to identify or address barriers to school enrolment and attendance on this side of the equation, focusing instead on punishing parents and families for the unauthorised absences of their child. A revamped SEAM that focused on all entrenched barriers to enrolment and attendance, rather than a subset of them, would be most likely to achieve lasting beneficial results.

Committee views

5.101 Low levels of school enrolment and attendance is a major problem in parts of the NT and this contributes to poor education outcomes, as well as an increased likelihood of welfare dependency and unemployment. Accordingly a measure designed to break this debilitating cycle, and improve school enrolment and attendance, will contribute to the enjoyment of a number of human rights including most clearly the right to education.

5.102 Indeed, the committee repeats its views from its 2013 report, where it noted that the 'reduction of low school attendance rates, particularly in Aboriginal communities in the NT is an important and pressing objective and that Australia is under an obligation to ensure that all children effectively enjoy the right to a quality education'.[79]

5.103 However, SEAM also limits a number of human rights, in particular the right to equality and non-discrimination, the right to social security, an adequate standard of living and privacy, and the right to culture. These limitations must be justified as a rational, reasonable and proportionate measure adopted in pursuit of a legitimate objective. The government bears the onus of clearly demonstrating that the measure is justified. In this case, the committee expects a clear demonstration, based on reliable empirical evidence, that the measures are having a significant impact on reducing low school attendance.

5.104 Since the committee's 2013 report, two evaluations of SEAM have been conducted. Unfortunately they find that the effectiveness of SEAM in stimulating an increase in enrolment or attendance levels 'is not readily identifiable'.[80] These reports suggest that any improvement has been mixed and has not had any lasting impact.

79 2013 report, 74.

80 ANAO report 66-67.

5.105 In a submission to the Senate Community Affairs Legislation Committee's 2012 inquiry into the Stronger Futures bill, the Australian Human Rights Commission noted that the question of school attendance is a complex issue and the problem of low school attendance needed to be approached holistically.[81] The ANAO and PM&C reports demonstrate that this remains true today. A punitive approach that focuses primarily on the action of children ignores broader reasons for unauthorised absences. Ignoring these broader reasons means that the problem of unauthorised school absences cannot be effectively targeted.

5.106 Even if evidence indicated that SEAM was effective in improving school enrolment and attendance, questions would remain over its impact on fundamental human rights. A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate

5.107 SEAM has adopted a punitive approach that sanctioned parents for the unauthorised school absences of a child and has operated with less flexibility for vulnerable communities in the NT compared to Queensland. Evidence from the ANAO and PM&C reports indicates that the provision of social work is integral in overcoming barriers to school enrolment and attendance and in ensuring that any improvement is sustainable in the long-term.

5.108 The committee considers that it is vitally important that school enrolment and attendance be markedly improved across the NT. However, on the basis of the evidence before it, the committee considers that there are real doubts as to whether SEAM is effective, and thereby rationally connected to this objective. Even assuming a rational connection, the committee considers that SEAM is not proportional to the objective of improving school enrolment and attendance. A human rights compliant approach to this problem requires that any measures must be effective, flexible to take into account individual circumstances, calibrated carefully to protect vulnerable groups and targeted at dealing with the causes of unauthorised absences rather than punishing the symptoms. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 6

- **The committee recommends that SEAM be redesigned to focus on identifying and overcoming complex barriers to school engagement within regional and remote communities. To do this, the provision of social work support should be enhanced.**

81 Australian Human Rights Commission, Stronger Futures in the Northern Territory Bill 2011 and two related Bills, *Submission to the Senate Community Affairs Legislation Committee* (6 February 2012) paragraphs [185] to [190].

Recommendation 7

- **The committee highlights that sanctions are a legitimate and effective mechanism to encourage families to assist their children to attend school. The committee recommends that sanctions regimes must differentiate between voluntary disengagement and non-attendance resulting from causes or factors outside the child or family's control. This likely requires the consideration of a social worker.**

The Hon Philip Ruddock MP

Chair

Appendix 1: Stronger Futures package of legislation considered in this report

Acts:

- *Stronger Futures in the Northern Territory Act 2012*
- *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*
- *Social Security Legislation Amendment Act 2012*
- *Social Services Legislation Amendment (No. 2) Act 2015*
- *Social Security Legislation Amendment (Debit Card Trial) Act 2015*

Legislative instruments:

- Social Security (Administration) (Recognised State/Territory Authority—NT Alcohol Mandatory Treatment Tribunal) Determination 2013 [F2013L01949]
- Stronger Futures in the Northern Territory Regulation 2013 [F2013L01442]
- Social Security (Administration) (Recognised State/Territory Authority—Qld Family Responsibilities Commission Determination 2013 [F2013L02153]
- Social Security (Administration) (Declared income management area—Ceduna and surrounding region) Determination 2014 [F2014L00777]
- Social Security (Administration) (Excluded circumstances—Queensland Commission) Specification 2014 [F2015L00002]
- Social Security (Administration) (Income Management—Crediting of Accounts) Rules 2015 [F2015L00781]
- Social Security (Administration) (Trial Area - Ceduna and Surrounding Region) Determination 2015 [F2015L01836]
- Social Security (Administration) (Exempt Welfare Payment Recipients - Principal Carers of a Child) (Specified Activities) Instrument 2015 [F2015L02086]
- Social Security (Administration) (Vulnerable Welfare Payment Recipient) Amendment Principles 2015 [FL2015L02087]

Appendix 2: Submissions received

All submissions to this inquiry can be viewed on the committee's website.[1]

Submission Number	Submitter
1.	Belconnen Amnesty International Action Group
2.	Digby Habel
3.	Committee on Racial Equality
4.	Stop the Intervention Collective Sydney
5.	Concerned Australians
6.	Whitehorse Friends for Reconciliation Inc
7.	Australian Lawyers Alliance
8.	Australian Lawyers for Human Rights
9.	Indigenous Issues Committee of the Law Society of NSW
10.	Dr Shelley Bielefeld
11.	Gedda Fortey
12.	Australian Council of Social Service (ACOSS) & Northern Territory Council of Social Service (NTCOSS)
13.	Jumbunna Indigenous House of Learning
14.	National Welfare Rights Network
15.	UnitingJustice Australia
16.	The Institute of the Sisters of Mercy Australia & Papua New Guinea
17.	Josephite SA Reconciliation Circle
18.	NSW Young Lawyers Human Rights Law Committee

1 See http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights.

19. Aboriginal and Torres Strait Islander Social Justice Commissioner
20. North Australian Aboriginal Justice Agency
21. Northern Territory Anti-Discrimination Commissioner
22. Aboriginal Peak Organisations Northern Territory
23. Jonathon Crane

Appendix 3: Ministerial correspondence

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

23 June 2015

Senator the Hon Nigel Scullion
Minister for Indigenous Affairs
MG. 50
Parliament House
CANBERRA ACT 2600

Dear Minister

Review of Stronger Futures in the Northern Territory Act 2012 and related legislation

As you know, the former Chair of the Parliamentary Joint Committee on Human Rights wrote to you on 18 March 2014 advising you that the committee would be undertaking a review into the *Stronger Futures in the Northern Territory Act 2012* and related legislation. This follows from the inquiry the committee undertook in 2013, as reported in its *Eleventh Report of 2013*, whereby the committee recommended it undertake a further review to consider the latest evidence to evaluate the continuing necessity for the Stronger Futures measures.

