

Recommendations and conclusions

Consideration of customary law in bail and sentencing decisions

2.25 The committee considers that the amendments relating to customary law in the Stronger Futures legislation are likely to be compatible with the right to a fair trial and the right to equality and non-discrimination.

2.26 Noting the broader concerns raised in relation to the reduced scope for consideration of customary law in bail and sentencing decisions for Commonwealth and Northern Territory offences, the committee recommends that a review be undertaken into the operation of these provisions, with specific emphasis on the impact of the prohibition on the right to a fair trial and the right to equality and non-discrimination.

Food security

2.38 The committee considers that the food security measures continued under the Stronger Futures legislation are likely to promote the right to an adequate standard of living (including the right to food).

Land reform measures

2.56 The committee considers that the land reform measures engage the right to self-determination, including the right of peoples to freely pursue economic, social and cultural development, under article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. The committee considers that expanding the purposes by which Indigenous peoples can voluntarily decide to lease their community land has the capacity to promote the right to self-determination.

Measures to address alcohol abuse

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 a 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).

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.

Income management

4.104 The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family. Although the committee considers that under certain conditions income management is a legitimate and effective mechanism, evidence before the committee indicates that compulsory income management is not effective in achieving its stated objective of supporting vulnerable individuals and families. The committee considers that this objective remains an important and legitimate goal.

4.105 A human rights compliant approach requires that any measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The current approach to income management falls short of this standard. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 4

- The committee recommends the continuation of community led income management where there has been a formal request for income management in a particular community following effective consultation on the particular modalities of its operation, including whether it should be a voluntary program.

Recommendation 5

- The committee recommends that income management should be imposed on a person only when that person has been individually assessed as not able to appropriately manage their income support payments. Information concerning rights and processes of appeal should be provided to the person immediately and in a language that they understand.

School Enrolment and Attendance through Welfare Reform Measure

5.108 The committee considers that it is vitally important that school enrolment and attendance be markedly improved across the NT. However, on the basis of the evidence before it, the committee considers that there are real doubts as to whether SEAM is effective, and thereby rationally connected to this objective. Even assuming a rational connection, the committee considers that SEAM is not proportional to the objective of improving school enrolment and attendance. A human rights compliant approach to this problem requires that any measures must be effective, flexible to take into account individual circumstances, calibrated carefully to protect vulnerable groups and targeted at dealing with the causes of unauthorised absences rather than punishing the symptoms. As such, the committee makes the following recommendations in order to improve the human rights compatibility of the measures:

Recommendation 6

- The committee recommends that SEAM be redesigned to focus on identifying and overcoming complex barriers to school engagement within regional and remote communities. To do this, the provision of social work support should be enhanced.

Recommendation 7

- The committee highlights that sanctions are a legitimate and effective mechanism to encourage families to assist their children to attend school. The committee recommends that sanctions regimes must differentiate between voluntary disengagement and non-attendance resulting from causes or factors outside the child or family's control. This likely requires the consideration of a social worker.

