



INSTITUTE OF
SISTERS of MERCY
OF AUSTRALIA & PAPUA NEW GUINEA

Submission to the Parliamentary Joint Committee on Human Rights

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

Contact:

Sister Berneice Loch
Institute Leader
Institute of Sisters of Mercy of Australia and Papua
New Guinea

Prepared by:

Ms Siobhan Marren
Mission Officer
Institute Mission Team

1 | BACKGROUND

The Sisters of Mercy have had a strong presence in Australia since the establishment of our first congregation in Perth in 1846. Our movement towards unity culminated on December 12, 2011, when fifteen independent congregations came together for the first time as the newly-formed *Institute of the Sisters of Mercy of Australia and Papua New Guinea*.

The Institute of the Sisters of Mercy of Australia and Papua New Guinea (ISMAPNG) encompasses not only religious Sisters, but also a strong network of lay staff engaged in ministries such as health and education. As Sisters of Mercy we are also privileged to play an important role in the vigorous network of Mercy congregations throughout the world.

As Catholic women religious, Sisters of Mercy are dedicated to serving those who suffer injustices relating to situations such as poverty, lack of adequate health care, education, meaningful employment, and the need to seek refuge from their country of origin. In many parts of the country, Sisters of Mercy are engaged in partnership with Aboriginal and Torres Strait Islander communities. We support their rights to land and culture, and are firmly committed to closing the gap in morbidity and mortality rates compared to the non-Indigenous Australian population.

We are dedicated to working together with our Aboriginal brothers and sisters to ensure that all Australians understand, respect and value the history, culture, rights and immense contribution of Aboriginal and Torres Strait Islander peoples. We look forward to the day where genuine and respectful partnerships are the norm and when the voices of Aboriginal communities are heard and reflected in federal policy and legislation.

Our faith and commitment to the message of the Gospels impels us to act for justice. Our Constitutions, approved in 2012, provide us with a firm foundation on which to base our directions and decisions. In part, they read:¹

1 Institute of the Sisters of Mery of Australia and Papua New Guinea (2013). *Constitutions*, ISMAPNG.

*The Church also reminds us that justice stands at the heart of the Gospel.
Action on behalf of justice,
and participation in the transformation of the world,
is a constituent dimension of the gospel.
We are mindful that justice is mercy in action.
Aware of the great extent to which
systems of dominance and control prevail in our culture,
we continually assess
its social, economic, and political structures and institutions,
challenging, in non-violent ways,
those relationships that are oppressive.*

Our commitment to God's mercy and the proclamation of God's reign impels us to strive for the flourishing of all humanity through the recognition and upholding of fundamental human rights. Inspired by our foundress, Catherine McAuley, and driven by the message of the Gospels, we continue to strive for justice in Australia and Papua New Guinea, and throughout the world.

It is in light of this commitment to justice that we welcome the opportunity to provide a submission to the Parliamentary Joint Committee on Human Rights Review of Stronger Futures in the Northern Territory Act 2012 and related legislation.

2 | INTRODUCTION

The Eleventh Report of the Parliamentary Joint Committee on Human Rights, examining the Stronger Futures legislative package, acknowledged:²

The continuing severe disadvantage suffered by many Aboriginal communities and the fact that the level of enjoyment by Indigenous Australians of the human rights guaranteed by the UN human rights treaties is, in general, well below that of other members of the Australian community; and

2 Parliamentary Joint Committee on Human Rights (2013). *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011*, June, p. 75.

That Indigenous people and many others have significant concerns about the human rights compatibility of a number of measures central to the Stronger Futures measures.

Despite acknowledging the “significant limitations on human rights that a number of the Stronger Futures measures represent,”³ the Committee recommended monitoring the situation and a close evaluation of the measures contained in the legislative package. ISMAPNG, who have been opposed to the discriminatory elements of the Stronger Futures legislation since their introduction, believe that monitoring and evaluation – whilst not devoid of value – do little to alleviate the suffering of Aboriginal communities and the people forced to live under conditions that we believe amount to clear violations of fundamental human rights.