As foreshadowed in that letter, the committee now seeks updated information about the implementation of these measures to assist its consideration of this legislative package. The specific information and questions the committee seeks your advice on are set out below.

Future approach

1. You provided advice in June 2014 that work was underway to revise Stronger Futures in collaboration with the Northern Territory Government. Can you advise the committee on the progress of these negotiations, including any proposed changes or any relevant findings as a result of this review? If negotiations are continuing, can you please advise the committee on the timeframe for the conclusion of these negotiations?

Customary law

2. Can you please provide the committee with an assessment of whether sections 15AB and 16A(2A) of the *Crimes Act 1914* (which precludes consideration of customary law or cultural practice in bail applications or sentencing in certain circumstances) is compatible with the right to a fair trial, the right to freedom from arbitrary detention and the right to equality and non-discrimination.

PO Box 6100, Parliament House Canberra ACT 2600 Tel: (02) 6277 3823 Fax: (02) 6277 5767

Email: human.rights@aph.gov.au Internet: http://www.aph.gov.au/joint_humanrights/

Food security

3. In relation to the food security measures in the Northern Territory, in particular the requirement for food stores in prescribed communities to be licensed, can you please provide the committee with an update as to whether these measures have improved the accessibility and affordability of food in the Northern Territory.

Land reform

4. The statement of compatibility for the Stronger Futures in the Northern Territory Regulation 2013 set out that consultation took place in relation to the draft regulation before it was adopted, and that views provided in the consultation meetings are summarised in an Outcomes Paper released by the Australian Government on 21 June 2013. The committee requests a copy of the 2013 Outcomes Paper be provided to the committee.

5. Can you please advise how many communities affected by the changes to the Northern Territory laws in relation to community living areas were consulted before the introduction of the Stronger Futures in the Northern Territory Regulation 2013?

Measures to address alcohol abuse

6. How many alcohol protected areas, which were originally prescribed as a result of the *Northern Territory Emergency Response Act 2007* and continued as an alcohol protected area under the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*, remain?

7. Is it intended that rules will be made prescribing areas in the Northern Territory as alcohol protected areas under section 27 of the *Stronger Futures in the Northern Territory Act 2012*?

8. How many Alcohol Management Plans (AMPs) have been approved by the Minister in total to date?

9. Where an AMP has been approved, have any rules been made under subsection 27(3) of the *Stronger Futures in the Northern Territory Act 2012* revoking or varying the original rules so that the area now covered by the AMP is no longer an alcohol protected area?

10. How many Alcohol Management Plans, if any, have been refused approval by the Minister in total to date? If any have been refused, on what basis were the plans refused?

11. What is the average time taken to approve an Alcohol Management Plan once it has been endorsed by the community?

12. If a community within an alcohol protected area does not wish to enter into an Alcohol Management Plan and, as a community, decides it wishes to ease alcohol restrictions, what steps can the community take to ensure it is no longer considered an alcohol protected area?

13. Is there a timetable in place to transition all alcohol protected areas to AMPs?

14. What is the latest evidence as to how effective AMPs have been in achieving the stated aims?

Income Management

15. In relation to the 15 income management sites outside of the Northern Territory, what proportion of those subject to income management are Indigenous in each site?
16. Can you provide a list of the most recent evaluations of all the income management measures across Australia?

School Enrolment and Attendance through Welfare Reform measure (SEAM)

17. When will the latest evaluation of the effectiveness of SEAM on school enrolment and attendance rates be made available?
18. What evidence is there as to whether SEAM has had beneficial outcomes for children?
19. As at 2015, how many schools in how many communities were subject to SEAM?
20. As at 2015, how many parents/guardians were subject to SEAM and what proportion of the people subject to it are Indigenous?
21. As at 2015, how many people have had their welfare payments suspended and for how long, because of a failure to comply with the enrolment measure and with the non-attendance measure? How many people, if any, have had their payments cancelled as a result of either measure?
22. Are there are any arrangements that have been granted, such as, emergency payments, to enable persons who have their welfare payments cancelled or suspended to meet basic needs?

It would be appreciated if you could provide the committee with your views on these issues by 31 July 2015.

Should you have any queries, please contact the acting committee secretary, Ivan Powell, on (02) 6277 3066.

I look forward to your response.

Yours sincerely

The Hon Philip Ruddock MP

Chair

PO Box 6100, Parliament House Canberra ACT 2600 Tel: (02) 6277 3823 Fax: (02) 6277 5767

Email: human.rights@aph.gov.au Internet: http://www.aph.gov.au/joint_humanrights/

MINISTER FOR INDIGENOUS AFFAIRS

Reference: B15/1391

The Hon Phillip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Chairman PHILLIP

Thank you for your letter of 23 June 2015 about the review of Stronger Futures measures by the Parliamentary Joint Committee on Human Rights (the Committee).

Improved Outcomes under Stronger Futures
The Stronger Futures legislation and associated measures can deliver real change for Aboriginal people in the Northern Territory. To date, Stronger Futures measures have delivered real outcomes in relation to many of the policy objectives they were designed to achieve. Some significant achievements include:

- essential ear and oral health checks to support improvements to the health of Aboriginal children across the Northern Territory;
- placement of short-term health staff to help address critical workforce shortages in remote Aboriginal communities;
- 60 additional remote police employed and a police presence maintained in 18 priority remote communities to make Aboriginal communities safer;
- 200 additional teachers and engagement officers employed in remote schools;
- early childhood services for over 300 children and youth, which support children's social, emotional, physical and cognitive abilities; and
- 100 licensed stores operating across the Northern Territory, carrying a range of grocery items that encourage good nutrition and meet community needs.

Stronger Futures Revision Process
Despite these achievements, I acknowledge that the original National Partnership Agreement on Stronger Futures in the Northern Territory was complex and often overly bureaucratic. That is why I am working in partnership with the Northern Territory Government on a revised Agreement, which will reduce unnecessary administration and result in funding flowing towards real reform and practical outcomes on the ground for Aboriginal people in the Northern Territory.

As announced in the 2015 Budget, while the overarching outcomes of the original Agreement remain the same, the new Agreement is refocussing the Commonwealth's substantial investment into the Northern Territory to get children to school, adults into work, and keep Aboriginal kids and communities safe and healthy.

Revisions are primarily administrative and will not require changes to legislation. Rather, the new Agreement will reduce unnecessary administration and red tape and ensure that funding is going to programmes and services that have a real and lasting benefit to Aboriginal people.

Extensive consultation was undertaken prior to the introduction of Stronger Futures and the new Agreement will continue to address those issues that Aboriginal people in the Northern Territory said were most important to them.

The streamlined and simplified Agreement will reduce the number of Implementation Plans from nine to four: Remote Australia Strategies; Children and Schooling; Community Safety; and Health. These Implementation Plans are being developed in partnership between the Northern Territory Government and the Department of the Prime Minister and Cabinet, and negotiations are progressing well.

Timing of the new Agreement, and the implementation of any changes that result, will depend on how negotiations with the Northern Territory Government continue.

