

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.

