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## Chapter 3

### Measures to address alcohol abuse

#### Background

3.1 The *Northern Territory National Emergency Response Act 2007* (NTNER Act) modified existing NT law in relation to alcohol regulation. In particular, it prescribed a range of areas in the NT for which it is an offence to bring liquor into, be in possession or control of liquor, or consume or sell liquor. There were limited exceptions to allow liquor to be consumed in certain licenced premises.<sup>1</sup>

3.2 The prescribed areas applied to most Indigenous land in the NT. The current minister advised the committee that it is not feasible to provide the numbers of areas prescribed under this measure, but that in broad terms, the following areas under the NTNER Act were deemed prescribed areas:

- Aboriginal land as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- community living areas under the Lands Acquisition Act of the NT; and
- town camps that have been declared for the purpose by the minister.<sup>2</sup>

3.3 The prescribed areas are all areas with predominantly or solely Indigenous inhabitants. The Stronger Futures legislation continued these restrictions, turning prescribed areas under the NTNER Act into 'alcohol protected areas' (APAs).<sup>3</sup> The same restrictions on alcohol possession, consumption or sale applied to the APAs as to prescribed areas under the NTNER Act (but with increased penalties for any breach).

3.4 When the Stronger Futures measures were introduced it was intended that the communities subject to the existing restrictions would be transitioned to community-driven alcohol management plans (AMPs). The Stronger Futures Act set out the process by which a person or group could apply for approval of an AMP. The explanatory memorandum for the Stronger Futures bill explained that the measures

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1 See Part 2 of the *Northern Territory National Emergency Response Act 2007*.

2 Appendix 3, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1.

3 See items 5 and 6 of Schedule 1 to the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

were intended to ensure that local solutions could be developed to address the problems of alcohol misuse:

Existing alcohol protections will be preserved in 'alcohol protected areas' with additional provisions that **enable the geographic areas covered by these protections to be changed over time and for local solutions to be developed.**

This Bill includes new provisions for the Commonwealth Minister for Indigenous Affairs to approve alcohol management plans. **This allows for communities to play an active role in continuing to reduce alcohol-related harm, and to tailor a solution specific to the community's needs.**<sup>4</sup>

3.5 The Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 (the Stronger Futures rule) was subsequently made, setting out the minimum standards to be met by AMPs. The statement of compatibility for the Stronger Futures rule stated that the prescribed minimum standards 'will encourage community groups to take ownership of the way that they manage alcohol in their community'.<sup>5</sup>

3.6 The committee's 2013 report examined the Stronger Futures rule and the AMP process and concluded:

The committee considers that alcohol management plans following compliance with the detailed criteria set out in the Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 are likely to avoid the human rights compatibility concerns that attached to alcohol restrictions permitted under the [NTNER] and continued under the Stronger Futures package.<sup>6</sup>

3.7 However, the committee noted that it was concerned to know whether there were still communities in which alcohol restrictions apply which had not followed the new consultation procedures and, if so, whether a timetable was in place to bring those communities under the new framework.

3.8 Following correspondence with the current minister as part of this inquiry, it has become clear that all of the existing alcohol restrictions imposed by the NTNER, and continued by the Stronger Futures measures, remain in place across the NT. As at late 2015, only one AMP has been approved by the current minister, and there has been no revocation or variations to existing APAs. This includes the one area which has had its AMP approved; the Titjikala community. In that case, the AMP operates

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4 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2 (emphasis added).

5 See Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 [F2013L00290], statement of compatibility 11-12.

6 See 2013 report, 44.

alongside the existing alcohol restrictions; it does not replace those restrictions.<sup>7</sup> In addition, the current minister has refused to approve seven AMPs submitted by community groups.<sup>8</sup>

3.9 As the restrictions imposed in 2007 by the NTNER continue to apply to Indigenous communities in the NT, the committee considers it necessary to assess whether the continuation of these measures, within the context of the current status of the AMP process, is compatible with human rights.