Reviews of Stronger Futures measures
As you know, we introduced legislation to repeal requirements in the Stronger Futures and related legislation to conduct independent reviews on Stronger Futures measures. The Bill seeking these repeals has not yet passed through both Houses of Parliament. In accordance with the legislation, I have initiated two independent reviews into laws relating to material prohibited in certain areas of the Northern Territory, and Commonwealth and Northern Territory laws relating to alcohol. The reports of these reviews are due to be tabled later this year.

I understand that you have requested specific information on various legislative measures under Stronger Futures. That detail is at Attachment A.

The Government is very interested in the Committee's review process, and I look forward to receiving the recommendations and findings of the Committee's review.

Yours sincerely

NIGEL SCULLION
28 / 07 / 2015

ATTACHMENT A

Stronger Futures in the Northern Territory

The Commonwealth has been working with the Northern Territory (NT) Government to jointly strengthen the way we tackle the disadvantage experienced by Aboriginal peoples and communities. Of all states and territories, the NT has the highest proportion of Aboriginal peoples, most of who live in remote or very remote areas, and the widest gap in outcomes between Indigenous and non-Indigenous Australians.

The *Stronger Futures in the Northern Territory Act 2012* (the Stronger Futures Act) was enacted with the objective to support Aboriginal people in the NT to live strong, independent lives, where communities, families and children are safe and healthy. Measures under Stronger Futures aim to improve outcomes in Indigenous health, education, child and family wellbeing, community safety, employment and housing.

Extensive consultation was undertaken prior to the introduction of Stronger Futures to discuss the issues that Aboriginal people in the NT considered most important to them. Consultation is also undertaken for specific measures, where further input and discussion is warranted. For example, Community Living Area land reform consultations were undertaken by the former Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) prior to the introduction of the land reform measure in the Stronger Futures legislation in 2013. In-community meetings were held in 16 selected community living area communities across the NT. In addition to these meetings, FaHCSIA also met with cattle station owners and/or managers where possible. Plain English communication materials were distributed in advance of, and used during, in-community meetings. Interpreters attended a majority of in-community meetings. As requested at point four of your letter, please find a copy of the *Community Living Area Land Reform in the Northern Territory Outcomes Paper* at Appendix A.

Ensuring Aboriginal communities have access to fresh and healthy food is one measure contributing to improving the health of Aboriginal families and children. The licensing scheme under Stronger Futures enables the Secretary of the Department of the Prime Minister and Cabinet to impose conditions on a community store licence that set minimum requirements for community stores. These requirements can ensure they operate in a safe and appropriate manner and carry a range of grocery items that encourage good nutrition and meet community needs. Licensed stores are also encouraged to develop and implement policies relating to nutrition, pricing and employment. At some stores these policies may have contributed to making nutritious food more affordable including through lower price mark-ups on healthy products.

There is a range of evidence suggesting that the licensing scheme has contributed to its objective of promoting a reasonable ongoing level of access to a range of food, drink and grocery items that are reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs in Aboriginal communities in the NT. An evaluation by the Cultural and Indigenous Research Centre in 2011 found that store licensing has had a positive impact on food security, including the ongoing access to food that is safe and of sufficient quality and quantity to meet household needs. More recently, the *Northern Territory Market Basket Survey 2014* showed the average number of varieties of fresh fruit

and vegetables available in remote NT stores was 29 in 2014, compared with only 22 in 2007 when the licensing scheme was not in place.

Measures to reduce alcohol-related harm also contribute to improvements in Aboriginal health, as well as the safety of Aboriginal families and communities. Alcohol restrictions within Alcohol Protected Areas (APAs) and Alcohol Management Plans (AMPs) are two such measures under Stronger Futures.

The Stronger Futures Act gives the Commonwealth Minister the power to make rules to: (1) prescribe an area in the NT as an Alcohol Protected Area (APA), or (2) to vary or revoke a rule prescribing an area as an APA, provided that the correct procedure is followed (for example, undertaking consultations with people living in the area about the proposed changes) and having regard to the matters set out in the Act.

Under subsection 27(5)(b) of the Stronger Futures Act, the Minister may prescribe, revoke or vary an APA:

- on the Minister's own initiative; or
- following a request by or on behalf of a person who is ordinarily a resident in the area to which the APA rules relate, regardless of the status of an AMP covering that area; or
- following the revocation of an approval of an AMP; or
- following the cessation of an approval of an AMP.

The Minister is yet to use this power under the Stronger Futures Act.

Although AMPs and APAs interact, AMPs are not simply a function of the APAs. AMPs are designed to support communities to drive locally tailored solutions to alcohol-related harm in their community. While some communities may wish to alter the boundaries of their APA, others prefer to remain within APAs. For example, the Titjikala community submitted an AMP for approval in February 2014. The Minister approved the AMP on 26 May 2014. The Minister did not make a rule revoking or varying the Titjikala APA rule as the community had not applied for a revocation or variation.

The requirements for AMPs set out in the AMP Rule have proven rigid and time-consuming and make it difficult for communities to prepare AMPs that the Minister can approve in accordance with the legislation. As a result the Government has adopted a new streamlined approach to AMP approvals in which the Government is supporting communities to work directly with the NT Government to implement activities that reduce alcohol-related harm in a more timely and responsive manner. Both the Commonwealth and NT Governments are currently working with communities to implement the new approach.

The AMP process continues to assist many communities to address alcohol-related harm. The effectiveness of an AMP is largely dependent on the quality of the projects and aims proposed within the plans themselves. In 2008, an evaluation of four remote communities in the NT found AMPs were effective in reducing serious injury in the assessed communities.

As part of the commitment to improve educational outcomes for Indigenous children, the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) currently operates in 52 schools in 23 communities across the NT. As at 19 June 2015 there were 2605 parents in-scope for the Attendance component of SEAM in relation to 4214

children. Data on the percentage of Indigenous parents that are in-scope is not collected, however given that SEAM is operational in remote communities in the NT, it is understood that a large percentage of parents in-scope are Indigenous.

The SEAM programme evaluation (undertaken by the former Department of Education, Employment and Workplace Relations in 2014[1]) indicates that SEAM has a positive impact on enrolment and a minimal to modest impact on reducing unauthorised absences. There was a high compliance rate for the enrolment component of SEAM. While a small percentage of income support payments were suspended for the enrolment component, no payments were cancelled during the evaluated period. This indicates that once suspended, parents very soon complied with SEAM and ensured their children were enrolled and/or taking steps to return to school on a regular basis.

The evaluation has assisted in the continuous improvement of SEAM, including the implementation of a reformed model in Maningrida and Tiwi Islands. This model has demonstrated some positive early outcomes. As at 19 June 2015 (Term 1, 2015), parents and carers in Maningrida have attended 120 conferences, resulting in substantially more children receiving assistance through the development of attendance plans to address barriers to school attendance.[2]

Across all sites, as of 19 June 2015, 218 parents have had their income support payments suspended as part of the attendance component of SEAM, with less than 20 cancellations. Under the enrolment component 1,232 parents have had their income support payments suspended, with less than 20 cancellations. Data is not available on the duration of suspensions.

As part of their role in the SEAM programme, Department of Human Services' social workers pro-actively make attempts to contact families who are subject to payment suspensions in order to re-engage the family with SEAM as soon as possible. Social workers identify and work to address any barriers that are contributing to non-compliance to ensure families meet the requirements of the SEAM programme and maintain eligibility for income support payments.