ISMAPNG does not believe that the Stronger Futures legislation has substantially improved the lives or the outcomes for Aboriginal and Torres Strait Islanders overall. We acknowledge areas of improvement, but are led to question the commitment of the Government to effective and long-lasting change in light of the impact of the 2014-15 Budget on Indigenous programs and services.

Specifically, our ongoing human rights concerns pertaining to the Stronger Futures legislation include:

- Severe budgetary cuts to vital programs and services;
- Continued use of income management, and
- Lack of genuine consultation and partnership with Aboriginal communities.

3 | 2014-15 BUDGET

Under the 2014-15 Budget, Aboriginal communities, already amongst the most disadvantaged in Australia, are further marginalised by cuts to programs and services totalling over \$600 million over a five-year period.

³ Ibid, p. 75.

While there is some additional allocated spending (the majority to take place in the 2014-15 period), the Government has reneged on its election promise to make substantial commitments to Indigenous wellbeing. We are also concerned that much of the new spending is directed to the implementation of policies that damage the autonomy of Aboriginal communities, such as increased police presence, income management, and school attendance welfare programs.

In addition to the financial cuts, 150 Indigenous programs have been collapsed into five:⁴

1. Jobs, Land and the Economy,
2. Children and Schooling,
3. Safety and Wellbeing,
4. Culture and Capability,
5. Remote Australia Strategies.

We believe that the Government, committed to a program of extreme rationalisation, has not only failed to engage Aboriginal communities in the planning and spending allocations within the Budget, but has also failed to appreciate the importance of many programs to the health, wellbeing and success of Aboriginal and Torres Strait Islanders.

Some of the key programs that have been cut and that ISMAPNG believe will have a negative impact on Aboriginal communities include:

Indigenous Languages Support Program:

There is overwhelming evidence to support the positive impact on learning outcomes and school attendance for Aboriginal students who are encouraged to learn in their first language. Incorporating Indigenous languages into the education system leads to an improvement in both Standard Australian English and Indigenous languages and can have many cultural, health and wellbeing advantages for both Indigenous and non-Indigenous students.⁵ ISMAPNG are deeply concerned that despite the need for support, particularly in remote and regional areas, the Budget sees \$9.5 million over four years cut from this program.

⁴ Russell, L. (2014). *Impact of the 2014-15 Federal Budget on Indigenous Programs and Services*, Menzies Centre for Health Policy, p. 1.

⁵ Standing Committee on Aboriginal & Torres Strait Islander Affairs (2012). *Inquiry into language learning in Indigenous communities*, Chapter 4.

Legal Services: Despite a gross overrepresentation in our corrective services system, with more than 8,500 of the 31,000 prison population being Indigenous, the Budget sees \$13.4 million cut from the National Aboriginal and Torres Strait Islander Legal Services (NATSIL). This cut, combined with \$15 million cut from legal aid commissions, will make it increasingly difficult for Aboriginal and Torres Strait Islanders to access mainstream legal services. In the Northern Territory, Aboriginal and Torres Strait Islanders comprise 86 per cent of the prison population, making the situation in this region even more dire.

Cessation of the National Congress of Australia's First Peoples: We believe the decision to save \$15 million over three years by ceasing to fund the National Congress is a blow to the autonomy of Indigenous leadership in Australia. The National Congress not only provided high level policy research and analysis, but was also a powerful advocate for recognising the status and rights of Aboriginal and Torres Strait Islanders.

ISMAPNG notes that there is no evidence to suggest that this highly bureaucratic new structure will improve outcomes for Aboriginal communities, nor is there any indication that communities impacted by these changes were consulted.

When the cuts outlined above are taken into consideration along with other proposed changes (such as the withdrawal of welfare payments and co-payments for GP visits and associated pathology services), we are deeply concerned that the impact on already marginalised communities and individuals will be deeply felt. Further, with increasingly limited access to legal assistance and welfare support, we believe that the proposed cuts and rationalisation measures contained in the 2014-15 Budget risk violating several international human rights treaties and supporting documentation, including:

- UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, particularly

Principle 3 and Guideline 2;

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), particularly Article 5, and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Article 9.

