

# Aboriginal Peak Organisations Northern Territory

An alliance of the CLC, NLC, CAALAS, NAAJA and AMSANT

29 November 2014

The Parliamentary Joint Committee on Human Rights  
C/- Committee Secretary  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
Submitted via email to: [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)

To the expert panel,

**Re: Submission to the Committee on the review of Stronger Futures in the NT and related legislation**

We are pleased to provide you with the submission from Aboriginal Peak Organisations (NT). Further to this submission, APO NT supports the submission provided to the Committee by the North Australian Aboriginal Justice Agency (NAAJA).

We look forward to further discussion on this important issue.

Sincerely,

Priscilla Collins  
CEO  
NAAJA

On behalf of APO NT

David Ross CEO CLC	Priscilla Collins CEO NAAJA	John Paterson CEO AMSANT	Patricia Miller CEO CAALAS	Joe Morrison CEO NLC
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**Aboriginal Peak Organisations NT**

# **Aboriginal Peak Organisations Northern Territory**

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**APO NT Submission to the Parliamentary Joint Committee on  
Human Rights**

**Review of Stronger Futures**

**29 November 2014**

## 1. Introduction

On 26 June 2013, the Parliamentary Joint Committee on Human Rights tabled the 11th Report of 2013. The Report examines the Stronger Futures in the Northern Territory Act 2012 (Cth). The Committee focused their attention on the human rights compatibility of three key measures: tackling alcohol abuse, income management and school attendance.

The report responded to the concerns expressed by a number of Aboriginal groups regarding the compatibility of the Stronger Futures measures with human rights.<sup>1</sup>

The committee is undertaking a 12 month review to consider the latest evidence, and evaluate the continuing necessity for the measures included in the Stronger Futures package.

The current submission contains an outline of APO NT's key concerns. Many of these issues have been raised in previous submissions.<sup>2</sup> We strongly believe that there should be a continuing dialogue around the issues raised by the Stronger Futures legislation, particularly given their significant and continuing impact on the indigenous people of the Northern Territory.

This document contains a brief summary of the key issues raised in the Report, focusing on the Committee's analysis of the key measures and APO NT's view on the legitimacy of the measures and their effectiveness in achieving the stated objectives.

## 2. Key Legislation

### Stronger Futures in the Northern Territory Act 2012

The Report examined the measures relating to alcohol abuse, including the declaration of alcohol restricted areas and the potential for community involvement in the development of liquor laws. APO NT's views on these measures are expressed below.

### Social Security Legislation Amendment Act 2012

The Committee considered the effectiveness of the Income Management provisions, by which a proportion of income received as Centrelink payments is quarantined and can only be used for certain purchases. The Report also analysed the school attendance provisions of the Act, which allow the suspension of Centrelink payments to parents if their children aren't attending school.

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<sup>1</sup> Statement to the Parliamentary Joint Committee on Human Rights on the Parliamentary Scrutiny of Human Rights(2012)

<sup>2</sup> Submission to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills (2012)

## Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012

The Report mentioned the key provisions of this legislation, but did not analyse these provisions in detail. We would like to highlight the amendments to the *Crimes Act 1914*, which restrict the consideration of customary law or cultural practices in bail and sentencing for certain offence provisions. APO NT considers that these provisions are particularly detrimental to Aboriginal people in the Northern Territory, and we urge the Committee to undertake further review in this area. We refer to APO NT's briefing paper on the issue dated 25 June 2012.<sup>3</sup>

### 3. Key Issues Raised by the Report

The report contains a detailed analysis of the human rights framework of the Stronger Futures package, including a consideration of the key rights engaged by the Bill and specific human rights issues. The following is an outline of APO NT's key concerns, with reference to the views of the committee expressed in the report.

#### Human Rights Framework

The Committee recognised several issues regarding the human rights implications of the Stronger Futures package, in accordance with their mandate to consider bills and legislative instruments for compatibility with Australia's human rights obligations under international law.

#### Community Consultation

There is an obligation to consult with Indigenous groups before the implementation of legislation that will affect their human rights.