The SEAM programme has the flexibility to respond to circumstances outside a family's control, which assists families to meet their basic needs. Where a family identifies valid reasons for non-compliance with SEAM, social workers can grant a 'Special Circumstances' exemption and enable the payment suspension to be lifted. Where this occurs payments are reinstated and backdated to the start-date of the SEAM suspension period, unless the parent is also subject to a non-SEAM related suspension. Social workers can apply a special circumstances exemption for a number of reasons, including cases of domestic violence (or other personal issues), serious illness (such as mental health issues), or where the parent is unable to comprehend a notice about complying with SEAM.

There is a range of social security payments available to customers experiencing severe financial hardship or in need of special assistance. Examples include:

[1] The report will be available on the SEAM website by the end of the July 2015 at http://www.dpmc.gov.au/school-enrolment-and-attendance-measure-seam

[2] When compared to existing SEAM communities of comparable demographics.

- Urgent Payment – the early delivery of part of a current customer's accrued eligible Social Security entitlement;
- Crisis Payment – a one off payment to help people who are experiencing difficult or extreme circumstances such as domestic violence;
- Advance Payment – eligible to Family Tax Benefit customers, where repaying the advance will not cause the individual to suffer financial hardship.

Under Social Security Law a person must be in receipt of an income support payment and meet the relevant eligibility criteria to qualify for these payments. Some Family Tax Benefit customers will not be able to receive an Advance Payment, where they owe a debt to the Commonwealth or where they have already received their maximum Advance Payment entitlement and are still repaying the advance. Customers whose income support is suspended or cancelled do not qualify for these forms of assistance.

If a customer contacts the Department of Human Services to request assistance due to hardship, and is not entitled to Commonwealth financial assistance, often the most appropriate action is to refer the customer to a welfare agency for assistance with meeting their basic needs.

The Department of Human Services' Social Work Services are also available for customers who are vulnerable and in hardship. Social workers assess customer needs (including entitlement to payments), offer short term counselling and support and work with other government and non-government agencies to address the needs of vulnerable people.

Like SEAM, Income Management is not an Indigenous-specific measure. Of the income management sites outside the NT, the majority of the population (exact percentages are not disclosed) is Indigenous in the four Cape York communities, APY Lands, Ng Lands (including Kiwirrkurra) and Ceduna. In Perth Metro and the Kimberly, 63 per cent of the population is Indigenous and in locations where place-based income management is implemented (Bankstown, Greater Shepparton, Logan, Playford, Rockhampton) 18 per cent of the population is Indigenous. This data is publically available. A list of recent evaluations of all income management measures across Australia is at Appendix B.

Customary Law

Sections 15AB and 16A of the *Crimes Act 1914* (the Crimes Act) provide a general prohibition on considering customary law in bail and sentencing for federal offences. The intention of these provisions is to prevent customary law from being used to mitigate the seriousness of any offence that involves violence against women and children, giving effect to a 2006 Council of Australian Governments (COAG) decision.

These provisions were amended by the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* to enable customary law and cultural practice to be considered in bail and sentencing decisions for offences against Commonwealth and NT laws that protect cultural heritage, including sacred sites or cultural heritage objects. This continued measures under the now repealed *Northern Territory National Emergency Response Act 2007* (the NTNER Act).

A key reason for this amendment was to ensure that appropriate cultural considerations would be regarded in matters regarding the protection of cultural heritage.[3] The circumstances in which customary law and cultural practice may be considered is a matter for judicial discretion but is limited to bail and sentencing matters.

Right to a fair trial

Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR) guarantees the right to equality before courts and tribunals, and the right to a fair and public criminal trial. The right to a fair trial is generally considered to guarantee procedural rights, and includes the presumption of innocence and minimum guarantees in criminal proceedings, such as the right to counsel and not to be compelled to self-incriminate.

The relevant provisions of the Crimes Act do not place limitations on any of the procedural guarantees set out in Article 14. Further, there is no international jurisprudence suggesting that the right to a fair trial includes a right to be tried under customary law, or the right to have customary law taken into account. In fact, trial by customary law would be incompatible with the ICCPR to any extent that it was inconsistent with the requirements of Article 14. Accordingly, the relevant provisions of the Crimes Act are compatible with the right to a fair trial in Article 14 of the ICCPR.

The right to freedom from arbitrary detention

The right to freedom from arbitrary detention (Article 9, ICCPR) requires that persons not be subject to arrest and detention except as provided for by law, and provided that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where people are deprived of their liberty, including to considerations regarding granting bail.

The UN Human Rights Committee has stated that detention may be arbitrary where it includes elements of inappropriateness, injustice and lack of predictability. Provisions for the granting of bail, or restrictions on factors to be considered in the granting of bail, must be reasonable in the circumstances.

[3] *Aboriginal Areas Protection Authority v S & R Building & Construction Pty Ltd* [2011] NTSC 3.

The Crimes Act provisions create a general exclusion on the consideration of customary law and cultural factors. This ensures and promotes certainty and predictability in criminal trials, and should not result in a person being unjustly or inappropriately detained.

While section 15AB (3A) of the Crimes Act creates an exception to the rule against considering 'any form of customary law or cultural practice', the exception is narrowly confined to a small range of Acts for the purposes of protecting cultural heritage, an obligation incumbent upon Australia under Article 27 of the ICCPR and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the *Convention for the Elimination of All Forms of Racial Discrimination* (CERD).

Accordingly, the relevant provisions of the Crimes Act are compatible with the right to freedom from arbitrary detention.

The right to equality and non-discrimination

Australia's international human rights obligations prohibit discrimination on various grounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and 'other status'. Australia's human rights obligations also guarantee equality before the law and to equal protection of the law without discrimination.

Separate legal rules for particular ethnic or racial groups may be discriminatory if they function to impair the equal enjoyment of rights. In this respect, Australia's obligations under international human rights law limit the extent to which separate legal rules can be established for particular ethnic or racial groups. Recognition of customary law or cultural practice in domestic law could constitute discrimination, either against members of the group whose cultural practice is recognised, or against another group whose cultural practice is not recognised.

The prohibitions excluding consideration of customary law in bail and sentencing decisions in the Crimes Act are universal and apply throughout Australia to all people and all cultural backgrounds. They ensure that all persons are subject to the same legal rules, except in a limited range of circumstances.

Those limited circumstances allow for the consideration of customary law in relation to bail and sentencing decisions for offences under a small number of Acts protecting cultural heritage.[4] Under international human rights law, differential treatment such as this will not constitute discrimination if the differentiation is reasonable and objective and the aim is to achieve a legitimate purpose.[5]

The exceptions for offences relating to the protection of cultural heritage recognise customary law or cultural practice in domestic law for the legitimate purpose of preservation of minority culture and ensure relevant cultural practice can be taken into account in relation to bail and sentencing decisions for offences which relate to practices that are inherently cultural. They ensure the adequate development and protection of Indigenous peoples in Australia, as required under Article 2(2) of the CERD, and protect cultural rights under Article 27 of the ICCPR and Article 15 of the ICESCR.

[4] See sub-ss 15AB(3A), 16A(2AA).
[5] UN Human Rights Council, General Comment 18, [13]; CERD Committee, General Comment 14, [2].