### **Rights engaged**

3.10 The tackling alcohol abuse measures were designed with the aim of reducing the effects of alcohol-related harm in Aboriginal and Torres Strait Islander communities in the NT.<sup>9</sup> It is clear that alcohol-related harm in many of these communities is a major concern and greatly affects the health and well-being of people in those communities. As such, reducing alcohol-related harm in these communities promotes a number of human rights, including the:

- right to health;<sup>10</sup>
- rights of the child (which includes the rights of the child to protection from all forms of physical or mental violence or neglect and a child's right to an adequate standard of living);<sup>11</sup> and
- right to security of the person (which includes protection by the state against violence or bodily harm).<sup>12</sup>

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7 See Appendix 3, letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1, which stated: 'To date I have approved one Alcohol Management Plan (AMP) for the Titjikala community. It was approved on 26 May 2014...No APAs have been revoked or varied'. See also letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 25 August 2015) Attachment A, 2, which stated: 'the Titjikala community submitted an AMP for approval in February 2014. The Minister approved the AMP on 26 May 2014. The Minister did not make a rule revoking or varying the Titjikala APA rule as the community had not applied for a revocation or variation'.

8 See Appendix 3, letter from Senator Nigel Scullion, Minister for Indigenous Affairs to the Hon Philip Ruddock MP (received 2 October 2015) 1.

9 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

10 Article 12 of the ICESCR.

11 CRC, especially articles 19, 24 and 27, and article 24 of the ICCPR.

12 Article 9 of the ICCPR and article 5(b) of the ICERD.

3.11 However, in addition to seeking to promote these rights, the committee considers that restricting the supply of alcohol in a community solely on the basis that it is an Aboriginal community engages and limits the following rights:

- right to equality and non-discrimination;<sup>13</sup>
- right to a private life;<sup>14</sup> and
- right to self-determination.<sup>15</sup>

### **Compatibility of the measures with multiple rights**

3.12 The government's position is that the measures taken to address alcohol abuse are 'special measures' for the purposes of international human rights law. A measure which provides differential treatment for certain racial groups may be considered to be a 'special measure' (and therefore not discriminatory) if it can be demonstrated that the measure is temporary and taken for the advancement of that group.

3.13 However, as set out in Chapter 1, in its 2013 report the committee found that measures which criminalise conduct by some members of the group to be benefited, in order to promote the overall benefit of the group, are not appropriately classified as a 'special measure' under international law.<sup>16</sup>

3.14 As such, the measures limit the right to equality and non-discrimination as they directly discriminate on the basis of race. The APAs apply only to Aboriginal land, Aboriginal community living areas and Aboriginal town camps. The measures also limit the right to a private life as they prohibit consumption of alcohol in such areas, including in the home. Nevertheless, limitations on these rights may be permissible if it can be demonstrated that the measures seek to achieve a legitimate objective and are rationally connected to, and a proportionate way of, achieving that objective.

### ***Legitimate objective***

3.15 The tackling alcohol abuse measures in the Stronger Futures Act were aimed at reducing alcohol-related harm to Aboriginal people in the NT.<sup>17</sup> In its 2013 report the committee accepted that this goal is an important and legitimate objective, and if achieved would contribute to the promotion of a number of human rights.<sup>18</sup>

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13 Articles 2 and 26 of ICCPR and article 2 of ICESCR and ICERD.

14 Article 17 of the ICCPR.

15 Article 1 of the ICCPR and article 1 of the ICESCR.

16 See 2013 report at 21-31.

17 See section 6 of the *Stronger Futures in the Northern Territory Act 2012*.

18 2013 report, 44.

3.16 The committee reiterates its view that the goal of reducing alcohol-related harm in Aboriginal communities in the NT is a legitimate objective for the purposes of international human rights law, and is clearly aimed at meeting a pressing and substantial concern. The committee considers that the evidence clearly establishes that alcohol is a major problem in parts of the NT and the harmful use of alcohol is causing numerous social, cultural, economic and health problems in many Indigenous communities.<sup>19</sup> As such, the committee considers that any limitations on human rights imposed by the tackling alcohol abuse measures seek to address a legitimate objective for the purposes of international human rights law.

### ***Rational connection***

3.17 In ascertaining whether the measures are rationally connected to that objective, the key question is whether the measures are likely to be effective in achieving the objective of reducing alcohol-related harm in Aboriginal communities in the NT.