This obligation is enshrined in the United Nations Declaration of the Rights of Indigenous Peoples. Whilst the Declaration is not listed in the *Human Rights (Parliamentary Scrutiny) Act 2011* as a treaty against which all legislation is to be measured, APO NT considers that it is both appropriate and necessary for the Committee to have regard to this important instrument of international law.<sup>4</sup>

The Committee took the view that the Declaration is not binding on Australia, but that 'the Declaration is nonetheless binding to the extent that the Declaration reflects obligations under other human rights treaties, or has obtained the status of customary law.

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<sup>3</sup> See attachment A

<sup>4</sup> APO NT also supports National Congress' and the Australian Human Rights Commission's call to include the Declaration formally in the mandate of the Committee, to ensure that Declaration is considered in all future Committee inquiries.

APO NT considers that there is strong justification for adhering to the provisions requiring effective and meaningful community consultation before the implementation of laws and policies that will greatly impact indigenous groups. APO NT's view is shaped by the opinion of human rights experts in the area of indigenous law,<sup>5</sup> who have stressed the importance of community consultation and consider this to be a duty of the State.<sup>6</sup> Furthermore, in our experience, good community consultation and involvement in policy decisions results in better policy outcomes.

Recommendation 1: The Committee should undertake to fully apply the provisions of the Declaration on the Rights of Indigenous Peoples in their review and analysis of the Stronger Futures legislation.

APO NT also draws the Committee's attention to our work over several years to convene forums in the Northern Territory on important issues such as alcohol and governance. APO NT was specifically funded to convene a number of forums to bring together a large number of Aboriginal people as well as experts in a particular field. These forums have been enormously successful and are a best-practice model of Government facilitating community consultation. The forums enabled comprehensive discussion and produced detailed reports.<sup>7</sup> Importantly, they have given Aboriginal people a voice in policy decisions affecting them.

APO NT urges the Committee to recommend that the Federal Government provide specific funding to peak Aboriginal organisations across Australia to facilitate meaningful community consultation with Aboriginal people before the implementation of laws and policies that will impact Aboriginal people in that area.

### Special Measures

The Committee notes that the government has maintained that many of the measures included in the Stronger Futures package are 'special measures'.

Special measures are permitted as an exception to racial discrimination. However, they are not measures without boundaries. The International Convention on the Elimination of Racial Discrimination provides for special measures but caveats that for measures that are positive and for the advancement of racial groups and are necessary to redress an inequality. Australian courts have bound what may constitute a special measure as;

1. the measure must confer a benefit;
2. on some or all members of a class of people whose membership is based on race, colour, descent, or national or ethnic origin;
3. the sole purpose of the measure must be to secure adequate advancement of the beneficiaries so they may equally enjoy and exercise their human rights and fundamental freedoms;
4. the protection given to the beneficiaries by the measure must be necessary for them to enjoy and exercise their human rights equally with others; and

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<sup>5</sup> See Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34, para 38 (2009).

<sup>6</sup> Para 38.

<sup>7</sup> See attachment B

5. the measure must not have yet achieved its objectives (the measure must stop once its purpose has been achieved and not set up separate rights permanently for different racial groups).<sup>8</sup>

The report challenged this assumption, stating that the government ‘has generally asserted this conclusion without any supporting analysis based on the criteria generally accepted in international law’.<sup>9</sup> After a review of the criteria for ‘special measures’ under international and Australian law, the committee’s view was that the provisions of the Stronger Futures package do not constitute ‘special measures’.

APO NT agrees with the committee view that the government should have to provide a detailed explanation of the characterisation of laws as special measures. Although the government has provided an explanation in explanatory statements, APO NT concurs with the committee opinion that these statements are merely assertions of government’s policy intentions, and are therefore not adequately justified.<sup>10</sup>

APO NT also considers that the automatic characterisation of all racially-based measures as ‘special measures’ does not reflect the international legal framework, and needs to be reviewed in light of the recent High Court decision of *Maloney v R*. In particular, consideration should be given to the intention and language of the ‘special measures’ provisions in the Convention, stated by one human rights expert as measures that are generally, ‘...accomplished through preferential treatment of disadvantaged groups... and not by the impairment of the enjoyment of their human rights’.<sup>11</sup>