4 | INCOME MANAGEMENT

One of the most controversial aspects of the Stronger Futures legislative package since its introduction, income management schemes have undergone several amendments since first found to be a direct breach of the *Racial Discrimination Act 1977* (RDA). Despite these amendments, data collected on the profile of those on income management plans in the Northern Territory reveals that despite the “technical adherence” to the discrimination provisions of the RDA, the way in which the policy is applied and the imbalance in the exceptions granted demonstrates “that the policy is indirectly discriminatory.”⁶

Income management (also known as ‘welfare quarantining’) refers to an arrangement whereby a percentage of income support or family payments is set aside to be spent on pre-determined items, including food, clothing, health items, education and training and child care. The percentage of funds that are quarantined are spent using the BasicsCard – an EFTPOS-like arrangement with approved stores and businesses.

According to the Government, there are five key objectives of the income management policy. These are:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependents;
- help affected welfare payment recipients to budget so that they can meet their priority needs;
- reduce the amount of discretionary income

⁶ Welfare Rights Centre (2012). Strong Futures Bill: weaker nation, vol 30:1, March, p.1.

available for alcohol, gambling, tobacco and pornography;

- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse by others seeking access to their welfare payments; and
- encourage socially responsible behaviour, particularly in the care and education of children.

In addition to these stated policy objectives, several other statements have been made by the present Government in reference to income management, with a focus on reducing welfare dependency.

It is therefore reasonable to infer from the comments that have been made that there is a sixth policy objective of income management – to wean people off welfare payments and have them move into paid employment. This inference is also based on the Government’s ‘new paternalism’ approach to welfare payments, which is a concerted attempt to “control peoples’ patterns of behaviour in what are perceived to be their own interest.”⁷ New paternalism is particularly concerned with intergenerational poverty. The theory supposes that disadvantage is passed on from parent to child through behaviours, attitudes and values. This is a highly contested theory, and there exists a wealth of criticism of the values that underpin it, not least that it homogenises groups and fails to take into account the backgrounds and beliefs of individuals.

Those who enter into welfare quarantining on a voluntary basis are obliged to remain on the program for at least 13 weeks. When a recipient applies to terminate the voluntary agreement, the recipient cannot make a new voluntary agreement for a period of 21 days. There is a dearth of quantitative research into whether the voluntary income management models are indeed ‘voluntary’. Certainly, while the legislation and policy framework makes it clear that there is an opt-out option for those who have voluntarily signed up to have their income quarantined, there is anecdotal

evidence that language barriers – particularly in remote communities – are impacting the ability of Aboriginal and Torres Strait Islander peoples to leave the program of their own accord.

The Commonwealth Ombudsman, assessing the voluntary aspect of the income management scheme in the Northern Territory in June 2012, were scathing in their assessment of Centrelink decisions and administrative procedures. The report also noted that many residents – particularly in remote areas in the Northern Territory – have been pressured by Centrelink staff to ‘volunteer’ for the scheme, with claims that their rent will not be paid unless they agree to have their income quarantined. For some Aboriginal and Torres Strait Islanders for whom English is a fourth or even fifth language, the lack of adequately trained interpreters in Centrelink offices has been an impediment to people who want to opt out of the voluntary scheme.⁸

One of the most serious challenges in assessing the efficacy of income management – both voluntary and compulsory schemes – is the lack of transparent and objective evaluation models. In 2010, the Social Policy Research Centre (SPRC) and the Australian Institute of Family Studies (AIFS) were commissioned by FaHCSIA to undertake a longitudinal evaluation of income management schemes, due to be completed in 2014. The group has released several interim reports on their findings and the evaluation models they are employing in their study. From the outset, they have acknowledged that there are significant challenges in collecting accurate information. Their statement is worth quoting at length here:⁹

“Ideally, in evaluating social policies, data would be collected prior to the implementation of the policy (baseline data). Data collected after the implementation of the policy would then be compared to the baseline date to track changes over time.

However, income management has been implemented in 73 discrete communities since 2008 as part of the Northern Territory Emergency

7 Parliament of Australia, Department of Parliamentary Services (2012). *Income Management: An Overview*. DPS, pp. 18ff.

8 Commonwealth Ombudsman (2012). *Review of Centrelink Income Management Decisions in the Northern Territory*, June, Dept Human Services.

