

# **SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS**

**September 2014**

**Whitehorse Friends for Reconciliation Inc  
an ANTaR (Australians for Native Title and Reconciliation) Group**

## **INTRODUCTION:**

Our criticism of Stronger Futures is not in the detail, though there is plenty that demonstrates human rights condemnation in the overall installation, philosophy and direction of its discriminatory policies. Our concern lies in the disempowering policies that strip Aboriginal peoples of their right to determine their own futures. This breaches various international covenants including ICECSR, ICCPR, CERD and others.

This committee's previous Stronger Futures report (11<sup>th</sup> report of June 2013) noted serious flaws with the 2011 Stronger Futures consultations and processes and noted policies were unlikely special measures. Why then go on to justify discriminatory policies? Why not rather request the Government go back to the drawing board, follow AHRC guidelines for consultations and negotiate with Aboriginal people from the outset of policy formation - in true partnership with Aboriginal communities. Stronger Futures policy [as with the Intervention] turned Aboriginal policy further backwards; these pre-determined paternalistic policies have disempowered, as in the past.

For 240 years non-Indigenous Australians have been systematically destroying Aboriginal culture and disempowering Aboriginal people. Putting the best possible spin on this from our technologically and economically advanced, narrow perspective, we believed Aboriginal people either needed our help or were not using/exploiting the land and its wealth as they should be. There is much we have missed.

We did not see the sophistication of their life in just about every other sphere of human experience. We certainly did not recognise or respect their great knowledge of the land nor listen to their collective wisdom.

Our contact with and knowledge of Aboriginal culture is limited. However, from our involvement in the reconciliation movement, we know many urban Aboriginals and our members have visited Ampilatwatja, Irrultja, Papunya and Yuendumu on 6 separate occasions for periods usually of a month. One member speaks of his involvement in communities as always in an educational setting.

Our strong criticism of the Intervention and Stronger Futures legislation is that it is perpetuating human rights abuses, it goes against all evidenced-based social data and it is even economically unviable. The policies take the relationship and trust between Aboriginal and non-Aboriginal Australians in the opposite direction to where we should be heading.

## GUIDING PRINCIPLES FOR FUTURE LEGISLATION:

We believe Human Rights must underpin all legislation and there are several guiding principles that must be employed in the drafting of any future legislation.

- **Any change must result in a greater rather than a lesser sense of empowerment for Aboriginal communities.** Australian and international studies consistently show that people and groups that have a sense of control over their day to day existence and their ultimate destiny are more likely to experience better health, more likely to be better educated and more likely to be economically independent.
- **The processes required to give this greater sense of control must be given sufficient time. They must not be rushed.** From our experience Aboriginal people are very patient and are prepared to work towards a goal in a truly democratic sense with their whole community when they have a sense of control over their destiny. They are also tolerant of, and in many cases expect, mistakes from politicians and bureaucrats. This causes great disharmony.
- **Each community or self-identifying collective of communities should be treated independently.** To lump all Aboriginal Australians under the same legislation ignores the historical and present reality that pre-European Australia consisted of many nations and language groups. To not acknowledge these differences is one of our first displays of disrespect towards the First Peoples of Australia. This principle is not easy to act upon. We know urban Aboriginals who would not identify as Aboriginal in the Northern Territory because of the expected reaction from the locals. This highlights the complexity of the problem.
- **Each group should be given time and resources to choose representatives that have the power and right to speak for the group.** The current situation has evolved chaotically with several larger representative groups coming and going, usually chosen with a lot of non-Aboriginal involvement. Land Councils have been given a central role in identifying Traditional Owners, who have the power to make decisions for the community. The principle involved in creating representative structures is a central principle that has the potential to be the most divisive because of past and current disruption to family, social and community governance structures. These divisions have been accentuated, for example, by the random chance of some communities or families within communities, being able to benefit disproportionately compared to others, from mining or other developments.
- **Legislation should be created by negotiation between Aboriginal representatives and the Government to define and describe processes that must be followed for proper consultation between community representatives and the Australian Governments.** Some individual pieces of legislation incorporate the principle of free, prior and informed consent by affected Aboriginal communities. However, past experience recognises that this consultation is often an insult to communities. It degenerates into fly-in, fly-out bureaucrats or politicians telling people what is planned for them. Often the message is communicated in English, a second, third or fourth language for many.
- **Education should be bi-lingual.** Culture is transmitted via language. To remove or discourage the use of one's first language at school, when surrounded by this language at home, has a huge impact on identity and ability to learn. Our members have witnessed children struggling to understand anything being taught by their teacher because their English was not good enough. Everyone understands and

accepts it is crucial that a good mastery of English is achieved. However, it is the timing and placement of this process which is critical. It is well recognised that Children first learn best in their mother tongue, to do otherwise is to set them up to failure.