### ***Review of the effectiveness of the Stronger Futures measures***

3.18 When the Stronger Futures bill was introduced, emphasis was placed on the fact that the legislation included a requirement that an independent review of the effectiveness of NT and Commonwealth laws in reducing alcohol-related harm was required within three years of the passage of the Stronger Futures Act.<sup>20</sup>

3.19 A report prepared in accordance with this requirement was tabled in both Houses of Parliament on 16 September 2015. However, that review did not, contrary to the legislative requirements, assess the effectiveness of the measures. The law firm engaged to conduct the review was engaged on 20 July 2015 (over one year later than required by the legislation) and reported within 14 business days (on 6 August 2015). The approach taken to the review within this timeframe was to conduct a 'desktop' review. The report's authors noted 'we have not had the benefit of any specific evidence or data collected for the purposes of this review'.<sup>21</sup> As such, the review concluded it was unable to assess the effectiveness of the existing laws:

...given the absence of specific evidence and data concerning alcohol-related harm, we have been unable to determine with any certainty the extent of alcohol-related harm suffered by those communities nor establish any definitive measure of the extent to which

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19 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

20 Revised explanatory memorandum to the Stronger Futures in the Northern Territory Bill 2012, 2.

21 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 7.

the laws under review may have been effective in reducing alcohol-related harm.<sup>22</sup>

3.20 In terms of making any conclusions, the review stated that sufficient data and evidence was not identified to allow a proper baseline to be established regarding the extent of harm caused by alcohol misuse at the commencement of the Stronger Futures Act or to date.<sup>23</sup> This is consistent with the submission to this inquiry from the Aboriginal Peak Organisations NT (APO NT), which noted that data on the effectiveness of establishing alcohol protected areas has not been collected, analysed or 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.<sup>24</sup>

3.21 As at December 2015 the progress report from 1 January to 30 June 2013 remains the most recent report issued by the Department of the Prime Minister and Cabinet on the implementation of the Stronger Futures measures.<sup>25</sup>

3.22 As the government has not produced any evidence as to the effectiveness of the Stronger Futures measures in reducing alcohol-related harm (contrary to the legislative requirements) it is difficult for the committee to assess whether the tackling alcohol abuse measures are rationally connected to the legitimate objective of reducing alcohol-related harm.

3.23 At a broad level, the committee notes that the evidence indicates that policies to reduce alcohol-related harm work best when they have the support of the local community, while blanket bans on alcohol appear to have had a number of unintended consequences which may have led to more unsafe drinking practices, as set out below.

*Policies with local support are most likely to be effective*

3.24 The committee's 2013 report noted that studies have shown that the alcohol restrictions most likely to be effective are those decided on by the community rather

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22 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 7.

23 Minter Ellison, *Stronger Futures in the Northern Territory Act 2012: Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm* (2015) 28.

24 Aboriginal Peak Organisations Northern Territory, submission 22, 7.

25 See Department of the Prime Minister and Cabinet, *Stronger Futures in the Northern Territory: Part 1 and Part 2: Six-Monthly Progress Report, 1 January 2013 to 30 June 2013* (24 May 2014).

than ones imposed from the outside.<sup>26</sup> In 2007 the National Drug Research Institute conducted a comprehensive review of all alcohol restrictions in Aboriginal communities and found that there is no single mix of restrictions that work for all communities.<sup>27</sup> A review of AMPs (including plans approved since 2002 under different arrangements to those set out in the Stronger Futures Act) has concluded that while the evidence is limited, where AMPs are locally driven and owned there are stronger and more sustainable outcomes.<sup>28</sup> For example, positive outcomes were recorded in relation to an AMP developed for Groote Eylandt and Bickerton Island:

A key finding of the study was that the success of the AMP could be attributed to ownership and support of the system by the Aboriginal communities and by key local service providers, employers and by the licensed premises.<sup>29</sup>

3.25 As set out above at paragraphs [3.4] to [3.5], it was intended that the Stronger Futures measures would transition the existing blanket bans imposed by the NTNER Act to AMPs developed by local communities. Yet, since the legislation was introduced in 2012 only one AMP has been approved by the current minister, and seven AMPs agreed to by local communities have been rejected. A number of other communities have been in the process of developing an AMP, but it appears that these were either rejected by the former minister or have not been submitted to the current minister for approval.<sup>30</sup> As a consequence, the existing blanket alcohol

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26 2013 report, 39.

27 National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes* (2007).

28 Indigenous Justice Clearinghouse, *Alcohol management plans and related alcohol reforms*, Brief 16 (October 2013) 7.

29 See Indigenous Justice Clearinghouse, *Alcohol management plans and related alcohol reforms*, Brief 16 (October 2013) 5.

