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REVIEW OF STRONGER FUTURES IN THE NORTHERN TERRITORY ACT 2012 AND RELATED LEGISLATION

SUBMISSION TO JOINT PARLIAMENTARY COMMITTEE ON HUMAN RIGHTS

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INTRODUCTION

UnitingJustice Australia (UJA) is the justice policy and advocacy unit of the Uniting Church in Australia Assembly (the national council), pursuing matters of social and economic justice, human rights, peace and the environment. The Uniting Aboriginal and Islander Christian Congress (UAICC), or Congress as it is commonly known, is the Aboriginal and Torres Strait Islander peoples' arm of the Uniting Church in Australia, formed in 1985.

UJA and UAICC welcome this opportunity to contribute to the Joint Senate Committee on Human Rights' review of the Stronger Futures in the Northern Territory Act 2012 and related legislation. This submission builds on the issues raised in our 2012 submission to the Senate Community Affairs Committee enquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills¹ and focuses on the following concerns:

1. The process of consultation regarding the Stronger Futures legislation was seriously inadequate. It was not respectful or genuine, and breached international human rights law regarding negotiation and consultation with Aboriginal people about legislation that affects them.
2. Aspects of the Stronger Futures legislation, in particular the alcohol bans, income management and school attendance initiatives take control away from people over the most basic aspects of their lives, thereby denying human rights and amounting to racial discrimination.
3. The Stronger Futures package has not met its stated objectives, and some evidence suggests that outcomes are opposite to the original intent of the legislation.

¹ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/submissions/item/723-inquiry-into-the-stronger-futures-in-the-nt-legislative-package>

THE UNITING CHURCH AND JUSTICE FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

The Uniting Church in Australia has a long-standing commitment to national policies which acknowledge the rights of Aboriginal and Torres Strait Islander peoples as the First Peoples of this land, which demonstrate respect for the land on which we live, and which empower Aboriginal and Torres Strait Islander peoples to take control of their own lives and destinies. We believe that justice for Aboriginal and Torres Strait Islander peoples will depend on policies which ensure appropriate resourcing in the areas of health, housing, education, employment and welfare support.

At its Seventh National Assembly, the Uniting Church formally entered into a relationship of Covenant with Aboriginal and Torres Strait Islander members, recognising and repenting for the Church's complicity in the injustices perpetrated on Australia's Aboriginal and Torres Strait Islander peoples, and pledging to move forward in hope towards a shared future. The Covenanting Statement, in part, reads:

It is our desire to work in solidarity with the Uniting Aboriginal and Islander Christian Congress for the advancement of God's kingdom of justice and righteousness in this land, and we reaffirm the commitment made at the 1985 Assembly to do so. We want to bring discrimination to an end, so that your young people are no longer gaoled in disproportionate numbers, and so that equal housing, health, education and employment opportunities are available for your people as for ours. To that end, we commit ourselves to build understanding between your people and ours in every locality, and to build relationships which respect the right of your people to self-determination in the church and in the wider society.²

² <http://www.unitingjustice.org.au/component/content/article/15-uniting-church-statements/187-covenantingstatement.html>

At its inception in 1977, the Uniting Church affirmed its commitment to human rights in its 'Statement to the Nation'.

We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.

We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.³

The Church's commitment to human rights is born from the belief that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected, or the human community and its reflection of God and all people is diminished. In 2006, the Uniting Church in Australia Assembly adopted its statement 'Dignity in Humanity: Recognising Christ in Every Person'. This statement bound the Church to continue its commitment to human rights and, in particular, to holding the Australian Government accountable to its international human rights obligations, stating:

We pledge to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.⁴

THE CONSULTATION PROCESS

The Uniting Church has long been concerned that the consultations held in relation to the Stronger Futures legislative package were grossly inadequate. We believe that it is fundamentally important to negotiate respectfully and consult thoroughly with Aboriginal people regarding policies and activities that will affect their lives. As stated in July 2012 by the President of the Uniting Church in Australia, Rev. Prof. Andrew Dutney,

The most hurtful aspects of the Stronger Futures legislation have been the lack of genuine consultation with Indigenous communities and the imposition of policies that were not developed in genuine partnership with those who would be most affected.⁵

Leading members of the UAICC have suggested that, in their experience, the Intervention models a very colonial view of the world which is completely at odds with respectful dialogue. It has failed to treat people with the respect they deserve. As the National Chairperson, Rev. Ronang Garrawurra has said, "You [the Government] failed to treat us as human beings".