Accordingly, the relevant provisions of the Crimes Act are compatible with the right to equality and non-discrimination.

Community Living Area Land Reform in the Northern Territory Outcomes Paper

Introduction

The Australian Government has made a 10-year commitment to work with Aboriginal people in the Northern Territory (NT) to build strong, independent lives where communities, families and children are safe and healthy.

Reforms to Community Living Area (CLA) land will help the Australian Government to respond to the things Aboriginal people in the NT said were important to them during the Stronger Futures consultations which includes reducing barriers to economic development in remote communities.

The Australian Government's Discussion Paper

On 15 March 2013, the Australian Government released a Discussion Paper on CLA land reform in the NT, marking the formal commencement of the Government's consultations on CLA land reform as part of the Stronger Futures in the NT initiative.[1]

The purpose of the Discussion Paper was to encourage discussions through written feedback and CLA community meetings in the NT.

The Discussion Paper provided background on relevant issues, explained how meaningful consultation on CLA land reform would occur and presented issues and ideas that the Australian Government sees as relevant to these reforms.

The Discussion Paper outlined the Australian Government's commitment to implementing CLA land reform, which is demonstrated by the land reform measure of the Stronger Futures legislation.

[1] Ctrl + Click here for the Community Living Area Land Reform in the Northern Territory Discussion Paper at the Department of Families, Housing, Community Services and Indigenous Affairs web site.

The land reform measure of the Stronger Futures legislation

The land reform measure enables the Australian Government to make amendments to NT legislation relating to CLAs. The Australian Government is committed to reforming the current arrangements that apply in CLAs in order to facilitate voluntary long term leasing, including for the granting of individual rights or interests and the promotion of economic development.

The Australian Government considers that the land reform measure is a special measure within the meaning of section 8(1) of the *Racial Discrimination Act 1975*, as the measure was enacted to address specific Aboriginal disadvantage and help Aboriginal people to enjoy their human rights equally with others in the Australian community. Further information on the land reform measure, including review provisions, is outlined in the relevant Explanatory Memoranda to the Stronger Futures legislation.[2]

Purpose of the Outcomes Paper

This Outcomes Paper summarises views provided in CLA land reform consultations during April and May 2013 and outlines proposed reforms, including specific immediate reforms and options for longer term reforms.

The Outcomes Paper invites written feedback on Draft Regulations to effect the proposed immediate reforms and on other issues raised in the Outcomes Paper, particularly longer term reform options. Please see the 'Proposed immediate CLA land reforms', 'Longer term reform options' and 'Next steps' sections of the Outcomes Paper for more information.

Consultations during April and May 2013

Written feedback to the Australian Government's Discussion Paper was requested by 12 April 2013. Seventeen formal submissions were received and are listed at **Appendix A**. These submissions are available online at the Department of Families, Housing, Community Services and Indigenous Affairs web site.[3] Please see the 'Summary of feedback provided in submissions on the Discussion Paper' section of the Outcomes Paper for more information.

The submissions helped to inform discussions at consultation meetings that took place in April and May 2013. **Appendix B** lists meetings Australian Government officials held with CLA communities and with cattle station owners and managers.

As **Appendix B** outlines, extensive CLA community meetings were held across the NT. Plain English communication materials were distributed in advance of, and used during, these meetings. Interpreters attended a majority of CLA community meetings.

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[2] Legislation relevant to CLA land reform within the Stronger Futures legislation package includes the *Stronger Futures in the Northern Territory Act 2012* and the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.
Ctrl + Click here for the Stronger Futures in the Northern Territory Bill 2012 web page at the Parliament of Australia web site.

[3] Ctrl + Click here for access to all formal submissions at the Department of Families, Housing, Community Services and Indigenous Affairs web site.

In addition to the meetings listed at **Appendix B**, Australian Government officials met with NT Government officials in Darwin on 2 April 2013 and 23 May 2013, and met with representatives of the NT Cattlemen's Association in Alice Springs on 10 April 2013 and via teleconference on 17 April 2013.

The consultation process meets the Australian Government's commitment to meaningful engagement in association with Stronger Futures in the NT and consultation requirements under the Stronger Futures legislation.

The Australian Government has prepared this Outcomes Paper after considering submissions received and consultation meeting discussions.

Summary of feedback provided in submissions on the Discussion Paper

Submissions were received from a number of key stakeholders.

- Submissions from the Central Land Council (CLC) and the Northern Land Council (NLC) broadly support CLA land reform. A number of issues are raised in these submissions, and in earlier submissions from the CLC and NLC to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills, and will be discussed in later sections of this Outcomes Paper.

- A submission from the NT Cattlemen's Association opposes reforms that would allow for fundamental changes in the nature and use of CLAs. Should reforms proceed however, the NT Cattlemen's Association seeks a legislated right for any adjoining pastoralist to a CLA to be consulted on new proposals in CLAs. This issue will be discussed in a later section of this Outcomes Paper.

- The NT Government did not lodge a formal submission.

Submissions were also received from other interested organisations and individuals.

- A number of these submissions broadly support CLA land reform.

- A number of these submissions broadly oppose CLA land reform, and criticise the adequacy of the consultation process.

Some of the submissions that oppose CLA land reform state that as part of the Stronger Futures process, CLA land owners' consent to development on their land has been removed. This is incorrect. None of the proposed reforms remove the need for CLA land owners' consent in relation to developments (including leasing) on their land.

Summary of consultation meeting discussions

CLA community meetings

Representatives from the CLC attended CLA community meetings where requested to do so by CLA land owners except on very few occasions where this was not possible due to staff availability. The NLC attended a number of meetings in the NLC region. NT Government officials were invited to attend all CLA community meetings and attended a number of these meetings.

Across communities there was broad support from meeting attendees for CLA land reform.

Specifically, many meeting attendees supported reforms that will enable CLA land owners to lease their land for a broader range of purposes. Meeting attendees understood that this would underpin service delivery and government investment in infrastructure, allow for greater rental income for land owners and help facilitate local business development. These were seen as positive parts of potential reforms, providing CLA land owners with the same opportunities to use their land as other Aboriginal land owners. Local examples of where leasing is not currently possible were discussed and included community stores, Government Engagement Coordinator complexes and certain other infrastructure.

Some meeting attendees indicated that the threshold at which leases on CLA land require NT Ministerial consent should be lifted, particularly if the CLA land-holding association or corporation has strong governance. The requirement for Ministerial consent currently applies to all leases (except those on CLA land owned by an incorporated association for a term of 12 months or less). Many community members spoke positively of the support provided by the Office of the Registrar of Indigenous Corporations on governance matters.

Meeting attendees generally supported consultations with cattle station owners and managers regarding CLA land reform but a number of people indicated that pastoralists should not be consulted on potential leases enabled by reforms.

Finally, where the relevant CLA was surrounded by *Aboriginal Land Rights (Northern Territory) Act 1976* land rather than a pastoral lease, a range of views were expressed regarding pursuing changes in the future to simplify and achieve consistency in tenure arrangements. Please see the 'Longer term reform options' section of the Outcomes Paper for further discussion on this matter.

Meetings with cattle station owners and managers

The cattle station owners and managers that Australian Government officials met with held varied views on CLA land reform.