- **There should be a conscious goal to work towards a situation whereby all work within a community be done by Aboriginal people from the community.** The situation of work within communities has deteriorated over the last 40 years for various reasons, and particularly since 2007. Communities that once had a high participation rate of Aboriginal workers, through e.g. CDEP, within the community now rely almost totally on outside workers who often come for short periods of time only and cost the community greatly because of their very high contract wages and FIFO status. This erodes the self-esteem of the people.
- **Bureaucrats and others working with Aboriginal communities should be encouraged to remain in the community for longer rather than shorter times.** The relationship between Aboriginal and non-Aboriginal Australians was once recently described to one of our members by an Aboriginal man as being based on one certainty – ‘that the whitefella’ will leave’. It is understandable that Aboriginal people have little trust in any development, even if it has general acceptance. They know that it will change either because the person running a program changes or the Government will change the situation through legislation or at the end of its short term funding cycle.
- **Aboriginal people must be given the space to make mistakes.** Embedded within the principles outlined, to be employed properly, they would require the acceptance that some decisions and actions may turn out to be less than ideal. For people to have the right to make decisions which directly affect their lives, they must be prepared and allowed to make mistakes. Australia’s First Nations people have the right to self-determination under ICESCR, ICCPR and CERD and the UNDRIP as the previous PHRJ recognised in (June 2013).

#### **REASONS FOR THIS APPROACH TO FUTURE LEGISLATION:**

It is accepted that the above principles would take far more time and effort, patience, understanding and probably money in the short term. However, we firmly believe that unless strong foundations are created for future developments the short term, paternalistic programs that characterise the last 150+ years have failed miserably. We are under no illusion that the situation we face today is not easy to move away from, but we believe it is time to take a deep breath and decide to make no major decisions ‘for’ Aboriginal people in the immediate future. Aboriginal self-determination must be allowed and implemented in an appropriate sequence. Start with true consultation and negotiation, as referred to in the previous committee’s first report – that Government adopt the 11 points for *meaningful and effective consultation with Indigenous communities*.<sup>1</sup>

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<sup>1</sup> See Paragraph 1.117, p31.

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Completed\\_inquiries/2013/2013/112013/~/\\_media/Committees/Senate/committee/humanrights\\_ctte/reports/2013/11\\_2013/pdf/report.ashx](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/2013/112013/~/_media/Committees/Senate/committee/humanrights_ctte/reports/2013/11_2013/pdf/report.ashx)

Senator Scullion (and others) during the Stronger futures senate hearings noted the Aboriginal people/communities were either not consulted, had little information (if any) and others felt greatly confused. Aboriginal people requested the Government go back to the square one in the consultation e.g,

*It is clear that when we came here we made some assumptions that information had been passed to the community about what this legislation was about. The difficulty is that we have arrived here to hear what you think about that but what you are really saying is, 'Let's go back to the first stage, because we do not understand what the differences.'<sup>2</sup>*

## **REASONS FOR A NEW APPROACH TO FUTURE CONSULTATION and LEGISLATION**

**We believe that Australia – and all Australians - can benefit greatly from a deep examination of Aboriginal life and culture and consideration of how elements can be incorporated into an evolving direction for our collective culture to deal with this century and beyond. It is for this reason we believe Australia needs to take a completely different approach to policies affecting Aboriginal Australia.**

### **Australia's potential role – heading in a different direction:**

Australia is a unique and fortunate country in many ways. Australia is home to a diverse group of people, the First Peoples of Australia, who have lived here for between 40,000 and 72,000 years, for many in very challenging conditions and in a manner which was technologically and economically simple yet sophisticated. They share this country with people, who are among the most modern, technologically advanced and wealthy as in any country.