The experience of UAICC members is that successive Governments have assumed that the European way is 'normal', that Aboriginal and Torres Strait Islander peoples need to let go of some of their cultural distinctions in favour of European ones, and that the only way forward is via the agenda of the government of the day.

The Uniting Church in Australia has long understood the vital importance of negotiating in a meaningful way with Aboriginal and Torres Strait Islander peoples. In 2009, at the Twelfth Assembly, the Uniting Church in Australia called on all Australian governments to use negotiated partnership approaches.⁶ In response to the inadequate consultation process regarding the Stronger Futures legislation, the Thirteenth Assembly three years later called upon the Commonwealth Government to engage in:

³ <http://www.unitingjustice.org.au/component/content/article/15-uniting-church-statements/190-statementtothenation-1977.html>

⁴ http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/assembly-resolutions/11_dignityhumanity2006.pdf

⁵ Pastoral Letter on Action Against Stronger Futures, <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/867-pastoral-letter-from-the-president-on-action-against-stronger-futures>
⁶ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/uca-statements/item/487-matters-affecting-indigenous-peoples>

- respectful and genuine negotiation with the leadership of the First Nations Assemblies living under the Stronger Futures regime;
- meaningful negotiation in regard to the provision of sufficient and appropriate resources ; and
- effective implementation of negotiated action plans.⁷

The international community recognises that successful consultation with Aboriginal and Torres Strait Islander peoples must be the cornerstone of any legitimate policy to address injustice and disadvantage in Aboriginal and Torres Strait Islander peoples. The UN Declaration on the Rights of Indigenous Peoples (DRIP), which was signed by Australia in 2009, sets out the right of Aboriginal and Torres Strait Islander peoples to be properly consulted on decisions that affect them⁸. In particular, the following right is afforded under Article 19 of the Declaration:

States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them⁹.

The Eleventh Report of 2013 of the Parliamentary Joint Committee on Human Rights also states that meaningful and effective consultation with Aboriginal people should be adopted by Government (1.123)¹⁰. Detail is given in the report as to the criteria for effective and meaningful consultation, including gaining consent, making decisions by consensus, and conducting ongoing consultations.

Jumbunna Research Institute developed a report card for assessing the consultation process with respect to the Stronger Futures legislation.¹¹ This report card evaluates whether the Stronger Futures consultation process complies with Australia's obligations under international law to consult with Aboriginal people in relation to decisions that affect

them. They provided an overall score of 17/65 or 26 per cent. No individual score was greater than 2/5, or 'inadequate'.

A publication by Concerned Australians entitled *A Decision to Discriminate*¹² gathers quotes and views expressed by a wide range of Aboriginal people about the Stronger Futures legislation. This book outlines the disempowerment and discrimination experienced by the Aboriginal people of the Northern Territory throughout the consultation process. Luke Morrish, CEO of Bawinanga Aboriginal Corporation, explained that "The discussion paper on Stronger Futures was actually handed to members of the community minutes – literally minutes – before the minister arrived for that consultation"¹³. David Cooper, from AMSANT, said, "We also had concerns, because our analysis of what was said at meetings and what consequently came out in the legislation showed that they did not tally well"¹⁴. Eddie Cubillo, Northern Territory Anti-Discrimination Commissioner noted:

There were concerns that only a few were spoken to, that the duration of visits was too short and that some Aboriginal Territorians could not participate because of language, dialect, or hearing impediments.¹⁵

During hearings to the Senate Committee in 2012, Senator Nigel Scullion (then Opposition Spokesperson on Indigenous Affairs) commented to Mr Cubillo, NT Anti-Discrimination Commissioner:

In fact, I suspect it [the consultation process] was a monumental failure. There are a number of Indigenous organisations – your office, the Northern Land Council and the Central Land Council – that seem to be able to connect, educate and communicate much better with the mob than government can.¹⁶

Lack of consultation is not only an abrogation of our responsibilities under international law, it increases the chances of failure. In 2012, upon the passing of the Stronger Futures legislation, Peter Jones, General Secretary of the Northern Synod of the Uniting Church said:

7 Support for Indigenous Peoples, Thirteenth Assembly (2012), Uniting Church in Australia Assembly, <http://unitingjustice.org.au/justice-for-indigenous-australians/uca-statements/item/968-support-for-indigenous-peoples>

8 http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

9 http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

10 http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/2013/112013/index

11 <http://www.jumbunna.uts.edu.au/researchareas/newmedia/Report-Card6March12.pdf>