9 Department of Social Services (2010). *Evaluation Framework for New Income Management*, December.

Response, which makes collecting pure baseline data (to identify the circumstances and beliefs of people before the implementation of policy) impossible. Even if it were possible to have 'pure' baseline data, other policies that may also affect people in the Northern Territory who are subject to income management have also been subject to change. Thus, it would not be possible to attribute, confidently, pre- and post-implementation differences in data collected to the New Income Management measures."

This absence of baseline data has drawn tremendous criticism of any studies or reports that the Government has since released that claim income management programs are successful. It is clear that such studies would not hold up to serious scrutiny – as articulated by the SPRC and the AIFS.

A key research centre at the University of Technology Sydney (UTS) – Jumbunna Indigenous House of Learning – compiled an extensive assessment of the Government's reports into the effectiveness of various income management schemes (both compulsory and voluntary), in a special edition of the *Journal of Indigenous Policy*.⁹ Updated after the passing of the Stronger Futures legislation, it remains the most comprehensive survey of all income management programs and the Government-commissioned surveys of them. The conclusion reached by the researchers at Jumbunna is clear: there is insufficient evidence to support the maintenance or expansion of income management.

According to the Jumbunna research, the Government-funded studies (that are quoted extensively by FaHCSIA in support of income management) failed "to deliver proof of the effectiveness of income management programs. They showed, at best, that some interviewees in affected groups reported that some things had improved, but the studies failed to validate these opinions with any independent data that confirmed their assertions. The problem of validity was exacerbated by most of these studies having research samples too small to be significant."¹⁰ As the researchers point out, there

is no reason for the poor quality of Government-funded studies. Income management, of all the policies enacted through the Stronger Futures legislation, should be the 'easiest' to assess. There is a bounty of quantitative data that the Government can draw on, including "records of Centrelink payments, bank accounts and other financial details on the BasicsCards". However, none of this data has been used in any of the Government's evaluations. This leads to the conclusion that the available information does not support the claims of the Government that income management achieves its stated policy outcomes.

Even with welfare quarantining, ISMAPNG remain deeply concerned that many of the food products and basic necessities available to communities will still be unaffordable. According to a recent report on food security in the APY Lands for instance, "the cost of food and in particular the cost of healthy and nutritious food is repeatedly raised by Anangu residents in the APY Lands as the biggest factor impacting on food security. Nearly every respondent expressed concern at the price of food in stores on the APY Lands with repeated claims that the prices are just too high and that the majority of personal income is spent on food or household infrastructure necessary for the storage and preparation of food".¹¹

While ISMAPNG are deeply concerned for the welfare of children, again there is a dearth of hard data to support that compulsory income management aids the health and development of children and young people. In fact, the confluence of Federal and State laws (child protection being governed by the States and income management governed at the Federal level) creates potential difficulties for members of the communities having their welfare quarantined under this scheme: "State-based child protection authorities will send details of their clients, and decide the time period for being income managed, as well as whether at 70% or maybe 100%. There is no active Centrelink involvement in the decisions so the child protection clients will have no recourse

9 Jumbunna Indigenous House of Learning Research Unit (2012). *Evidence-Free Policy Making? The Case of Income Management*, *Journal of Indigenous Policy*, Issue 12, May.

10 Ibid.

11 Aboriginal Affairs & Reconciliation Division SA (2012). *APY Lands Food Security Strategic Plan 2011-2016*, March, available at http://www.statedevelopmentsa.gov.au/upload/aard/publications/APY-Lands_FoodSecurity11-16.pdf

to formal appeals to the Social Security appeals system. They will need to raise any problems through the much less accessible state type complaints systems.”¹² Additionally, the National Welfare Rights Network (NWRN) has noted that: “[there is] no evidence to link withholding income support and family assistance payments and improved ‘socially responsible behavior’. NWRN is not aware of any evidence that it will prevent child abuse or child neglect”.¹³

ISMAPNG returns again to the fundamental human rights owed to all Australians. The right to social security is set out in:

- Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),
- Article 5 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD),
- Article 26 of the Convention on the Rights of the Child (CRoC), and
- Articles 11(1)(e) and 14(2)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

One key feature of these articles is the principle that the right to social security is to be enjoyed without discrimination, including on the basis of race. We firmly believe that the use of income management, regardless of its guise, is a violation of the above-mentioned human rights.