## Key Measures of the Stronger Futures Package

### Alcohol misuse:

The committee’s key concern is whether the alcohol measures constitute racial discrimination, given that the measures primarily, and in many cases, exclusively, impact on Aboriginal communities in the Northern Territory. APO NT is committed to advocating for effective measures to prevent and minimise alcohol-related harm in Aboriginal communities, including supply reduction measures. However, APO NT is also concerned that many of the punitive measures imposed under Stronger Futures may be racially discriminatory, and possibly ineffective. Evidence-based policy and developing measures that are led and controlled by the community must be at the centre of legal and policy decisions concerning alcohol-related harm in our communities. We welcome the Committee’s acknowledgement of this.<sup>12</sup>

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<sup>8</sup> *Gerhardy v Brown* (1985) 159 CLR 70, 133-140 (Brennan J).

<sup>9</sup> P21 Parliamentary Report

<sup>10</sup> P 28 Parliamentary Report

<sup>11</sup> Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, The situation of indigenous peoples in Australia, A/HRC/15/37/Add.4 , para 21 (2010).

<sup>12</sup> P. 39

We also urge the Committee to champion coherent approaches to alcohol policy. For too long, the Northern Territory has been subject to often conflicting alcohol policy regimes imposed at Federal, Territory and local government levels. This is confusing for Aboriginal people and has undermined the effectiveness of specific evidence-based initiatives.

APO NT urges approaches to alcohol policy that are coordinated, responsive to local need and that are evidence-based.

### Alcohol Management Plans

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

However, only one AMP in the Northern Territory has been approved by the Federal Minister for Indigenous Affairs. The lack of progress on the approval of Alcohol Management Plans indicates a problem with the current approval framework, and associated minimum standards. There may also be a lack of funding for relevant services to support implementation. Publicly available data on AMP’s shows that quite a significant number of AMPs have community endorsement, but have been awaiting governmental approval for longer than 12 months.

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

In 2013, APO NT held the Central Australian Alcohol Summit, which focused on alcohol policy affecting Aboriginal people in the Northern Territory. The participants of this summit agreed that for measures to be effective they need to be holistic in their approach to alcohol issues and should be community driven.

APO NT believes that AMPs could be an effective mechanism for enabling community control however, in their current format it is difficult to determine whether the AMPs are or will be an effective measures to address alcohol issues and support community control.

Recommendation 2: Government funding should be directed to fund experts and Aboriginal organisations with strong relationships with local communities to develop effective community controlled alcohol strategies.

## Alcohol Protected Areas

There is a lack of clarity around the operation of the measures under NTER, and continued under Stronger Futures legislation, restricting alcohol in Aboriginal communities and the effectiveness of these restrictive measures. APO NT is concerned by the potentially discriminatory nature of some of the measures, and the failure to adhere to principles of self-determination in developing and implementing these measures.

Under the NTER, the government deemed most Aboriginal communities in the Northern Territory to be 'prescribed areas' in which it would be illegal to purchase, possess or consume alcohol. This measure was continued under Stronger Futures legislation, however, prescribed areas were renamed 'alcohol protection areas', with harsher penalties for the offences. Prior to the NTER, many of the communities had voluntarily been dry communities, and had sought designation as 'general restricted areas' under the NT *Liquor Act*. Currently, some Aboriginal communities are still 'restricted areas' under the NT *Liquor Act*, including most Aboriginal town camps. Similar offence provisions to the offences relating to Alcohol Protected Areas apply, and the *Liquor Act* cross-references the Stronger Futures legislation.

The Committee Report notes that it is difficult to identify the specific number and location of alcohol protected areas. This is because of complicated transitional provisions, deeming provisions and declaration powers under the legislation. There are three different ways that an area may be declared an 'Alcohol Protected Area': first, the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* deems areas that were prescribed areas under the former *NTER Act* to be 'Alcohol Protected Areas'; second, the Minister has power to declare an area an alcohol protected area, where certain criteria is satisfied; and third, any land prescribed in section 3 of the *Aboriginal Land Rights (NT) Act* is also deemed to be an Alcohol Protected Area. Due to this complex legislative arrangement, it is difficult to readily ascertain whether a community is, or was, within an Alcohol Protected Area.