12 M. Harris (ed) *A Decision to Discriminate*, 2012 Vega Press, Victoria, 2012 http://www.concernedaustralians.com.au/media/A_Decision_to_Discriminate.pdf

13 *ibid.*, p. 4

14 *ibid.*, p. 20

15 *ibid.*, p. 19

16 *op. cit.*

Since day one of the Intervention, we have seen the dismal failure of top-down approaches to addressing the real problems of Indigenous disadvantage. The pain and shame in Northern Territory Aboriginal communities has been exacerbated by the Government's unwillingness to enter into true partnership with our Indigenous brothers and sisters.¹⁷

This lack of consultation also reflects a more significant problem highlighted by Kerry Charlton, National Aboriginal and Torres Strait Islander Ecumenical Commission (NATSIEC) National Director in a statement about the Stronger Futures legislation:

Unfortunately, responding to historical and cultural disadvantage without community ownership will lead to increased rates of Indigenous incarceration, reduced well-being and health status, youth crisis, family stress and suicide rates.¹⁸

As we stated in our 2012 submission on the Stronger Futures legislation¹⁹, without direct and genuine consultation with the communities the Government cannot fully understand the needs and circumstances of Aboriginal and Torres Strait Islander peoples as they vary across communities and it will always struggle to expand successful programs that have been devised and implemented by Aboriginal and Torres Strait Islander peoples.

Recommendation

We recommend that a proper consultation process involving meaningful negotiation is conducted as soon as possible to determine future directions for community development, health and safety initiatives in the Northern Territory.

IMPLEMENTATION OF THE POLICY

The Uniting Church, at its Thirteenth Assembly in July 2012, heard many stories of the impact of the Northern Territory intervention on the lives, wellbeing and dignity of Aboriginal people. Those who shared their stories revealed the despair experienced at the passing of the Stronger Futures

legislation, which they understood to continue many of the harmful and discriminatory aspects of the previous Northern Territory Emergency Response Act 2007 (NTER). The Assembly then resolved to:

Condemn the imposition and extension of the harmful and discriminatory aspects of the "Stronger Futures" legislation and those elements that disempower local communities and impose compulsory income management.²⁰

As a result of hearing these stories, the Assembly also resolved to suspend its business and conduct a silent march to South Australian Parliament House in Adelaide and hold a vigil to mourn the passing of the Stronger Futures legislation²¹. A statement issued by the Uniting Church in June 2012²² described this disappointment:

Stronger Futures employs punitive, top-down measures that have done little to improve the lives or outcomes for Indigenous groups. Indigenous communities have experienced few perceivable benefits from the governmental policies of the last five years.

The Church's concerns are shared by many Aboriginal leaders and organisations:

The Stronger Futures package does not recognise the role of Aboriginal people and organisations in addressing disadvantage. It remains focused on mechanisms for the Australian Government to make decisions about Aboriginal people's lives. Aboriginal people want to take responsibility for their families and communities and have to be supported to do so.²³

In addition, there are a number of human rights obligations that the Australian Government has committed to meet. DRIP requires that Aboriginal and Torres Strait Islander peoples have a right to be actively involved in the development of their economic and social conditions (Articles 21, 23) and

¹⁷ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/838-church-disappointed-by-senate-report-into-flawed-stronger-futures-legislation>

¹⁸ <http://www.ncca.org.au/departments/natsiec/666-stronger-futures-or-stronger-policing>

¹⁹ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/submissions/item/723-inquiry-into-the-stronger-futures-in-the-nt-legislative-package>

²⁰ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/867-pastoral-letter-from-the-president-on-action-against-stronger-futures>

²¹ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/867-pastoral-letter-from-the-president-on-action-against-stronger-futures>

²² <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/865-uca-response-to-the-passing-of-the-stronger-futures-legislation>

²³ Dorothy Fox, Chairperson of the North Australian Aboriginal Justice Agency, *A Decision to Discriminate*, op. cit., p. 25

be educated in their own language, (Articles 14, 16, 19) and determine their own housing (Article 23)²⁴. The ICERD sets out the rights to social security and social services (Article 5)²⁵.