Those supportive of CLA land reform noted the possible benefits from increased commercial activity to both the community and pastoral operations, and the pressing need for changes to allow CLAs to function as normal towns.

Those opposed to CLA land reform noted the strain on resources and infrastructure that potential increased commercial activity could contribute to and indicated that pastoralists should be consulted regarding leasing of CLA land.

Both those supportive of and those opposed to CLA land reform noted the need to ensure increased commercial activity does not impact adversely on pastoral operations.

Other issues noted included the need to strengthen the governance of CLA land-holding associations and corporations.

Proposed immediate CLA land reforms

After considering submissions on the Discussion Paper and consultation meeting discussions, the Australian Government proposes the following immediate reforms to help address priorities for CLA communities. Draft Regulations to effect the legislative amendments required to deliver these reforms are available online at the Department of Families, Housing, Community Services and Indigenous Affairs web site.[4]

Leasing restrictions

The Australian Government proposes that immediate reforms include allowing CLA land owners to grant leases for a greater variety of purposes, including for commercial, infrastructure and public purposes. These changes would bring the purposes for which CLA land can be leased under the *Associations Act (NT)* in line with the purposes for which CLA land can be used or developed under the NT Planning Scheme. This is not currently the case. For example, while a community store is a use or development that falls within the scope of the NT Planning Scheme, CLA land owners are not currently able to lease a community store to a store operator. The proposed changes correct this discrepancy and recognise that leasing is now part of normal business in remote communities in the NT.

It is proposed that these changes are able to be achieved by modifying provisions in the *Associations Act (NT)* which deal specifically with CLA land owners that are incorporated associations and those that are Aboriginal corporations. Therefore, it is proposed that new subsections 6(d) and (e) be included in the *Associations Act (NT)* for land owners that are incorporated associations and 8(d) and (e) be included in the *Associations Act (NT)* for land owners that are Aboriginal Corporations (refer to items 4 and 9 of the Draft Regulations).

For the avoidance of doubt, the proposed changes also clarify that relevant *Associations Act (NT)* provisions relating to leasing restrictions also apply to licenses (refer to items 2, 3 and 4 and 7, 8 and 9 of the Draft Regulations).

The Australian Government notes that the proposed changes complement and build on provisions included in the Associations Act Amendment Bill introduced by the former NT Government in 2012 but which lapsed upon prorogation of the legislature prior to the 2012 NT elections.

[4] Ctrl + Click here for access to the Draft Regulations at the Department of Families, Housing, Community Services and Indigenous Affairs web site.

CLA community meeting discussions demonstrated consistent support from CLA land owners for reforms to enable leasing for a greater variety of purposes. This support is reflected in submissions from NT Land Councils on the Discussion Paper and to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills.

NT Ministerial consent provisions

The Australian Government proposes that immediate reforms also include changing the current arrangements in relation to NT Ministerial consent for leases on CLA land (refer to items 1, 5, 6 and 10 of the Draft Regulations). This change would provide that NT Ministerial consent is only required for leases with a term greater than ten years. As stated above, the requirement for Ministerial consent currently applies to all leases (the only exception being leases for a term of 12 months or less on CLA land owned by an incorporated association).

A range of views was presented on this issue in submissions on the Discussion Paper and consultation meeting discussions. CLA community meeting discussions demonstrated general support for measures that give more control to CLA land owners to make decisions. The CLC submission on the Discussion Paper specifically states that, in line with similar provisions under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the requirement for NT Ministerial consent should only apply for a lease period of 40 years or more. Conversely, the NT Cattlemen's Association submission on the Discussion Paper seeks, as part of the NT Ministerial decision-making process, a legislated consultation right for adjoining pastoralists to any new proposals on CLA land. This request appears to presuppose the continuation of current NT Ministerial consent processes. A ten year threshold represents a balanced position. The ten year period recognises the potentially competing priorities of giving greater control to CLA land owners and retaining appropriate checks and balances in relation to land dealings on CLA land while longer term reform options are considered further.

With regard to any consultation that occurs as part of the NT Minister's decision-making process, the Australian Government considers that this is a matter for the NT Government and notes that it will necessarily involve considering the interests of different parties. Should the CLA land reform provisions of the Stronger Futures legislation be used to make the Draft Regulations, the NT Government remains able to complement these reforms with its own amendments to the relevant NT legislation.

Longer term reform options

The Australian Government recognises that longer term reforms require further consideration in order to ensure sustainable models for CLA land. Some of the key issues that were raised in submissions on the Discussion Paper and in consultation meetings are outlined below.

The CLC submission on the Discussion Paper notes the importance of comprehensive reform of CLA title in order to address issues such as the vulnerability of title and administrative uncertainty.

The CLC notes that while land councils may provide assistance to CLA land owners on request, this does not necessarily mean than CLA land-holding associations and corporations have the necessary administrative and legal support to deal effectively with their land. The same checks and balances do not exist in relation to CLA land dealings as exist with regard to land dealings under the *Aboriginal Land Rights (Northern Territory) Act 1976*, and therefore the same level of certainty cannot be provided to lessees and licensees. Similar views were also presented in a number of consultation meeting discussions.

The Australian Government agrees that comprehensive reform may be needed to strengthen the way CLA title is held and to systematise the available support. This could include lessening the administrative burden on CLA land-holding entities that do not engage in any other activities beyond holding title to CLA land.

As noted in Appendix 1 of the CLC submission on the Discussion Paper, these outcomes could be provided for via a statutory land trust model established under NT legislation, similar to those provided for in the *Kenbi Land Trust Act 2011 (NT)* and the *Parks and Reserves (Framework for the Future) Act 2003 (NT)*. There may be additional models that merit consideration.

In addition, a number of submissions on the Discussion Paper highlighted that planning issues require careful consideration, including the application of the NT Planning Scheme to CLA communities and the way in which town planning frameworks can best be applied. Area plans have been developed for a number of towns on *Aboriginal Land Rights (Northern Territory) Act 1976* land, with the intention that these towns are added to Schedule 5 of the NT Planning Scheme. One option is that a similar process could apply in the future to CLA communities, particularly larger communities.

The consultation process demonstrated the significant diversity that exists across CLAs, both in relation to the geography and size of communities, as well as communities' governance, aspirations and capacity. Any longer term reforms will therefore require the flexibility to respond to the specific needs of individual CLA communities.

For example, specific approaches may be required for CLA communities that are surrounded by *Aboriginal Land Rights (Northern Territory) Act 1976* land (rather than a pastoral lease), as well as communities which consist of CLA title for one area and *Aboriginal Land Rights (Northern Territory) Act 1976* title for the remainder. In these circumstances, CLA land holders may wish to pursue changes in the future to simplify and achieve consistency in tenure arrangements. This is particularly relevant to communities such as Minyerri, where community members indicated to Australian Government officials that the current inconsistent and complex tenure arrangements impact on the effectiveness of community decision-making.

Next steps

The Australian Government invites **written feedback to the Draft Regulations by 5 July 2013**. The Australian Government will take into account this written feedback before settling on the final form of the proposed regulations.

The Australian Government also invites **written feedback on broader issues raised in the Outcomes Paper, particularly on longer term reform options, by 30 September 2013**.