30 See the submission from the Northern Territory government in April 2014 which stated that there were then 29 AMPs being developed across the NT, which included 17 AMPs signed off at the community level which were awaiting approval by the federal minister. See also a 2014 report from the Department of the Prime Minister and Cabinet that stated that 'At the end of August 2013, 19 communities were developing an AMP with 17 plans in final draft at the community agreement stage'. Contrast this with the Commonwealth Government's response to the House of Representatives inquiry which stated that only eight AMPs had been submitted for approval to the minister and that there were no AMPs with the Department of the Prime Minister and Cabinet for consideration: Northern Territory Government, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60, 25; Department of the Prime Minister and Cabinet, *Stronger Futures in the Northern Territory: Part 1: Six-Monthly Progress Report, 1 January 2013 to 30 June 2013* (24 May 2014) 7; and *Commonwealth Government's response to the House of Representatives Standing Committee on Indigenous Affairs Report: Alcohol, hurting people and harming communities* (December 2015) 6.

bans, which had no community development or involvement before their imposition in 2007, continue to exist in all prescribed areas across the NT.

3.26 There is some evidence to suggest that the stalled process on AMPs has had the effect of undermining the capacity of communities to manage alcohol in their area. For example, in a submission to a recent House of Representatives inquiry into the misuse of alcohol in Indigenous communities, Professor Peter d'Abbs provided a case-study of a community that, when developing their AMP, decided it wanted to have a designated drinking area on the outskirts of the community, to ensure the safety of those who continued to drink.<sup>31</sup> This decision was reached after the blanket ban imposed in 2007 had meant a number of people had been killed after being struck by vehicles while drinking on crown land located next to a highway not covered by the alcohol bans.

3.27 Despite the community having overwhelmingly endorsed this plan (a plan which included the support of the then regional Police Superintendent and the local Health Centre), the current minister refused to endorse the AMP. Professor d'Abbs explains the effect of this process:

One immediate effect was a palpable deflation in the level of energy that community members were prepared to put into addressing alcohol-related issues—a deflation that, in my observation, continues to this day, despite the sustained efforts of a few committed community members. Another was an ongoing search by drinkers for places where they could drink (in their terms) safely....

The net effect of all of these events, I suggest, has been to undermine rather than enhance the community's own capacity to manage alcohol, and to increase the likelihood of both drink-driving and opportunistic binge-drinking.<sup>32</sup>

3.28 That House of Representatives inquiry noted that concerns were raised during the inquiry that once a community had mobilised to develop an AMP, the lack of responsiveness from governments can mean that impetus and motivation is lost.<sup>33</sup>

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31 See Professor d'Abbs, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, submission 99.

32 Professor d'Abbs, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, submission 99, 18.

33 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 49.

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### *Unintended consequences of blanket alcohol bans*

3.29 In assessing whether the limitations on rights occasioned by the tackling alcohol abuse measures are justifiable, it is also important to consider whether the measures would have any unintended consequences and so fail to achieve the objective of reducing alcohol-related harm. There is some evidence that the blanket alcohol bans imposed in 2007 and continued under the Stronger Futures measures are having unintended negative consequences. The recent House of Representatives inquiry into the misuse of alcohol in Indigenous communities highlighted that 'where there is a demand for alcohol and a supply point is not available, people will engage in a range of activities to circumvent alcohol restrictions'.<sup>34</sup> This includes: the trafficking of alcohol to restricted areas; setting up drinking camps outside of restricted areas (in potentially unsafe locations); the displacement of community members to locations where alcohol is more readily available; and the possible substitution of alcohol with other drugs.

3.30 The NT Government has highlighted research that has found that the bans introduced by the NTNER Act (and continued under the Stronger Futures measures) have resulted in drinking camps shifting further away from communities, and stated:

Aboriginal people in remote communities are concerned by the harms and level of grief being experienced by family members and communities through unmanaged drinking in unsafe public places. This includes on highways, close to rivers, or far away from communities hidden in the bush, where family members cannot watch over drinkers, where anti-social behaviour arises between clans and the mixing of communities, and where drinkers are at a long distance from Night Patrol or police officers. There have been a number of road deaths of drinkers, drinking on highways and car accidents of people returning from drinking camps.<sup>35</sup>

3.31 UnitingJustice Australia also submitted to this committee:

According to [the] Jumbunna Research Institute, 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.<sup>36</sup>

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34 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 87.