It is important that any legislation that aims to advance the human rights of Aboriginal and Torres Strait Islander peoples should not be discriminatory. Special measures in international law enable preferential treatment for a group, defined by race, in order to make possible the enjoyment of their human rights. The ICERD²⁶ Article 1 (4) states that special measures will not be deemed to be racial discrimination provided such measures do not, as a consequence, lead to the maintenance of separate rights for racial groups. Special measures should provide a benefit to some or all members of a group based on race, have the sole purpose of advancement of the group so they can enjoy human rights and fundamental freedoms equally with others, and are necessary for the group to achieve that purpose²⁷. For any aspects of Stronger Futures legislation to be considered 'special measures', the Government would need to demonstrate that they provide a benefit, have the sole purpose of advancement of the group, are necessary. Also, any measures that are taken with neither the consultation nor consent of those affected cannot legitimately be labelled as 'special measures'. This principle is particularly important in relation to the rights of Indigenous peoples. The UN Committee on the Elimination of Racial Discrimination (ICERD) has called on parties to 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.²⁸

The lack of genuine consultation in relation to both NTER and subsequent Stronger Futures in the Northern Territory Act 2012 has distanced and disempowered Indigenous communities from the policy process and thus does not meet the conditions for 'special measures'.

24 United Nations Declaration on the Rights of Indigenous Peoples A/RES/61/295

25 International Convention for Elimination of all forms of Racial Discrimination (1969)

26 *ibid.*

27 *ibid.*

28 Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of indigenous peoples (Fifty-first session), U.N. Doc. A/52/18, annex V at 122 (1997) available at <http://www1.umn.edu/humanrts/gencomm/genrexxiii.htm>

ALCOHOL MANAGEMENT

The first component of the *Stronger Futures Act 2012* attempts to tackle harmful alcohol practices. The Act includes the continuation of alcohol restrictions in all designated communities including already dry communities; alcohol management plans (AMP) allowing communities to develop solutions for addressing alcohol-related harm; examination of trading practices of licensed premises; and provisions for alcohol-related signs to be respectful to Aboriginal and Torres Strait Islander peoples.

Alcohol is associated with higher rates of death, hospitalisation, unemployment, domestic violence and crime, with severe impacts on health, education, employment and housing.²⁹ Research suggests that the effectiveness of regulatory measures aimed at reducing alcohol related harm is improved if they are community owned and controlled, and if they equally resource measures to address supply as well as demand. The Stronger Futures measures, largely continuing the work of the Northern Territory Intervention, focus primarily on demand, regulating consumer behaviour through imposed restrictions and very little emphasis on measures restricting supply.

Government-imposed, blanket alcohol restrictions are humiliating, discriminatory, and in some cases undermine the good work done by communities to address alcohol related harm. This policy and all the stories told to justify it, increase the shame and humiliation which Aboriginal people experience every day. In its own assessment of the legislation in relation to human rights, the Joint Parliamentary Committee on Human Rights expressed concern about the alcohol bans noting that they did not meet the conditions of 'special measures'.³⁰ Given that the communities most affected by this legislation are predominantly Aboriginal, it is likely that these measures are racially based, and therefore discriminatory and do not meet the conditions for special measures'.

Some community members felt that the penalties for liquor offences were too harsh:

Our board members indicated that the proposed changes under the Stronger Futures bill, under the penalty for liquor

29 E. Walker, 'Stronger Futures. Alcohol regulation in the NT', *Indigenous Law Bulletin*, 2012, Vol. 8, No. 3

30 11th Report of 2013, *op. cit.*, p. 44

offences for under 1,350ml to include six months imprisonment is very harsh.³¹

Others suggested community education and rehabilitation measures as opposed to punitive measures:

We need treatment and a rehabilitation centre for dealing with alcohol and substance abuse – not imprisonment.³²

Still others felt that the previous alcohol management processes already in place in communities were not adequately acknowledged:

The alcohol management plan was in place a long time prior to the NTER. It was in place and it was a conscientious decision that the community made through the women's centre to be able to police what was going on out here as far as alcohol purchasing went. It was a system that worked³³.

According to Jumbunna Research Institute³⁴, 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. David Dalrymple³⁵ worked with a number of communities in the pre-Intervention era when the Northern Territory Government assisted communities to establish and set the conditions of alcohol-free communities. He observed that those community-led initiatives were more effective in reducing harmful alcohol practices than the Northern Territory Intervention.

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011)³⁶ stated in its report that:

In order to effect long term behavioural changes in communities, alcohol and substance restrictions must be owned and driven by the community rather than

continuously imposed by government or police forces...While the committee would like to see more widespread introduction of alcohol restrictions, it is aware that, unless there is community support, ownership and drive for change, this merely introduces a black market for alcohol or drives people to the fringes of local townships where alcohol can be purchased more easily.

Recommendation

Measures to reduce harmful alcohol practices should be community led and managed and should not undermine existing agreements between communities and state governments. The inclusion of culturally appropriate public education, and support for community-led public health programs, treatment and rehabilitation would be more appropriate and effective than punitive approaches that lead to increased policing, arrests and incarceration.

