

Chapter 4

Other issues

Consultation process

4.1 During the inquiry the committee considered significant evidence to indicate that there was a high degree of confusion amongst people in the communities who will be most affected by the measures in the Stronger Futures bills. There continues to be great confusion between the previous Emergency Response and the new process, and this too was reflected in the evidence given by submitters and the questions that witnesses asked of the committee during hearings.

4.2 In Ntaria the committee heard that people did not understand the difference between the Intervention and the Stronger Futures package.

All [the people] want to know is what is the difference between Stronger Futures and the intervention. That is what they want to know. What are the changes?¹

4.3 Many submitters and witnesses also expressed their frustration with the consultation that took place around the Stronger Futures measures. There was a lot of concern about the perceived lack of consultation, but also about the way in which the consultation occurred, with evidence to suggest that officers and consultants running the consultations need to be better prepared for the task, and that more time needed to be taken building relationships with people to support effective communication.²

4.4 Given the confusion about the Emergency Response, and the content of the Stronger Futures package, and given also that there are many other policy reforms also taking place, the committee found that witnesses wished to give evidence on a wide range of matters. These included issues such as housing, or governance reforms that lie outside the Stronger Futures reforms.

4.5 The Commonwealth government, as part of the Closing the Gap initiative, has developed a framework for engagement with Aboriginal and Torres Strait Islander Australians, published as *Engaging Today, Building Tomorrow*. Developed in FAHCSIA, it was released in May 2011.

4.6 The need to improve engagement processes was made clear to the committee during its visit to the Northern Territory. It also noted the evidence from the Australian Human Rights Commission (AHRC). In its submission it commented:

1 Ms Roxanne Kenny, *Committee Hansard*, 21 February 2012, p. 4.

2 Mr Peter Jones, Uniting Church Northern Synod, *Committee Hansard*, 23 February 2012, p. 9; Australian Human Rights Commission, *Submission 351*, p. 14.

The Commission is concerned that despite five years of effort under the NTER, both the Northern Territory and Australian Governments continue to lack the capacity and cultural competency to effectively implement the measures in the NTER (as redesigned through the proposed Stronger Futures Bills).

The capacity of government officials working with Aboriginal and Torres Strait Islander peoples must be developed to ensure engagement with local communities is effective. Therefore, it is suggested that government officials working with Aboriginal and Torres Strait Islander peoples must be supported with professional development training from nationally accredited training providers...

[T]he Commission is of the view that the Government should identify cultural competency as an essential skill required from its workforce. One way of doing this is by ensuring that identified criteria are used for all positions.³

4.7 The Commission reinforced the importance of cultural competency during its evidence. The committee notes that the Government's framework document does emphasise building trust and promoting dialogue as key to effective engagement.⁴ Building relationships is an important part of this. The Director of Catholic Education in the Northern Territory, referred to the positive impact of enduring relationships in the following way:

I think it is very hard for us to have deep and meaningful consultation till we have an ongoing relationship, and that takes time. Those people coming up for SEAM do not have time. I think they make a good attempt, but I do not think it is really landing with the people themselves. One of the things I said before you came in is that you have to have consistency of faces. You have to have consistency. We employed my colleague Alan after a period of 30 years with DEEWR. One of the attractive things for us is that he can walk into any community and they actually know him and trust him. He has been known much longer than me or most people in the office. That is a critical part of change.⁵

4.8 The AHRC outlined key considerations for governments to achieve a culturally competent workforce in engaging with Indigenous communities. These included:

- The mandatory use of Identified Positions/Criteria for all positions in the public service that have any involvement with the Stronger Futures measures, and the requirement for relevant officers to have the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities

3 Australian Human Rights Commission, *Submission 351*, pp 18–20.

4 *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians*, May 2011, p. 7.

5 Mr Michael Avery, *Committee Hansard*, 23 February 2012, p. 6.

- The development of targeted education and training programs with accredited training providers to facilitate the development of appropriate skills and cultural competency
- Increasing the capacity of Government Business Managers and Indigenous
- Engagement Officers to work with communities and build community engagement processes with a view to improving community engagement.⁶

Recommendation 9

4.9 The committee recommends that governments work closely with the Australian Human Rights Commission to build a culturally competent workforce.