35 Northern Territory Government, *Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60, 28.

36 UnitingJustice Australia, submission 15, 7 (footnotes omitted).

### **Proportionality**

3.32 A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective sought to be achieved. In assessing whether a measure is proportionate some of the relevant factors to consider include whether there are effective safeguards or controls over the measures, including the possibility of monitoring and review. It is also relevant to consider whether the communities affected by the measure have been consulted and agree to the measures imposed.

### **Monitoring and review**

3.33 As set out above at paragraphs [3.18] to [3.21], the Stronger Futures Act contained a legislative requirement for an independent review to assess the effectiveness of the alcohol laws.

3.34 However, a bill was introduced in 2014 seeking to repeal these review requirements on the grounds it was no longer required.<sup>37</sup> One of the reasons given was that the Stronger Futures measures would be assessed as part of the revision of the Stronger Futures National Partnership Agreement (NPA).<sup>38</sup>

3.35 In June 2014, the current minister advised the committee that work was underway to revise Stronger Futures, with a focus on reducing unnecessary administration and red tape and ensuring funding is directed appropriately.<sup>39</sup>

3.36 In July 2015, the current minister further advised that the original NPA was still being revised and advised that the revisions 'are primarily administrative and will not require changes to legislation'.<sup>40</sup> The current minister noted that as consultations were held with affected communities prior to the 2012 Stronger Futures measures being introduced, there would be no further community consultation in the development of the new NPA.<sup>41</sup>

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37 See explanatory memorandum, 36 to the Omnibus Repeal Day (Spring 2014) Bill 2014.

38 See letter from the Hon Christian Porter MP, Parliamentary Secretary to the Prime Minister, to Senator Dean Smith (received 26 March 2015) 2-3 and considered in Parliamentary Joint Committee on Human Rights, *Twenty-Second Report of the 44th Parliament* (13 May 2015) 174-182.

39 See Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 24 June 2014) 2.

40 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) 1-2.

41 See Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) 2: 'Extensive consultation was undertaken prior to the introduction of Stronger Futures and the new Agreement will continue to address those issues Aboriginal people in the Northern Territory said were most important to them'.

3.37 The revision of the Stronger Futures NPA will not affect the existing restrictions imposed by the alcohol abuse measures. Therefore, the committee does not consider that the review of the NPA, while it may have other benefits, will be of assistance in determining whether the existing legislative alcohol restrictions are appropriate.

*Consultation with affected communities*

3.38 As noted in the committee's 2013 report, one of the much criticised features of the 2007 NTNER was the failure to consult with the communities and groups affected by the measures introduced.<sup>42</sup> The 2013 report acknowledged that in developing and introducing the Stronger Futures measures the government went to considerable effort to consult with Indigenous communities and other stakeholders around many aspects of the proposed measures.<sup>43</sup> However, as found by the Senate Community Affairs Legislation Committee, notwithstanding this, there remained much confusion and frustration in many communities over the measures.<sup>44</sup>

3.39 The community engagement aspect of the AMP process introduced by Stronger Futures has support from a number of organisations. The APO NT submitted to this inquiry:

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.<sup>45</sup>

3.40 The Australian Human Rights Commission has also indicated its support for AMPs:

The Commission believes alcohol management plans have significant potential to address alcohol related harm in the Northern Territory by facilitating community control of alcohol regulation and harm reduction strategies. This is both consistent with human rights standards and the evidence base.<sup>46</sup>

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42 See 2013 report, 31.

43 2013 report, 31.

44 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) 62-63.

45 Aboriginal Peak Organisations Northern Territory, submission 22, 6.

46 See Australian 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) paragraph 267 (note this earlier submission was referred to the committee as still relevant by Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, submission 19, 1).

3.41 As noted above at paragraphs [3.4] to [3.5] and [3.25], while it was intended that the Stronger Futures measures would transition the existing blanket bans imposed by the NTNER Act (which had no community development or involvement) to AMPs developed by local communities, since 2012 only one AMP has been approved across the entire NT.<sup>47</sup>

3.42 From correspondence with the current minister, it appears that, despite the legislative requirement for approvals of AMPs, the development of AMPs is no longer a focus of the alcohol abuse measures:

The requirements for AMPs set out in the AMP Rule have proven rigid and time-consuming and make it difficult for communities to prepare AMPs that the Minister can approve in accordance with the legislation. As a result the Government has adopted a new streamlined approach to AMP approvals in which the Government is supporting communities to work directly with the NT Government to implement activities that reduce alcohol-related harm in a more timely and responsive manner. Both the Commonwealth and NT Governments are currently working with communities to implement the new approach.<sup>48</sup>