INCOME MANAGEMENT

The Stronger Futures package includes provisions that subject some welfare recipients to income management. Those on income management are given a "BasicsCard" which allows them to purchase items from establishments that will accept the card. The stated aims of income management are to advance the enjoyment of rights such as the right to an adequate standard of living, social security, health and the rights of children. Some people are subject to compulsory income management (CIM) while others have voluntarily elected to participate in income management initiatives.

The Uniting Church has previously indicated its belief that "The quarantining of income payments is a blunt, ineffective instrument for addressing the complex social problems in Indigenous communities"³⁷. Cultural cohesion and meaning, strong relationships, and a sense of well-being are important to dealing with and reducing social problems, but having other people control life in this way helps none of these things. Indeed it is likely to cause the opposite – frustration, humiliation, anger, violence and self-harm.

This policy also signals a dangerous shift from a welfare system based on legal rights to one based on individual and often highly punitive contracts between the Government and an individual.

31 Jimmy Tan, Maningrida Progress Association, *A Decision to Discriminate*, op. cit., p. 41

32 Raelene Silverton, Ntaria, *ibid.*, p. 43

33 Dene Hereen, Maningrida Progress Association, *ibid.*, p. 41

34 <http://www.jumbunna.uts.edu.au/researchareas/newmedia/nondiscriminatoryalcoholmanagement.html>

35 <http://www.abc.net.au/news/2011-05-12/dalrymple---nt-intervention/2621614>

36 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'Doing Time – Time for Doing. Indigenous Youth in the criminal justice system', June 2011, pp. 90-91

37 <http://www.unitingjustice.org.au/justice-for-indigenous-australians/submissions/item/723-inquiry-into-the-stronger-futures-in-the-nt-legislative-package>

Rather than welfare payments being seen as a way of reducing inequality they become a way of forcing people to conform to behaviour that a particular government considers normal.

Stores that are involved in the income management scheme are faced with a large amount of extra paperwork. There are reports that a number of smaller community-based stores have been unable to do this extra work and have closed. This means that people have to travel further for basic items, which adds hugely to fuel costs (and, thus, food costs).

A number of academics have examined CIM. Philip Mendes³⁸ found these measures to reflect a top-down and coercive imposition based on a lack of empirical evidence that discriminates against Australians who are Indigenous or reliant on income payments. He argues that the approach assumes individualistic interpretations of social disadvantage as a result of behavioural characteristics such as laziness, immorality or incompetence rather than a structuralist approach which acknowledges that structural factors such as social and economic deprivation and inequality are more important predictors of poverty. Mendes examined a number of reports of Indigenous organisations and affected communities, and identified some common themes. People were united in their opposition to the blanket application of measures. It was also noted that CIM has resulted in practical problems such as limited choice of approved stores and experiences of shame and humiliation when relegated to separate checkout queues. Some people have lost or damaged their card, forgotten their PIN, or find it difficult to travel interstate. Given that the legislation is primarily targeted at communities in the Northern Territory, it was felt that it is discriminatory.

Recommended alternative policy solutions include supporting voluntary income management with intensive case management and therapeutic counselling, financial management and budgeting skills programs, family violence services, health (including mental health) clinics, parenting workshops, expanded child protection services, alcohol and drug rehabilitation services, and upgraded police and legal responses to humberging (hassling people for their welfare money).

38 Philip Mendes, 'Compulsory Income Management: A Critical Examination of the Emergence of Conditional Welfare in Australia, Australian Social Work', 2013, *Indigenous Law Bulletin*, Vol. 66, No. 4

Dr Shelley Bielefeld³⁹ argues that compulsory income management significantly erodes the freedom of contract for those subject to it. She draws on a number of sources that critique CIM, and argues that a system which quarantines 50% of fortnightly welfare payments (100% of lump sum payments and 70% of fortnightly welfare payments where there is a child protection issue) substantially restricts freedom of choice. Consumers subject to CIM are often encouraged to purchase from large corporations rather than independent stores or markets, thereby limiting choice and bargaining capacity.

A report of the NTER issued by the Government in 2008⁴⁰ recommended the immediate cessation of the CIM measures, based on evidence that people were angry, resentful and disillusioned, and that people for whom English was a 2nd or 3rd language were expected to master new and changing procedures with a minimum of information. Voluntary income management measures could be continued. CIM has continued regardless of this report's recommendations.