4.10 FAHCSIA advised the committee of the consultation process that was undertaken, and the committee notes the published reports on consultation, referred to earlier in Chapter 1, as well as the independent evaluation on the consultation process that was commissioned by FAHCSIA and completed by Cultural and Indigenous Research Centre Australia.⁷ Discussing the detail of consultations in Maningrida, FAHCSIA explained how it had used Cultural and Indigenous Research Centre Australia's analysis of 2009 consultations to help structure the 2011 consultations for Stronger Futures.⁸

4.11 FAHCSIA provided additional information to the committee regarding their consultation process in the NT through questions on notice, including communication products and the engagement framework that was used to inform this process. This information is at Appendix 6.

4.12 The committee considered evidence from the Australian Human Rights Commission which advocates the use of specific criteria to deliver effective consultation and engagement with Aboriginal and Torres Strait Islander communities in a culturally safe and secure way.⁹ These criteria, developed by the Aboriginal and Torres Strait Islander Social Justice Commissioner, were outlined in their submission:

- The objective of consultations should be to obtain the consent or agreement of the Aboriginal and Torres Strait Islander peoples affected by a proposed measure, not simply to outline what is proposed. Consultation is a two way

6 Australian Human Rights Commission, *Submission 351*, p. 8.

7 Cultural & Indigenous Research Centre Australia, *The Department of Families, Housing, Community Services and Indigenous Affairs, Report on Stronger Futures Consultation 2011 Final Report* (2011).

8 Families, Housing, Community Services and Indigenous Affairs, Response to Question on Notice #1, received 9 March 2012.

9 Australian Human Rights Commission, *Submission 351*, Features of a meaningful and effective consultation process and Appendix C, Creating Cultural Competency.

process, which includes listening to community's views and using this feedback to influence and develop proposals from government.

- Consultation processes should be products of consensus.
- Consultations should be in the nature of negotiations.
- Consultations need to begin early and should, where necessary, be ongoing.
- Aboriginal and Torres Strait Islander peoples must have access to financial, technical and other assistance.
- Aboriginal and Torres Strait Islander peoples must not be pressured into making a decision.
- Adequate timeframes should be built into consultation processes.
- Consultation processes should be coordinated across government departments.
- Consultation processes need to reach the affected communities.
- Consultation processes need to respect representative and decision making structures.
- Governments must provide all relevant information and do so in an accessible way.¹⁰

Committee comment

4.13 The committee recognises that the Commonwealth government has acknowledged that the way that the Northern Territory Emergency Response was introduced without consultation caused affront and hurt to Aboriginal people. The committee acknowledges that the government has been consulting with remote communities and town camps in the Territory about the Emergency Response and its future. It notes the efforts undertaken in 2008 by the Independent Review Board and in 2009 and 2011 by the Minister and her Department. The committee accepts that the Government has carried out these consultations in good faith and sought to make them as open and as transparent as possible.

4.14 Nevertheless, the committee is concerned that there remains misunderstanding of the stronger futures bills in the Northern Territory and that the committee has heard complaints raised about the manner in which the consultations were undertaken. The committee notes with serious concern the degree of confusion, and frustration expressed in relation to the Stronger Futures consultations. There appears to be a discrepancy between the level of consultation undertaken, as reflected in FAHCSIA's evidence and the consultation evaluation report, and the level of understanding within communities.

4.15 While the committee appreciates that the Commonwealth government made significant efforts to consult with people on the changes, and to inform them of the impact, more needs to be done to ensure that these processes are effective. The committee notes the development of the framework for engaging with Aboriginal and Torres Strait Islander Australians, but emphasises that the success of such a

10 Australian Human Rights Commission, *Submission 351*, p. 15.

framework lies in commitment to implementation by agencies. It notes also the concern of the Australian Human Rights Commission that the capacity of communities has declined since the introduction of the Northern Territory Emergency Response,¹¹ and that this could make effective consultation more difficult.

4.16 The committee agrees with the Australian Human Rights Commission that the criteria (outlined in paragraph 4.12) should guide the way that governments and agencies engage with Aboriginal and Torres Strait Islander communities. Consultations should also build on the cultural competency principles advocated by the Australian Human Rights Commission.