Feedback can be submitted by post:
Land and Economic Development Branch
Department of Families, Housing, Community Services and Indigenous Affairs
PO Box 7576
Canberra Business Centre
ACT 2610

By email:
CLAlandreform@fahcsia.gov.au

Or in person:
To your local Government Engagement Coordinator or Indigenous Engagement Officer.

This Outcomes Paper is available on the FaHCSIA website at
http://www.fahcsia.gov.au/community-living-area-land-reform-in-the-northern-territory

All written feedback on broader issues raised in the Outcomes Paper will be made public at this web address.

The Australian Government will hold a second stage of consultations on longer term CLA land reform options after considering written feedback on broader issues raised in the Outcomes Paper.

Appendix A – Formal Submissions received on the Discussion Paper on Community Living Area Land Reform in the Northern Territory

1. Mr Digby Habel
2. Ms Michele Harris OAM on behalf of Concerned Australians
3. Mr Greg Marks
4. Ms Bev Patterson, Commun ty Facilitator, Binjari
5. Mr Ray Jackson on behalf of the Indigenous Social Justice Association
6. Mr Don Stokes
7. Ms Jan Aitken
8. Ms Fairlie Arthur
9. Indigenous Business Australia
10. Mr Mick Gooda, Aboriginal And Torres Strait Islander Social Justice Commissioner
11. Ms Marlene Hodder on behalf of the Intervention Rollback Action Group
12. Ms Joy Dahl
13. Central Land Council
14. Northern Land Council
15. Name Withheld
16. L & S Nominees Pty Ltd
17. Northern Territory Cattlemen's Association

Appendix B – Consultation Meetings

CLA community Meetings

- Engawala *8 April 2013*
- Atitjere *9 April 2013*
- Bulla *23 April 2013*
- Laramba *29 April 2013*
- Wilora (including participants from Tara) *30 April 2013*
- Titjikala *1 May 2013*
- Imanpa *7 May 2013*
- Kings Canyon Outstations (Lila and Ulpanyali) *8 May 2013*
- Wutunugurra *14 May 2013*
- Imangara *15 May 2013*
- Alpurrurulam *22 May 2013*
- Binjari *28 May 2013*
- Jilkminggan *28 May 2013*
- Minyerri *29 May 2013*
- Urapunga *29 May 2013*

Cattle Station Meetings

- Auvergne Station *23 April 2013*
- Napperby Station *29 April 2013*
- Stirling Station *30 April 2013*
- Kings Creek Station *8 May 2013*
- Palmer Valley Station *8 May 2013*
- Epenarra Station *14 May 2013*
- Lake Nash Station *22 May 2013*

APPENDIX B

Income Management Evaluations

Evaluation of the Child Protection Scheme of Income Management and Voluntary Income Management Measures in Western Australia, Orima Research, September 2010

Evaluation of New Income Management in the Northern Territory, The Social Policy Research Centre at UNSW and the Australian National University,

First Evaluation Report July 2012

Final Evaluation Report September 2014

A Review of Child Protection income Management in Western Australia, Evaluation Hub in the Australian Government Department of Social Services, February 2014

Placed Based Income Management Evaluation (PBIM), Deloitte Access Economics,

Baseline, Process and Short-Term Outcomes Report, May 2014

Medium-Term Outcomes and consolidated Final Report is not yet publically available

Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Report, Social Policy Research Centre at UNSW and Colmar Brunton, October 2014

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

8 September 2015

Senator the Hon Nigel Scullion
Minister for Indigenous Affairs
MG. 50
Parliament House
CANBERRA ACT 2600

Dear Minister

Review of *Stronger Futures in the Northern Territory Act 2012* and related legislation

Thank you for your letter dated 28 July 2015 (received in full on 25 August 2015) responding to the committee's inquiries in relation to the *Stronger Futures in the Northern Territory Act 2012* and related legislation. The committee appreciates the information that you have provided addressing its specific inquiries regarding the Stronger Futures measures.

As noted in my previous letter, the committee is seeking updated information about the Stronger Futures measures to assist in its consideration of this legislative package.

While your response provided answers to some of the committee's questions, I note that a number of the questions were not addressed in your response. This is particularly the case in relation to the measures to address alcohol abuse.

As such, I write again to seek your advice in relation to the following questions:

Land reform

1. You advised that community meetings were held in 16 selected communities before the introduction of the Stronger Futures in the Northern Territory Regulation 2013. Can you advise how many communities in total were affected by the regulation and whether, in relation to the selected communities consulted, these 16 communities were reflective of the type of communities affected by the regulation?

Measures to address alcohol abuse

2. How many alcohol protected areas, which were originally prescribed as a result of the *Northern Territory Emergency Response Act 2007* and continued as an alcohol protected area under the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*, remain?
3. How many Alcohol Management Plans (AMPs) have been approved by the Minister in total to date?
4. Where an AMP has been approved, have any rules been made under subsection 27(3) of the *Stronger Futures in the Northern Territory Act 2012* (the Act) revoking or varying the original rules so that the area now covered by the AMP is no longer an alcohol protected

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area? We understand, based on the example provided in your original response, that some communities have not specifically applied for a revocation or variation of the original rules However, the question remains as to whether any alcohol protected areas have been revoked or varied under the Act.

5. How many AMPs, if any, have been refused approval by the Minister in total to date? If any have been refused, on what basis were the plans refused?
6. What is the average time taken to approve an AMP once it has been endorsed by the community?
7. If a community within an alcohol protected area does not wish to enter into an AMP and, as a community, decides it wishes to ease alcohol restrictions, what steps can the community take to ensure it is no longer designated as an alcohol protected area?
8. Is there a timetable in place to transition all alcohol protected areas to AMPs?
9. What is the latest evidence as to how effective AMPs have been in achieving their stated aims? Is the 2008 evaluation referred to in your original response the most recent evaluation? Could you provide the committee with a copy of that evaluation?

Income management

10. In relation to the 15 income management sites outside of the Northern Territory, could you provide the specific proportion of those subject to income management who are Indigenous in *each* site? (While we understand that the data is publicly available, it would assist the committee if the department could provide the percentages in each site).

School Enrolment and Attendance through Welfare Reform measure (SEAM)

11. You have stated that the SEAM programme evaluation will be available on the SEAM website by the end of July 2015. However, to date it is not available on this website. Could you please provide the committee with a copy of this evaluation?

It would be appreciated if you could provide your response by 22 September 2015, and if you could ensure that the response addresses each of the questions above individually.

I note that the committee is seeking this information via correspondence with you in lieu of holding public hearings. However, in the event that sufficient information is not able to be obtained through our correspondence, the committee has determined that it may be necessary to hold a public hearing of the inquiry.

Should you or your department have any queries, please contact the Acting Committee Secretary, Ivan Powell, on (02) 6277 3066.

Thank you, in anticipation, for your assistance with this matter.

Yours sincerely

The Hon Philip Ruddock MP

Chair

MINISTER FOR INDIGENOUS AFFAIRS

Reference: C15/90430

The Hon Philip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Chairman

Thank you for your further letter of 10 September 2015 with additional questions from the Parliamentary Joint Committee on Human Rights (the Committee) in relation to Stronger Futures measures. Please find responses prepared by my Department below.