A comprehensive, Government-funded evaluation of 'New Income Management' has produced an interim report, noting that although the evaluation continues in 2014, "the data collected to date allows some clear initial findings to be made".⁴¹

These initial findings show that:

- changes in the community cannot be positively correlated to the introduction of income management, separate to the substantial additional resources expended during the same time period in these communities;
- evidence available shows that compulsory income management is a blanket measure that is applied to people who are actually able to manage money, and do not have problems with alcohol or gambling;
- in relation to people on voluntary income management, there is evidence that those

39 S. Bielefeld, 'Compulsory Income Management under the Stronger Futures Laws – providing "flexibility" or overturning freedom of contract?' *Indigenous Law Bulletin*, 2013, Vol. 8, No. 5

40 Report of the NTER Review Board, http://nterreview.gov.au/docs/report_nter_review.PDF

41 J. Rob Bray et al., Evaluating New Income Management in the Northern Territory: First Evaluation Report, July 2012, page xvii <http://caepr.anu.edu.au/sites/default/files/announce/12/NIM%20First%20Evaluation%20Report.pdf>

who choose to be on the scheme value aspects of it, although there is evidence that confusion exists as to the voluntary nature of the scheme; and

- there are questions about the value and operation of Child Protection Income Management, with some child protection workers reluctant to refer families to this measure due to concerns about the appropriateness of the measure in cases where economic neglect is not a feature; and due to bureaucratic concerns, such as the need for a case to remain open while income management was in place.

The evaluation report concludes that while income management may assist some members of the community to cope with particular issues they face, its blanket application is not based on evidence and has led to “widespread feelings of unfairness and disempowerment”, further stating:

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.**⁴² (emphasis added)

In 2013 the Parliamentary Joint Committee on Human Rights came to the view that the BasicsCard “represents a restriction on the right to social security and the right not to have one’s privacy and family life interfered with unlawfully or arbitrarily”⁴³. It also concluded that the impact of income management varies among different groups. Those on voluntary income management appreciated it, whereas those on CIM had a sense of being treated unfairly and being disempowered.⁴⁴

Community responses also reflect concerns about CIM. “Income management does not really teach people to budget; it just takes half their money away”⁴⁵ and “we are not opposed to income

management. We are opposed to compulsory income management”.⁴⁶ However, some see benefit in the scheme:

As the committee would be well aware, the NPY Women’s Council overall supports income management, and we have provided that detail in previous reports and submissions...the women have said that it provides some certainty around access to income if there are issues of risk, vulnerable people, children.⁴⁷

Recommendation

Income management measures should be voluntary. Compulsory income management is humiliating and harmful to many participants, and represents a restriction on the right to social security and should be repealed.

SCHOOL ATTENDANCE

We believe the Stronger Futures School Enrolment and Attendance Measures (SEAM) impose a punitive arrangement on parents and guardians. Failure to meet compliance plans (such as attending a compulsory conference, or enter into a school attendance plan) would lead to suspension of a parent’s income support payment.

SEAM is another punitive and ineffective measure. Evidence suggests that other, less punitive measures are and will be more effective in increasing school attendance. The General Secretary of the Church’s Northern Synod, Peter Jones, of the Uniting Church Northern Synod commented that:

Punishing the most disadvantaged people in the land for not participating in a system that has not delivered the outcomes they desire is heaping punishment on punishment.⁴⁸

This Committee’s 13th Report indicates that there are a number of human rights compatibility concerns with the SEAM aspect of the legislation. In particular, the measures are said to involve a:

limitation on the right to social security, the right to privacy and family, the right to an adequate standard of living, and the rights

42 *ibid.*, page xix

43 *op. cit.*, p. 155

44 *ibid.*, p. 61

45 Mr Oliver, CEO of Malabam Health Board, *A Decision to Discriminate*, *op. cit.*, p. 63

46 Katie Robertson, from the Central Australian Aboriginal Legal Aid Service (CAALAS), *ibid.*, p. 66

47 Andrea Mason, Ngaanyatjarra Pitjantjatjara Yankunytjajara (NPY) Women’s Council, *ibid.*, p. 65

48 *ibid.*, p. 73

of children in relation to each of those rights.⁴⁹

The Committee placed the onus upon the Government to demonstrate that the measures are having a significant impact on reducing low school attendance.⁵⁰

Jumbunna announced that school attendance has actually decreased since the intervention. They argue that there is no evidence to suggest that taking away welfare payments leads to increased school attendance, and suggest that bilingual education and increased resourcing of teachers are approaches that are more likely to increase school attendance.⁵¹

It is vitally important for children to learn in their first language⁵². 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.⁵³