Recommendation 10

4.17 The committee recommends that when conducting further consultation in relation to Stronger Futures the Commonwealth government:

- **work with the framework provided by the Australian Human Rights Commission for meaningful and effective consultation processes that are culturally safe, secure and appropriate; and**
- **give consideration to the effective use of Land Councils in consultation processes given their knowledge and expertise in consulting appropriately with communities.**

10 year sunset clause and review timeframe

4.18 The committee heard concerns from many submitters about the length of the sunset clause provisions of the Stronger Futures bill. An example of this evidence was presented by the Reverend Dr Gondarra OAM:

...the Northern Territory's emergency response took away any sense of cooperation with the Indigenous jurisdiction by introducing section 91 of the NTA law. Now the government wishes to extend this law for another 10 years. Our law is about justice and is active against crime. That is the Australian law. So why is this sanction necessary?¹²

4.19 Some submitters welcomed the length of investment in Aboriginal communities, however advised the committee that they were concerned that seven years is too far into the 10 year timeframe to conduct a review. The Northern Territory Coordinator General of Remote Service Delivery stated that the 10 year timeframe:

....does provide a degree of stability and certainty for Aboriginal people in communities here in the Northern Territory. It also provides an opportunity for some long-term planning—for proper community based planning, not the kind of planning processes we have seen to date. It also provides an opportunity for governments to make good on their commitments and

11 Mr Mike Gooda, Australian Human Rights Commission, *Committee Hansard*, 1 March 2012, p. 2.

12 Rev Dr Djiniyini Gondarra OAM, *Committee Hansard*, 22 February 2012, p. 29.

practice about good governance, transparency in decision making and accountability and for undertaking jointly with Indigenous people a more rigorous monitoring and evaluation process over that time.¹³

4.20 Mr Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner stated 'the formal review of legislation at seven years is too far away to address these critical issues'.¹⁴

4.21 FAHCSIA provided evidence to the committee regarding the basis for the seven year review timeframe as follows:

...the rationale was to put it at a point where (1) it is not rushed and (2) it leads into what happens next, because the legislation does sunset at 10 years. So there is going to be a need to have a look at how things have gone and decide what is happening next, in 10 years time. So we felt, I think, that that was an appropriate time to place a comprehensive evaluation.¹⁵

Committee view

4.22 The committee agrees that long-term investment is needed in the Northern Territory as there is a breadth of evidence to suggest implementation requires time to see positive outcomes. As reflected in the Child Protection in the Northern Territory Report, 2010, 'implementation science tells us that if things are done well, it will take time to see any improvements'.¹⁶

4.23 The Committee notes that provisions in the two Stronger Futures in the NT Bills are to be reviewed starting 7 years after its commencement, and alcohol laws that are designed to benefit Indigenous Territorians including the provisions in the Stronger Futures Bills will be reviewed after 2 years. However, the Committee has also been made aware that the Government is also actively considering a new program funding package to strengthen additional services that were funded through the NTER. The program funding, if approved, may be the subject of a new National Partnership Agreement between the Territory Government and the Commonwealth.

4.24 In addition to points already discussed, the committee heard evidence of real concerns around the issues of homelands and the permits system. The committee

13 Ms Olga Havnen, Northern Territory Coordinator General of Remote Service Delivery, *Committee Hansard*, 23 February 2012, p. 20.

14 Mr Mike Gooda, Australian Human Rights Commission, *Committee Hansard*, 1 March 2012, pp 3–4.

15 Mr Michael Dillon, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 55.

16 Report of the Board of Inquiry into the Child Protection System in the Northern Territory, *Growing them Strong, Together*, 18 October 2010, p. 18, http://www.childprotectioninquiry.nt.gov.au/_data/assets/pdf_file/0009/49779/CPSR_Summary.pdf (accessed 7 March 2012).

considers that these issues must continue to be discussed with governments, communities and elders.

Recommendation 11

4.25 The committee recommends that in addition to the reviews of the legislation already announced, the Commonwealth also ensure that any National Partnership Agreement is the subject of an independent and public review and evaluation after 5 years.

Senator Claire Moore

Chair