3.43 This is in line with a submission from the NT government to the recent House of Representatives inquiry, which stated that the process for approving AMPs under the Stronger Futures measures is overly bureaucratic:

The current model of Alcohol Management Planning under the [Stronger Futures] Act is a top down driven approach, with a protracted bureaucratic process for gaining approval by the Federal Minister requiring extensive evidence of meeting the AMP Minimum Standards linked to the [Stronger Futures] Act.<sup>49</sup>

3.44 The committee notes that the House of Representatives inquiry recommended that communities be empowered to develop the strategies that will work for their communities and that AMPs and other community driven strategies

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47 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August) Attachment A, 2. Note the statement in the Attachment in relation to the AMP that has been approved: 'The Minister did not make a rule revoking or varying the Titjikala APA rule as the community had not applied for a revocation or variation'.

48 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 2.

49 Northern Territory *Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60 to the House of Representatives Standing Committee on Indigenous Affairs (April 2014) 25.

needed to be reviewed and processed within a maximum of six months.<sup>50</sup> The government's December 2015 response to this stated:

The process around Government handling of AMPs has been streamlined to reduce red tape and support local outcomes. Priority is being given to working with the Northern Territory (NT) Government and local communities to advance practical actions that reduce alcohol related harm. For those communities that choose to submit AMPs, they will be assessed by the Government in accordance with legislative requirements.<sup>51</sup>

3.45 It is not clear to the committee what steps are now being taken in relation to alcohol restrictions in Aboriginal communities in the NT. The committee notes the government's advice that work is being done with the NT government and local communities in relation to 'practical actions' to reduce alcohol-related harm and encouraging communities to work directly with the NT Government 'to implement activities that reduce alcohol-related harm'. No further detail has been provided as to what exactly this entails. What is clear is that under the Stronger Futures legislation, the existing blanket alcohol restrictions introduced in 2007, without any community consultation, continue to apply to Indigenous communities across the NT.<sup>52</sup>

3.46 There is evidence that the process for the approval of AMPs has resulted in widespread frustration and a loss of community goodwill and engagement. The APO NT submitted to this inquiry that there has been a lack of progress on the approval of AMPs and a significant number of AMPs which have community endorsement 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.<sup>53</sup>

3.47 The recent House of Representatives inquiry into the harmful use of alcohol in Indigenous communities also received a number of submissions which, while

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50 Northern Territory *Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, submission 60 to the House of Representatives Standing Committee on Indigenous Affairs (April 2014) 56.

51 *Commonwealth Government's response to the House of Representatives Standing Committee on Indigenous Affairs Report: Alcohol, hurting people and harming communities* (December 2015) 6.

52 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) 2.

53 Aboriginal Peak Organisations Northern Territory, submission 22, 6.

generally supportive of AMPs, questioned the current approach to the approval of such plans:

Concern was raised during the inquiry that once a community has mobilised to develop an AMP, the lack of responsiveness from governments can mean that impetus and motivation is lost. Professor Langton notes that some AMPs with community endorsement had been waiting for approval for two years or longer.<sup>54</sup>

3.48 One submission to this inquiry also raised concerns with the process established under the legislation, noting that the requirement for federal ministerial approval of AMPs is effectively a ministerial override:

This approach does not allow for Indigenous communities to be self-determining in terms of effectively and appropriately addressing these issues as they choose.<sup>55</sup>

### **Committee view**

3.49 The committee acknowledges that alcohol is a major problem in parts of the NT and the harmful use of alcohol is causing numerous social, cultural, economic and health problems in many Indigenous communities.<sup>56</sup> The committee therefore considers that any limitation on human rights imposed by the tackling alcohol abuse measures clearly seek to address a legitimate objective for the purposes of international human rights law. If the measures were likely to be effective this would contribute to the enjoyment of a number of human rights, including the right to health and the rights of the child.

3.50 While the committee considers that the measures seek to achieve a clearly legitimate objective of reducing alcohol-related harm, the committee is concerned that the government has not established that the measures are likely to be effective in achieving the stated aim, or are proportionate to that aim.

3.51 A key question for the committee in assessing whether the measures are rationally connected to the stated objective is whether they are likely to be effective in achieving the aim of reducing alcohol related-harm to Aboriginal people in the NT. The required legislative review of the effectiveness of the alcohol laws in the NT did not produce any evidence as to the effectiveness of the Stronger Futures measures in reducing alcohol-related harm. There appears to be no government data

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54 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015) 49.