Recommendation 3: Government should remedy this by ensuring that information on current and past Alcohol Protected Areas and restricted areas (as well as operational AMP's) is made easily available to the general public.

They are enforced through excessive and intrusive police powers and an array of offence provisions, which can attract quite significant criminal sanctions. Despite this, governments have not relied on or developed an evidence-base to justify the measures. As the Committee's Report notes, despite the Minister's assertions, there is no 'clear evidence that the measures have had an impact on reducing alcohol consumption and the harms linked to abuse of alcohol'.<sup>13</sup> Data on the effectiveness of establishing restricted areas (including Alcohol Protection Areas) has not been collected, analysed and made publicly available. The Stronger Futures Progress Report (1 January 2013 – 30 June 2013) does not contain any data related to the imposition of Alcohol Protected Areas and other alcohol restrictions, nor does it propose to establish an evaluation process to measure the impact of these restrictions. It is possible that the imposed alcohol restrictions on Aboriginal communities are discriminatory and impact upon an individual's rights to self-

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<sup>13</sup> Committee Report, p. 39



determination guaranteed by international law<sup>14</sup>; but it is difficult to ascertain whether the restrictions constitute a ‘special measure’ without a proper evaluation process in place.

APO NT supports evidence-based, community-controlled and owned measures to address alcohol-related harm in communities. Aboriginal communities should not be subjected to potentially discriminatory experiments. Prior to the NTER over 100 Aboriginal communities were voluntarily alcohol restricted, at their own determination.<sup>15</sup> Professor Dennis Gray has noted that “around 80 percent of the remote communities targeted by the NTER have already chosen to be dry”.<sup>16</sup> A community owned response to alcohol-related harm would be more effective, and non-discriminatory.

It is arguable that the alcohol measures are not reasonable and proportionate so as to justify their classification as a special measure. To demonstrate they are appropriately classified requires data that shows the measures are achieving the objective identified. This data is not readily available. It is not possible to state that the objectives are being achieved in a manner that wasn’t already being achieved through community elected measures prior to the NTER and the Stronger Futures package.

### Independent Review

Section 28 of the *Stronger Futures Act* states that the Commonwealth or relevant NT Minister must cause for an independent review of the operation of Part 2 (Tackling Alcohol Abuse) of the *Stronger Futures Act* (Cth), the *Northern Territory’s Liquor Act* and Liquor Regulations, and other relevant legislation aimed at dealing with alcohol issues in the Northern Territory. The purpose of the independent review is to assess the efficacy of the alcohol related laws. In our view, this is a valuable process. As noted above, the most recent progress report lacks quantitative data on the efficacy of the measures, and notes that ‘work is underway’ to develop performance measures for AMP’s.<sup>17</sup> The efficacy of other alcohol measures under the *Stronger Futures Act* (Cth) and Northern Territory legislation is not considered.

This review was due to take place by June 2014. There has been no indication by the Commonwealth or NT Governments that this review has been called or is being conducted. This is a clear breach of section 28. The Committee report should call for the independent review to take place as soon as possible.

Recommendation 4: Both NT and Commonwealth governments should task to commence this independent review without any further delay.

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<sup>14</sup> Article 1 of ICCPR and article 1 of the ICESCR and articles 5 and 23 of the Declaration;

<sup>15</sup> Walker E, “*Stronger Futures – Alcohol regulation in the NT*”, Indigenous Law Bulletin, November/December 2012, Vol 8, Issue 3.

<sup>16</sup> Ibid.

<sup>17</sup> Department of Prime Minister and Cabinet, *Stronger Futures in the Northern Territory – Six-monthly Progress Report – 1 January 2013 to 30 June 2013*, p. 24.

## Income Management

### The extent of Income Management in the Northern Territory

There are approximately 48,000 people on Centrelink benefits in the Northern Territory.<sup>18</sup> Of these, 20,003 are on income management.<sup>19</sup> The vast majority of these people are Aboriginal or Torres Strait Islander.