Land Reform

All community living area communities were potentially affected by the regulation. There are over 100 community living areas in the Northern Territory. They range in size from towns to small family outstations. The 16 communities consulted are the largest (by population) community living areas. The 16 communities were selected in consultation with the Central and Northern Land Councils.

Measures to address alcohol abuse

In relation to the Committee's question as to the number of alcohol protected areas (APAs), it is not feasible to provide a numerical answer. Existing APAs were originally 'prescribed areas' under the *Northern Territory National Emergency Response Act 2007* (NTNER Act). These prescribed areas were preserved as APAs under the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*. In broad terms, the following areas under the NTNER Act were deemed prescribed areas:

- Aboriginal land as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- Community living areas under the *Lands Acquisition Act* of the Northern Territory; and
- Town camps that have been declared for the purpose by the Minister.

To date I have approved one Alcohol Management Plan (AMP) for the Titjikala community. It was approved on 26 May 2014. So far, seven AMPs have been rejected. Each AMP was rejected because it had the potential to increase alcohol related harm.

No APAs have been revoked or varied under the *Stronger Futures in the Northern Territory Act 2012* (SFNT ACT).

In terms of timing, the Titjikala AMP was finalised by the community in June 2013 and approved on 26 May 2014. In the intervening period, additional documentation was sought from the Northern Territory Government, to ensure an informed decision was made about the proposed AMP.

A community can request at any time to the Minister to have an APA varied or revoked, regardless of whether an approved AMP is in place. As I outlined in my previous response, subsection 27(5) of the SFNT Act outlines the circumstances in which a rule to vary or revoke an APA may occur. An APA may be varied or revoked:

- On the Minister's own initiative; or
- Following a request made to the Minister by, or on behalf of, a person who is ordinarily resident in the area to which the rule APA rules normally relate; or
- Following approval of an AMP relating to the area subsection 17(1) of the SFNT Act related to the determination to approve or refuse an AMP.

Before varying or revoking an APA the Minister must undertake community consultation in accordance with subsection 27(6) of the SFNT Act. Any decision to vary or revoke an APA must also take into account the matters set out in subsection 27(9) of the SFNT Act.

Although AMPs and APAs may interact, AMPs are not a function of APAs. AMPs are designed to support communities to drive locally tailored solutions to alcohol-related harm in their community. Approval of an AMP may be accompanied or followed by a request for a revocation or variation to an APA in accordance with the Act, but an approved AMP will not automatically lead to a revocation or variation of an APA.

The SFNT Act ceases to have effect at the end of 10 years after its commencement, which will be in July 2022.

There is a range of information in the public domain about the effectiveness of AMPs as a policy tool, including:

- Clough, A.R. et al (2014) 'Study Protocol - Alcohol Management Plans (AMPs) in remote indigenous communities in Queensland: their impacts on injury, violence, health and social indicators and their cost-effectiveness', Biomedical Central Public Health. Available at: www.biomedcentral.com/content/pdf/1471-2458-14-15.pdf
- Smith, K., Langton, M., d'Abbs, P., Room, R., Chenhall, R., Brown, A. (2013) 'Alcohol management plans and related alcohol reforms'. Written for the Indigenous Justice Clearinghouse. Available at: www.researchgate.net/profile/Kristen_Smith/publication/262818179_Alcohol_management_plans_and_related_alcohol_reforms/links/548fad9d0cf2d1800d862987.pdf
- d'Abbs, P., McMahon, R., Cunningham, T., Fitz, J. (2010) 'An evaluation of the Katherine Alcohol Management Plan and Liquor Supply Plan'. Menzies School of Health Research. Written for the Norther Territory Department of Justice. Available at www.nt.gov.au/justice/documents/KatherineAMPEvaluation.pdf
- Senior, K., Chenhall, R., Ivory, B., & Stevenson, C. (2009) 'Moving beyond the restrictions: The evaluation of the Alice Springs Alcohol Management Plan', Menzies School of Health Research & Monash University, Medicine Nursing and Health Sciences, School of Public Health and Preventive Medicine. www.territorystories.nt.gov.au/bitstream/10070/218442/2/Vatskalis-110609-Alcohol_restrictions_working_in_Alice_Springs_attachment.pdf

- Margolis, S. A., Ypinazar, V. A. and Muller, R. (2008) 'The impact of supply reduction through alcohol management plans on serious injury in remote Indigenous communities in remote Australia: A ten-year analysis using data from the Royal Flying Doctor Service', *Alcohol & Alcoholism*. vol. 43, no. 1: 104-110. Available at: http://alcalc.oxfordjournals.org/content/43/1/104.long. This is the evaluation referred to in PM&C's July 2015 response to the Parliamentary Joint Committee on Human Rights.

On a related matter, I would like to advise the Committee that in accordance with section 28 of the SFNT Act, and section 114 of the *Classification (Publications, Films and Computer Games) Act 1995*, I tabled reports of the independent reviews into laws relating to prohibited material and alcohol legislation in both Houses of Parliament on 16 September 2015.

School Enrolment and Attendance through Welfare Reform measure (SEAM)

The *Improving School Enrolment and Attendance Through Welfare Reform Measure (SEAM) Trial 2009-2012* Final Evaluation Report is available on the PM&C website: www.dpmc.gov.au/sites/default/files/publications/Improving_School_Enrolment_Attendance_through_Welfare_Reform_Measure_trial.pdf

Income management data

The attached information has been provided by the Department of Social Services, and is as at 28 August 2015. Data is no longer collected by income management site, but by standard statistical boundaries. The areas below most closely align with income management sites.

Yours sincerely

NIGEL SCULLION

28 / 9 / 2015

Attachment – Income Management Data

Total Number of People on Income Management^	Total	Per Cent Indigenous
Northern Territory	**20,778**	**88%**
— Alice Springs	5,372	96%
— Barkly	1,481	96%
— Katherine	3,487	95%
— Daly-Tiwi-West Arnhem	3,942	95%
— East Arnhem	2,827	97%
— Rest of Northern Territory	3,669	53%
Western Australia	**1,835**	**65%**
— Kimberley	826	97%
— Goldfields (*Ng Lands, Laverton and Kiwirrkurra*)	194	98%
— Greater Perth	749	20%
— Rest of Western Australia	66	82%
South Australia	**1,021**	**43%**
— Greater Adelaide (*Playford*)	637	17%
— Western & West Coast (*Ceduna Region*)	66	97%
— APY Lands	235	97%
— Rest of South Australia	83	47%
Victoria	**395**	**18%**
— Shepparton	310	17%
— Rest of Victoria	85	22%
New South Wales	**258**	**14%**
— Greater Sydney (*Bankstown)*	187	9%
— Rest of NSW	71	26%
Queensland	**1,916**	**44%**
— Greater Brisbane *(Logan)*	1,000	16%
— Rockhampton	454	29%
— Far North *(Cape York)*	100	98%
— Rest of Queensland	362	54%
ACT	**<5**	**n/a**
Tasmania	**12**	**n/a**
Unknown/Missing	**n/a**	**n/a**
Total	**26,231**	**78%**

^ Potential inconsistencies from any data reported prior to 1 July 2015 are due to a change in reporting method for the income management programme, to conform to the Australian Statistical Geography Standard (ASGS). The data represents the current residential address of income managed customers within designated statistical areas.