Feedback from community members suggests that there are numerous reasons for children not attending school, and that the SEAM is not addressing those reasons. They also suggest that other, more positive community-based initiatives to improve school attendance are having greater success. According to one community resident, "The only thing most of the people are afraid of now is that, if their children do not attend school, they will be fined and they will be punished for that"⁵⁴. Aboriginal Medical Services Alliance of the NT remarked:

We oppose the expansion of the SEAM measure in the absence of sufficient evidence. Its coercive and punitive approach fails to address the systematic problems with remote Aboriginal education and the complex reasons for low school attendance rates.⁵⁵

Mr Dwyer, Principal Maningrida School explained that attendance had gone up at their school, but not as a result of the punitive measures:

Our attendance has doubled. This is due to a number of reasons and a number of strong partnerships with the other agencies across Maningrida. It is due to a lot of work by our attendance officers at the school, building those partnerships with the parents and the families and helping each of the parents and families work out ways to get their children to school on a regular basis. That hard work is reflected in these results.⁵⁶

Recommendation

Measures to increase school attendance should not be linked to welfare payments. Instead, they should address social factors. We recommend strengthening bilingual education programs, better resourcing of teachers in remote and rural areas and support for the development of positive partnerships between school and family.

LAND LEASES

The stated objectives of the land reform measures were to enable residential and economic development in town camps and community living areas. However, the effect of this legislation is that communities are forced to sign leases of up to 99 years in order to see any housing developments in their community. We believe that these measures are paternalistic and deny communities and people their right to self-determination and their right to own property. According to Alastair Nicholson, former Chief Justice of the Family Court of Australia, land lease measures serve:

To give the Minister almost unlimited control over the uses of town camps and community living areas and in particular to enable their development for private purposes, presumably for profit.⁵⁷

⁴⁹ op. cit., p. 74

⁵⁰ ibid.

⁵¹ <http://www.jumbunna.uts.edu.au/researchareas/newmedia/empowermentthrougheducation.html>

⁵² E. Grimes 'Indigenous Languages in education: what the research actually shows', Australian Society for Indigenous Languages, Palmerston, 2009. <http://ausil.org.au/sites/ausil/files/2009%20Grimes-Indig%20Lgs%20in%20Ed-AuSIL-web.pdf>

⁵³ World Bank, 'In their own language... education for all', in *Education Notes*, June 2005. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/03/07/000020439_20070307141203/Rendered/PDF/389060Language00of1Instruct01PUBLIC1.pdf

⁵⁴ A *Decision to Discriminate*, op. cit. p. 69

⁵⁵ ibid., p. 73

⁵⁶ ibid., pp. 69-71

⁵⁷ ibid., p. 51

Control of housing has been transferred from Indigenous Housing Committees to the NT Department of Housing. Fourteen out of 16 townships have now signed 40 year leases with the Commonwealth, leaving almost no Aboriginal control over design, maintenance or administration.⁵⁸

Putting pressure on people to sign 40-99 year leases before development will take place is a clear breach of human rights. It denies the right to self-determination, and to control over decisions affecting their lives.

The land lease measures are also counter to the UN Declaration on Human Rights, Article 17, which states that it is a right to own property, either alone or in association with others. Article 11 of the DRIP⁵⁹ states that it is the right of Indigenous Peoples to have redress for the property that was taken without free, prior and informed consent. In Australia, property rights are set out in the Constitution (Section 51 guarantees the acquisition on just terms of all types of property by the federal government) and the *Racial Discrimination Act 1975* guarantees the right to enjoy property on an equal basis, referring particularly to property owned by Aboriginal and Torres Strait Islander peoples.

It is not clear why land leases are necessary in order to achieve the Government's policy aims and has added to people's fears about an unspoken agenda.

Recommendation

We recommend an end to the Minister's control over Aboriginal land. Communities should not be expected to sign 40-99 year leases and provision of housing services and repairs should be community-driven.