By virtue of Part 3B of the *Social Security (Administration) Act 1999*, 50% to 70% of the Centrelink payments of people under income management is paid into their bank account and the other 50% to 30% of their payment is put into a Centrelink administered account to spend on their 'priority needs'.<sup>20</sup>

People are income managed in the Northern Territory for a number of reasons: substantiated child protection concerns,<sup>21</sup> vulnerability,<sup>22</sup> compulsory (length of time on payment)<sup>23</sup>, voluntarily,<sup>24</sup> and by order of the Alcohol Mandatory Treatment Tribunal of the Northern Territory.<sup>25</sup>

By contrast, there are 4725 people on income management in 13 locations around the rest of Australia. They are income managed on different criteria: they are considered to be vulnerable, they volunteer or there are child protection concerns. 212 people are income managed under the Cape York Welfare Reform System.

Income management in the Northern Territory does not involve case management or wrap around service provision. By contrast, income management in Cape York is part of a broader system involving case conferencing and referral to community support services.<sup>26</sup>

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<sup>18</sup> UNSW, Social Policy Research Centre, Evaluating New Income Management in the Northern Territory: First Evaluation Report, July 2012 at p 42.

<sup>19</sup> 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1.

<sup>20</sup> Section 123 TH of the *Social Security (Administration) Act 1999* defines priority needs as food; non-alcoholic beverages; clothing, footwear; basic personal hygiene items; basic household items; housing, including rent; home loan repayments; repairs; and maintenance; household utilities, including: electricity, gas; water; and sewerage; and garbage collection; and fixed-line telephone; rates and land tax; health, including: medical, nursing, dental or other health services; and pharmacy items; and the supply, alteration or repair of artificial teeth; and the supply, alteration or repair of an artificial limb (or part of a limb), artificial eye or hearing aid; and the supply, alteration or repair of a medical or surgical appliance; and the testing of eyes; and the prescribing of spectacles or contact lenses; and the supply of spectacles or contact lenses; and the management of a disability; child care and development; education and training; items required for the purposes of the person's employment, including: a uniform or other occupational clothing; and protective footwear; and tools of trade; funerals; public transport services, where the services are used wholly or partly for purposes in connection with any of the above needs; the acquisition, repair, maintenance or operation of: a motor vehicle; or a motor cycle; or a bicycle; that is used wholly or partly for purposes in connection with any of the above needs.

<sup>21</sup> Section 123UC, *Social Security (Administration) Act 1999*

<sup>22</sup> Section 123UCA, *Social Security (Administration) Act 1999*

<sup>23</sup> Section 123UCB -Under 25s on Special Benefit, Youth Allowance, Newstart Allowance or Parenting Payment are income managed if they have been on payments for 13 of the past 26 weeks. Section 123UCC, for over 25s on Special Benefit, Youth Allowance, Newstart Allowance or Parenting Payment, if on that payment for the past 12 of 24 months.

<sup>24</sup> Section 123UFA

<sup>25</sup> Section 34, *Alcohol Mandatory Treatment Act 2013* (NT)

<sup>26</sup> Dr L Buckmaster, 'Does Income Management Work' Parliamentary Library Briefing Book, 44<sup>th</sup> Parliament, Canberra

A long term welfare payment recipient or a disengaged youth can be exempted from income management if they engage in full time work or study or their children meet attendance requirements or other age appropriate activities for children under school age.<sup>27</sup> There are currently 64 exemptions in place for regular paid work, 482 for full time students, 1,721 for parenting requirements. The majority of exemptions granted have been to non-Indigenous people.<sup>28</sup>

One of the consequences of income management is that families have a lower amount of cash available to support family members who are without income.

### ***General problems with Income Management in the Northern Territory***

The member organisations of APO NT have strongly opposed compulsory income quarantining when it was introduced through the Northern Territory Intervention. The Compulsory Income Management Scheme under Stronger Futures still lacks an evidence base, does not address the causes of welfare dependency and is not sufficiently targeted to minimise its disproportionate impact upon Indigenous people.

This was explained further in the AMSANT submission to the Community Affairs legislation Committee Inquiry in 2010:

The scheme disproportionately impacts on Aboriginal people in the Northern Territory as the target categories that are subject to income management are more heavily represented by Aboriginal people. Given that, many people report that income management results in significant negative impacts on their daily lives this amounts to indirect discriminatory treatment.