5 | LACK OF CONSULTATION

Since its inception, a fundamental criticism of the Stronger Futures legislation has been the lack of genuine consultation with Aboriginal communities.

The Government points out that prior to passing the last suite of changes in 2012, they conducted 100 meetings. ISMAPNG believes that the number of meetings held bears no correlation to successful consultation and partnerships. We are concerned that suitable

interpreters were only booked for 91 of these meetings, and not all materials were printed in the relevant community languages. There were also no official recordings or transcripts of these meetings, which makes it difficult to verify the Government’s claim that they are now acting according to the wishes of Aboriginal and Torres Strait Islander peoples.

We also note that Government visits to communities are generally ‘fly in – fly out’ meetings, which means that Parliamentarians would spend less than a day in remote communities. This does not allow time for those living on homelands, which may be a great distance from the growth centres that were the focus of meetings or hearings, to attend the consultations and express their views.

ISMAPNG believes that successful consultation with Aboriginal communities must be the cornerstone of any legitimate policy to address and overcome disadvantage. We believe that this is the only way for any government to understand and appreciate the diverse range of needs of Aboriginal peoples, and will additionally allow them to expand successful programs that have been devised and implemented by communities themselves.

The UN Committee on the Elimination of Racial Discrimination has called on parties to the International Convention on the Elimination of Racial Discrimination (ICERD) to:

“Ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”¹⁴

The approach taken by the Government in the Stronger Futures legislation has distanced and disempowered Indigenous communities from the policy process, and we believe it has breached our international obligations under ICERD.

12 Cox, E. (2012). *There’s no evidence that income management works... So why introduce it?* The Conversation, 9 July.

13 National Welfare Rights Network (2008). *Submission to the NTER Review Board on the NTER*, September 2008.

14 Article 5c

6 | ADDITIONAL CONCERNS

While the Declaration on the Rights of Indigenous Peoples, endorsed by Australia in 2009, is not a binding treaty, it remains one of the most significant instruments relating to the rights of Indigenous communities and peoples throughout the world. For that reason, ISMAPNG believes it is appropriate to note that many of the measures contained in the Stronger Futures legislative package stand in direct contradiction to a commitment to recognising and protecting the rights of Aboriginal and Torres Strait Islanders. Central to the operation of the Declaration are a number of guiding principles, including:

- self-determination;
- participation in decision-making and free, prior and informed consent; and
- non-discrimination and equality.

ISMAPNG believes that much of the evidence provided in this submission stands in opposition to the realisation of these important rights. Additionally, without the meaningful involvement of Aboriginal communities in the creation or implementation of Stronger Futures, the “effectiveness of [any] initiatives is significantly compromised and diminished.”¹⁵

7 | CONCLUSION

Through its partners and agencies, the Sisters of Mercy have been opposed to the discriminatory aspects of the Stronger Futures legislation since their inception. We remain deeply committed to working with Aboriginal and Torres Strait Islanders in partnership to see improvements in health and wellbeing, however we do not believe that current paternalistic-style policies are having sufficient positive impact.

While we welcome the commitment of the Joint Committee to monitor developments and encourage reviews, we fail to see the results of this translated into practice. In short, “the Australian Government, the driver of both the Intervention and the Indigenous reform process [remains] hopeful that progress is being made

– despite the fact there is no foundational, evidence-based policy logic, and no baseline against which to measure improvement.”¹⁶

ISMAPNG encourage the Government to more fully engage with Aboriginal communities – to listen and to act based on direct feedback. We firmly believe that positive change is possible and that a truly reconciled nation is within the realm of possibilities. We will continue to work towards that vision of a reconciled world in partnership with our Aboriginal brothers and sisters.

¹⁵ Schokman, B. (2012). *Stronger Futures: Disempowering, Damaging and Doomed to Fail*, Indigenous Law Bulletin, vol 7:30, p. 19.

¹⁶ Altman, J & Russell, S. (2012). *Too Much Dreaming: Evaluations of the NTER 2007-12*, Evidence Base, Issue 3, p.18.