55 Dr Shelley Bielefeld, submission 10, 8.

56 See House of Representatives Standing Committee on Indigenous Affairs, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities* (June 2015).

demonstrating whether the measures have made any difference in reducing alcohol-related harm.

3.52 The only evidence that is available indicates that, in general, policies to reduce alcohol-related harm work best when they have the support of the local community. AMPs were intended to ensure that locally tailored solutions could be found to address the problems of alcohol-related harm. The criteria for community involvement and ownership of such plans led the committee to previously conclude that alcohol restrictions based on these community-led plans would be likely to avoid the human rights compatibility concerns attached to the blanket alcohol restrictions imposed by the NTNER Act and continued under Stronger Futures.<sup>57</sup>

3.53 However, it is now clear that the existing AMP process under the Stronger Futures Act and Stronger Futures rule is not functioning effectively. Only one AMP has been approved by the current minister across the entire NT, several have been rejected and many more appear to have stalled. The government itself has stated that the existing AMP process is rigid and time-consuming and a number of stakeholders have stated that the process is overly bureaucratic. In addition, none of the existing blanket alcohol restrictions have been eased in any of the areas originally proscribed by the NTNER Act, despite the Stronger Futures legislation setting out a process by which the existing restrictions could be eased. Even where communities have decided as a group that the best solution for their community would be to have designated safe drinking sites in their community (for a range of sound reasons), this has been rejected by the current minister. This is despite evidence demonstrating that blanket bans on alcohol have had a number of unintended consequences which may have led to more unsafe drinking practices and greater alcohol-related harms.

3.54 In addition, a key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective sought to be achieved. In assessing this it is important to consider whether there are effective safeguards or controls over the measures and whether the communities affected by the measures have been consulted and agree to the measures imposed. As set out above, there appears to now be no legislative process to monitor and review the existing alcohol laws and the blanket alcohol restrictions which were imposed without community consultation apply to all areas originally prescribed in 2007.

3.55 It is not clear to the committee what steps are now being taken in relation to alcohol restrictions in Aboriginal communities in the NT. The government has advised that work is being done with the NT Government and local communities in relation to 'practical actions' to reduce alcohol-related harm and encouraging communities to work directly with the NT Government 'to implement activities that reduce

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57 2013 report, 44.

alcohol-related harm'.<sup>58</sup> While the committee welcomes the adoption of any steps that might be taken outside of the legislative process that may reduce alcohol related harm, under the Stronger Futures Act the existing blanket alcohol restrictions continue to apply. There does not appear to be any intention to review these legislative restrictions or make amendments to the legislation. This is despite the current minister's own acknowledgement that the existing legislative process is rigid and time-consuming.

**3.56 On the basis of the evidence before it, it is difficult for the committee to establish that the existing legislative alcohol restrictions are rationally connected or proportionate to the stated objective of reducing alcohol related harm. The committee considers that it is vitally important that there be a coherent approach to addressing alcohol related harm in Indigenous communities in the NT. A human rights compliant approach to the regulation of alcohol requires that any measures must be effective and genuinely tailored to the needs and wishes of the local community. It is not apparent that the current legislative process set out under the Stronger Futures Act meets these requirements. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:**

**Recommendation 1**

- **The committee recommends that detailed and evidence-based review be undertaken to assess the effectiveness of existing legislative alcohol restrictions in the NT in reducing alcohol-related harm. The review should consider whether any laws should be amended to ensure a more coherent and effective approach to reducing alcohol-related harm. Specific data and evidence analysing the effectiveness of the existing laws should be collected and made available; and the review should be undertaken by independent experts and given sufficient time to gather and analyse the available evidence.**

**Recommendation 2**

- **The committee recommends that the existing process for approval of AMPs be streamlined to reduce unnecessary administrative burden and the legislation amended to remove the power of the minister to unilaterally refuse to approve AMPs agreed to by the affected communities (with consideration given to devolving decision-making power to ensure greater responsiveness to communities).**

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58 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015), Attachment A, 2.

**Recommendation 3**

- **The committee recommends that the existing blanket alcohol restrictions that continue to apply to all Indigenous land in the NT be reviewed and that the legislation be amended within a reasonable timeframe to ensure a transition from the existing blanket restrictions to locally developed AMPs.**