This places Australia in the challenging and exciting situation of having to solve one of humankind's most difficult questions. How do people (simplified to just mean Aboriginal and non-Aboriginal) with such different social, political, technological, economic, cultural, and spiritual experiences coexist so that both can live in a way that respects their differing needs. **In finding a solution to this situation we believe we can both draw on those aspects of each other's culture that may produce a new direction that gives new hope to future generations. of all Australians**

**We believe there are many elements of Aboriginal culture that would contribute greatly to contemplation on where Australian cultural practices, and maybe even human civilisation, could be heading.**

- **Family and social connectedness, mutual support and sharing.** We suspect that the reason Aboriginal culture has survived in some way under great duress is due to the strength of their family, kinship and social connectedness; the sense of 'whole of

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<sup>2</sup> See Hermannsburg consultation p,4. [http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/toc\\_pdf/Community%20Affairs%20Legislation%20Committee\\_2012\\_02\\_20\\_817\\_Official.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/toc_pdf/Community%20Affairs%20Legislation%20Committee_2012_02_20_817_Official.pdf;fileType=application%2Fpdf)

communal wellbeing'. Modern, westernized and industrialised culture tends towards atomisation, individualism and alienation. Having role models for a different way is important. Unfortunately this aspect of Aboriginal life can often be difficult to observe behind the negative stereotypes/images portrayed of Aboriginal life that bombard our screens. There is much misunderstood/little understood

- **Relationship/connectedness with the land and environment.** Aboriginal people are intricately connected to the land and have a deep two-way connection and responsibility to it. They speak of mother earth and have a deep respect for and are bound to this connection to their lands. There are many nations/ land within Australia. The people are often bound to local lands.  
This connectedness results in treating the natural world with far greater care and respect in comparison to modern Western societies. Western, destructive relationships with the natural world seem to be influenced by a range of negative attitudes: seeing the world as a resource to exploit or a place to control or a place to fear/fence off.
- **Non-materialistic - accumulation of wealth is not a high priority nor instinctive.** Not surprising given a culture based around a nomadic and seasonal lifestyle. There was no incentive to accumulate since it had to be carried and what you wanted was dependant on the land you travelled –on the seasons and environment to- where you were going anyway. This approach to material goods is in stark contrast to our exaggerated consumerism.
- **Respect for older generations - accumulated wisdom not lost.** We have witnessed a few occasions where this respect-the wisdom of the elders- was publicly declared. Quite a moving experience for a person who is used to younger generations assuming that people who can't use a television remote have nothing to offer. Sadly many young Aboriginals are also losing this cultural instinct. How can we expect Aboriginal youth to respect their elders when our Governments so disrespect and disregard the wise and valuable input of the elders and their governance structures in areas that have been maintained since time immemorial.
- **A sense of things continuing in a seamless way.** Stories don't have to have a start, middle and end. As a result, the effect of actions on many future generations is considered. We wonder whether this approach is fashioned in some way by experiencing at first hand the seasonal cycles and even more so by spending a lot of time under the stars.
- **Aboriginal lore /law has relevance today.** For example wrong-doers are forgiven and their deeds forgotten by the community once the punishment (decided by community) has been delivered. The punishment is also non-custodial. This is in contrast to the young offender who is constantly being reminded of a spontaneous, stupid but harmless act as a teenager.
- **Education is non-competitive.** I once heard a Melbourne-based Aboriginal man tell a school assembly of Year 10s that when he was being educated no one progressed until they were sure the slowest student understood the concept being taught. This is anathema to western concepts of individual excellence and competitive education.

Whilst it would require a different approach and methodology within schools, its social outcomes could be enormously productive. Certainly an idea worth exploring. NAPLAN testing is inappropriate for ESL students and should be replaced in ESL /communities with more appropriate testing. Education must also be relevant.

- **Everything is interconnected - as opposed to Western culture where we tend to compartmentalise and have experts study parts only.**

It is instructive that Aboriginal people have always assumed the interconnectedness of everything, whilst the concept of ecology has only been a part of Western scientific knowledge for around 100 years.

### **CONCLUSION:**

The Intervention and Stronger Futures legislation was a dramatic event that stripped people of their right to determine their future. This has affected Aboriginal people. The ICSEI, ICCPR and ICERD have been breached.

Stronger Futures has continued to systematically dismantled the cultural and communal foundations of A&TSI family and social connectedness and spiritual connection to the land. Adding to this destruction was the further disempowerment of a strong, proud people by the stigmatisation of all Aboriginal men as child sex molesters – this myth was rejected by John Lawler of the AAA commission in 2009 but has untold damage to First Nations people of the N.T. These myths and further victimisation of disadvantaged people has allowed the rollout of racist policies.

WFFR argue for a new approach to the creation of future legislation. It should be based the cessation of Stronger Futures legislation and the introduction, at an appropriate pace, of Aboriginal Self Determination to support their human rights and existing strong culture. The reason for supporting Aboriginal culture can always be argued on human rights grounds but, just as importantly, it must be preserved because there are many aspects of Aboriginal life, wisdom and culture which can usefully assist all Australians to inform the future.

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