EFFECTIVENESS OF STRONGER FUTURES MEASURES

There is significant evidence that the Stronger Futures legislation does not address the very problems it intends to address. In June 2012, a statement by the UCA expressed particular concern about quality of life indicators that seemed to be dropping instead of rising:

Suicide rates, particularly amongst young people, have dramatically increased since

⁵⁸ <http://www.jumbunna.uts.edu.au/researchareas/newmedia/no-townshipleases.html>

⁵⁹ United Nations Declaration on the Rights of Indigenous Peoples A/RES/61/295

the Intervention. In NSW, which has the largest Indigenous population, the youth suicide rate is one young person in every 100,000. In the Northern Territory, however, it is now more than 30 in 100,000. The official unemployment rate is at least four times higher for Aboriginal and Torres Strait Islander peoples than for the rest of the population, with this rate rising even higher in remote communities. Around 30% of Indigenous children don't attend school on a regular basis, while the housing crisis facing Aboriginal and Torres Strait Islander peoples has been described as 'alarming' by the Australian Institute of Health and Welfare. Since 2007, Indigenous incarceration rates have risen by 41%. These figures were investigated by a research team at the University of Queensland, who found that the increase can largely be explained by a jump in prosecutions for minor motor vehicle offences such as unlicensed driving.

These facts are shocking but they should not be surprising considering how current policy is being implemented. It is well understood, but conveniently ignored in much public debate and alarmingly ignored in the Stronger Futures legislation, that the most effective policy reforms are those developed in partnership with Indigenous communities. Many of the answers we seek as a community are contained in well-written and evidence-led reports that the Government's own departments have produced. It is almost incomprehensible that the Government and the Opposition fail to pay attention to what they know is necessary for positive and long-lasting change.⁶⁰

A study conducted by Cunneen, Allison and Schwartz⁶¹ explores Aboriginal civil and family law needs in the Northern Territory, through a process of focus groups and interviews with legal service providers. According to their findings, the key areas of need for legal support include discrimination, housing, child protection, social security, credit/debt and consumer law problems. Particularly, they noted that since 2007 there was a shift away from Indigenous community housing and towards

⁶⁰ <http://www.unitingjustice.org.au/justice-for-indigenous-australians/news/item/865-uca-response-to-the-passing-of-the-stronger-futures-legislation>

⁶¹ C. Cunneen, F. Allison and M. Schwartz, 'Access to Justice for Aboriginal People in the Northern Territory', *Australian Journal of Social Issues*, 2014, Vol. 49, No. 2

a public rental model. Focus group participants also felt that the NTER and subsequent Stronger Futures measures had brought an increase in child removal. They found that the linking of welfare payments with school attendance often resulted in legal issues, because it is not clear whether parents can bear responsibility for ensuring that their child remains at school. We do not believe that the 'special measures' provision used by successive governments has been met in that the legislation has not helped to advance Aboriginal people in the Northern Territory.

CONCLUSION

There is a stark contrast between the stated intent of the Stronger Futures legislation, and its impact. The consultation process was inadequate. It did not sufficiently negotiate with or seek respectful partnership with Aboriginal people in the development of the legislation. This failure is contrary to consultation obligations under DRIP. Most significantly, it has weakened the ability of communities to determine their own plans of action for positive changes in their lives.

We believe that the measures within the Stronger Futures legislation are largely punitive, discriminate against Aboriginal people and take control away from communities. They do not take seriously the evidence about what is working well in Aboriginal communities and as a result, we are seeing disappointing outcomes almost reversing the intended results of the program. School attendance has declined in many places, incarceration of Aboriginal people has risen by almost 30%, incidents of suicide and self-harm have increased, and workers who were engaged in the CDEP program are now on Centrelink benefits.

We believe that the Stronger Futures legislation has not helped to advance Aboriginal people in the Northern Territory. The 'special measures' provision used by successive governments to allow for this legislation (and the NTER legislation before it) has not been met. We believe that the original intent of the legislation – stronger health and safety outcomes for families – can be realised through genuine collaboration with Aboriginal people which enables local leadership and involvement with the initiatives for change that local communities have themselves identified as important.

SUMMARY OF RECOMMENDATIONS

- *We recommend that a proper consultation process involving meaningful negotiation is conducted as soon as possible to determine future directions for community development, health and safety initiatives in the Northern Territory.*
- *Measures to reduce harmful alcohol practices should be community led and managed and should not undermine existing agreements between communities and state governments. The inclusion of culturally appropriate public education, and support for community-led public health programs, treatment and rehabilitation would be more appropriate and effective than punitive approaches that lead to increased policing, arrests and incarceration.*
- *Income management measures should be voluntary. Compulsory income management is humiliating and harmful to many participants, and represents a restriction on the right to social security and should be repealed.*
- *Measures to increase school attendance should not be linked to welfare payments. Instead, they should address social factors. We recommend strengthening bilingual education programs, better resourcing of teachers in remote and rural areas and support for the development of positive partnerships between school and family.*
- *We recommend an end to the Minister's control over Aboriginal land. Communities should not be expected to sign 40-99 year leases and provision of housing services and repairs should be community-driven.*