Negative impacts reported by people on income management include the shame and stigmatisation of the racially targeted nature of the measure, significant difficulties and inconvenience in using the BasicsCard, increased travel costs to access approved stores and lack of choice and flexibility managing their money and failure to promote personal responsibility or improve money management skills for those that do not.

The evaluation of income management in the Northern Territory by the Social Policy Research Centre states that:

there appears to be a large number of people subject to Compulsory Income Management who are unlikely to benefit from this measure, and for whom the restrictions of income management can create unnecessary frustrations and challenges...<sup>29</sup>

It is of concern to APO NT member organisations that compulsory Income Management has been continued, given these issues and, significantly, that there is little evidence to date that income management is resulting in widespread behavioural change or that it

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[[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/IncomeManagement](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/IncomeManagement)]

<sup>27</sup> Section 123UGC, section 123UGD *Social Security (Administration Act)1999*

<sup>28</sup> 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1.

<sup>29</sup> J Rob Bray, et al p xix

has improved financial outcomes and wellbeing for recipients. As such, the early indications are that compulsory income management has largely failed to achieve its stated objectives.

Measured against such limited outcomes, the enormous economic cost of compulsory income management cannot be justified. It has cost almost \$100 million per year to date to income manage 15,000 people, and it was forecast to cost in excess of \$650 million in the NT for the seven years between 2007-09 to 2013-14. This investment could be much better spent on measures proven to improve outcomes for Aboriginal people in the NT. For example, the money could provide desperately-needed community services and intensive case management for those in real need. It could almost double the amount available for new and upgraded housing. Current budgeted expenditure will provide new housing in only 16 out of the 73 prescribed communities and over 600 non-prescribed communities in the NT. Given that housing is a critical determinant of health and wellbeing, the inability of current funding levels to significantly or even marginally reduce overcrowding in most Aboriginal communities will deliver a social cost of poorer health outcomes and ongoing risk of neglect and abuse.

APO NT continues to have serious concern about the impairment of the right to privacy and the rights to freedom of movement resulting from the income management scheme, which is detailed within the North Australian Aboriginal Justice Agency (NAAJA) submission to the Committee, dated 7 November 2014. APO NT supports the views of NAAJA with respect to the human rights issues created as a result of the income management measures.

### **Alternative options**

APO NT supports a voluntary approach to income management. Voluntary income management allows those who want income management to continue to access it.

APO NT believes that income management should only be considered as either a voluntary measure or as part of a broader, evidence-based targeted approach that focuses on the provision of comprehensive services and supports relevant to the needs of the individuals targeted.

APO NT has also called for the expansion of financial literacy courses and access to banking services, particularly in remote communities.<sup>30</sup>

### **Specific problems with the Stronger Futures scheme**

In addition to our concerns about the policy rationale and approach generally, there are a number of specific features of the Stronger Futures compulsory Income Management scheme which are problematic.

First, the exemption criteria are inappropriate for Aboriginal people in many remote communities. The lack of child care in remote Aboriginal communities, and the difficulty of remote community people obtaining the required evidence, means that it can be

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<sup>30</sup> There is little evidence on the extent of how often these services are being offered to clients, and if clients are enrolling in these sessions.

particularly hard for Aboriginal people in remote communities to meet the criteria. In this regard, We are concerned by reports that the Minister has directed that where a community does not have a service that is a required criteria for an exemption (e.g. child care), that an exemption must be refused on the basis that the lack of the service indicates an increased need for income management. This is discriminatory against Aboriginal people living in poorly serviced remote communities.

Other specific concerns raised by APO NT include:

- The broadness of the categories of ‘vulnerable’ and ‘financially vulnerable’ can result in subjective and inconsistent determinations;
- The intrusive nature of the questioning of those seeking exemptions from compulsory income management.
- That there has been inadequate consideration and provision for interpreters to assist Centrelink staff interviewing clients.
- policy guidelines have not been released in relation to the child protection income management process.
- the health related exemption criteria is unworkable for many Aboriginal people in the NT, including because of:
  - difficulty accessing immunisation records;
  - the lack of standardised child health checks in the NT and significant capacity issues for health services that are already over-burdened, or operate without GPs. There will be many instances where parents are not to blame for a check not having been completed; and
  - the lack of allied services in remote communities.

## SEAM MEASURES

It is difficult for APO NT to make comment on the efficacy of the SEAM measure as there has been little evidence demonstrating whether the link of welfare payments to truancy is effective in increasing school attendance or for that matter improving education outcomes for Aboriginal children in the NT.

APO NT agrees with and supports the Australia Human Rights Commission’s statement that –

Given the variations in reports on SEAM’s effectiveness, the program should continue to be subject to regular review and revision to establish its efficacy as an approach over several years. At present there is still insufficient evidence to suggest the welfare consequences in SEAM are an effective approach to improving school attendance.<sup>31</sup>

APO NT continues to harbour concerns over the punitive approach of suspending welfare payments to those most in need of them should their child be unable to attend school.

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<sup>31</sup> Australia Human rights Commission, Stronger Futures in the Northern Territory Bill 2011 and two related Bills, Submission to the Senate Community Affairs Legislation Committee, 6 February 2012, para 194.

APO NT has concern over the stigma and resulting problems that may be attached with having payments suspended.

The report correctly points out the human rights compatibility concerns with SEAM with respect to the limitation of the right to social security and an adequate standard of living guaranteed by articles 9 and 11 of the ICESCR.

Again, it is difficult to measure the practical human rights impact this measure has had and is having on Aboriginal people in the Northern Territory, when there has been so little evidence released addressing the efficacy of the program and the impact on individuals and families.

## LAW AND JUSTICE MEASURES

### Customary law

The Committee has failed to consider the human rights implications of the restriction on taking into account Aboriginal and Torres Strait Islander customary law in bail and sentencing decisions. We assume that this was merely an oversight.

While APO NT welcomed the Stronger Futures amendments allowing customary law and cultural practices to be considered in offences involving cultural heritage or cultural objects, the restrictions should have been repealed completely. The restrictions devalue Aboriginal culture and custom, distorts the bail and sentencing process, and result in unjust outcomes for Aboriginal people. We refer to the Committee to our previous submissions on this issue, provided at Attachment A.

We urge the Committee to inquire into the human rights implications of the restrictions on taking Aboriginal and Torres Strait Islander customary law into account in bail and sentencing decisions. We are particularly concerned by the discriminatory nature of the restrictions, and the impact of the restrictions on equality before the law for Aboriginal and Torres Strait Islander peoples.

### *Access to justice*

Stronger Futures legislation and policies have greatly increased demand for Aboriginal legal services. The increased police presence in remote communities, combined with criminal law measures – such as the continuation of strict alcohol regulations under Stronger Futures, has increased police investigations, prosecutions and court listings, placing pressure on Aboriginal legal services' criminal defence teams' resources. Other Stronger Futures policies, including the increased focus on child protection issues and changes in social security law and remote housing, has also resulted in a high demand for legal services.

The Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Justice Agency have received additional funding to meet this demand. Both services

operate on a very tight budget and, even with this additional funding, struggle to meet the significant level of unmet legal need experienced by Aboriginal people in the Northern Territory. The government cannot confirm whether the supplementary legal assistance funding provided through Stronger Futures will continue post June 2015.

The Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Justice Agency are grateful that the government has, to date, acknowledged the need to match changes in law and justice policy with an increase in funding to legal services. If this funding is not continued, the services will be crippled. Cuts to Aboriginal legal aid services reduce Aboriginal people's capacity to access justice, and potentially diminishes the right to equality before the law.

APONT acknowledges that this issue may be outside of the scope of the Committee's mandate, given the Committee's focus on legislative compliance with human rights obligations. However, it is a critical issue, which we wish to draw to the Committee's attention.

## **Conclusion**

There is a need for the Government to demonstrate, rather than simply state, how the measures contained within this Stronger Futures package are a proportionate response to the perceived problems. There has been no evidence provided by the Government to demonstrate that less intrusive and alternative solutions to the problems have been or are being considered.

Whilst particular wording of the legislative package attempts to avoid being viewed as discriminatory, Aboriginal people in the Northern Territory are disproportionately impacted by the Stronger Futures laws.

APO NT does not support punitive measures that disproportionately and negatively impact upon Aboriginal people in the Northern Territory. APO NT supports and believes in evidence based approaches aimed at empowering Aboriginal people and communities in the Northern Territory.