Josephite SA Reconciliation Circle

on Kaurna Land

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

Submission invitation amendment –

12-month review of the *Stronger Futures in the Northern Territory Act 2012* and related legislation

Introduction. The Josephite SA Reconciliation Circle is prepared to again write this response to the Parliamentary Joint Committee on Human Rights in regard to the *Stronger Futures* legislation following on our own original brief report. Our second report is written in the hope that we, in our turn, will to hear of any practical positive effects that came or are due to come from the Report regarding Government response to its previous Recommendations.

Our members have participated in a number of reviews concerning the *Stronger Futures* and its predecessor the NTER or NT Intervention and also have noticed well the consultations with the people seriously affected, the Aboriginal peoples of the NT. Unfortunately we have yet to notice any significant positive change in relation to the recommendations/pleas made by many of the people and communities themselves, nor by many highly respected advocates, including the Human Rights Commission, the Indigenous Doctors Association, NAAJA (North Australia Aboriginal Justice Agency), ACOSS, the Australian Red Cross and United Nations representatives. With the original invitation to the first Review of the NTER for example, there were over 400 submissions. A substantial number were extremely well informed, lengthy contributions from such significant bodies as noted above. However in the time frame, it would be doubtful if there was time at all for those making a final report to even read, much less submit the vital information contained therein.

In his advance report to the Australian Government, 10/03/10 the UN Special Rapporteur Professor James Ananya notes that the *Stronger Futures'* (SF) predecessor, the NTER '*contains problematic features from a human rights standpoint, in particular in relation to compulsory income management, compulsory acquisition of Aboriginal lands, the assertion of the Commonwealth Government over Aboriginal communities and alcohol and pornography restrictions in prescribed areas.*'

Naturally, our members would like an assurance that all of our efforts together with your own, are not in vain. Our members remain concerned that little has changed since the above quoted Rapporteur's concerns over four years ago.

However, we found it refreshing and pleasing to note that your own 2013 Parliamentary Committee's carefully researched Report made some justified criticisms of the legislation.

These are criticisms with which our members strongly concur.

Our Report

The Josephite SA Reconciliation Circle has chosen to comment and make recommendations on the following areas.

1. SPECIAL MEASURES PARTICULARLY RELATED TO LAND
2. SEAM (Improving School Enrolment through Welfare Reform Measure)
3. ALCOHOL LEGISLATION
4. INCOME MANAGEMENT

1. SPECIAL MEASURES PARTICULARLY RELATED TO LAND

'*For Aboriginal people the link between health and attachment to country is inseparable. Land is linked to Indigenous identity, beliefs and rights. Land was taken at the time of colonisation and there has been an ongoing struggle for Aboriginal people to achieve government recognition of land rights for Aboriginal Australians.*' Australian Indigenous Doctors Association

Our members particularly affirm the PJCHR's questioning of the Government's continuing appeal to 'special measures' cf 1.98, 1.99 and 1.100 to justify punitive aspects in the *Stronger Futures* legislation. We quote:

1.98 *The committee notes that the government has not provided a detailed explanation of why the Stronger Futures measures can be legitimately viewed as 'special measures' under international law; it has merely asserted that it is its 'policy intention' that it is so.*

1.100 ***The committee is not persuaded by the material put before it by the government that the Stronger Futures legislation can properly be characterised as 'special measures' under the ICERD or other relevant human rights treaties.***

Our members strongly concur.

In regard to the claims of successive Federal governments' various assertions of the legitimacy of the 'special measures' caveat, we quote the following summary from Robyn Seth- Purdie, *Amnesty International* Australia 2009:

'*Under international law, special measures are intended to show affirmative action. They must be*

1. *necessary,*
2. *proportionate to the problem,*
3. *limited in scope,*
4. *of a temporary nature,*
5. *implemented with the consent of the affected peoples,*
6. *they must also be considered beneficial by those affected by them.*'

Conditions 5 and 6. Our members comment on the process employed for the large number of consultations which the previous Minister, J Macklin and the then Federal Government undertook, seemingly to cover conditions 5 and 6 in an effort to justify an authentic restoration of the Racial Discrimination Act.

We found it was disturbing to view videotapes of a sample of these consultations. The tapes demonstrated conversations seemingly at cross purposes with the proposed purpose of the consultations. Members of the Aboriginal community organisations presented their activities to the cross party panel of Senators in an obvious desperate effort to retain/obtain control and funding rather than speak to the proposed complex *Stronger Futures* legislation **WHICH THEY HADN'T YET SIGHTED. Alternately, the long and complex legislation papers were actually handed to participants literally minutes before the session or promised to be posted after the session!**

As in previous consultations, there were also some reports of Interpreters being not available or not extensively used. There seemed to be completely inadequate preparation and no workable process which would ensure genuine consultation. Reports from other areas confirmed that these defects were a general occurrence.

Condition 4 – of a temporary nature.

Our members note the **sunset clause** espoused by both the Coalition and The Greens in their dissenting reports but obviously refused inclusion in the main report.

The Coalition dissenting report

1.47 They recommended an earlier timeframe for a sunset provision for the legislation:

The Stronger Futures in the Northern Territory Bill 2011, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill be formally reviewed after 3 years and lapse after 5 years from the date of assent.

Our members are aghast that the Stronger Futures legislation was to be implemented for an extraordinary ten years.

Our Summary: The Josephite SA Reconciliation Circle submit that none of these special measures conditions quoted are met under the further 10 year *Stronger Futures* legislation and therefore we question the legitimacy of the legislation and its implications.

Recommendation: The *Stronger Futures* legislation including Compulsory Leasing of title held land in return for basic services, must be abandoned as it does not comply with internationally recognised special measures and therefore has no justification in international law.

2. SEAM (Improving School Enrolment through Welfare Reform Measure)

Our members, many of whom have a background in education, are implacably opposed to SEAM. Of course we value education and would want children to attend school but have grave fears concerning the punitive manner that this legislation plans to bring this about. In our own 2010 Report to ICERD when SEAM was first mooted, we began by quoting the **Coalition Party's** warning at the time when they were in Opposition.

To deny a person access to subsistence on the basis of their failure to comply with certain extraneous legal obligations represents a significant shift in the philosophy of social security in Australia.[1]

We would urge the Committee to pursue the implications of its strong recommendation to Government concerning the SEAM program. We applaud the concern re the questions mentioning the possibility or probability of their infringing racial discrimination.

1.266 The committee considers that the fact that the SEAM program has its predominant impact on Indigenous communities means that the program may come within the definition of racial discrimination in the ICERD as its effect is to limit the enjoyment of rights by persons of a particular racial and ethnic origin. It therefore must be justified as a proportionate measure based on objective and reasonable criteria adopted in pursuit of a legitimate goal…

We suggest on the contrary it is impossible to justify any such measures for the following reasons as we again raise the following pertinent questions – this time to the PJCHR.

1. How is a family is to survive on about half their already 'subsistence' income?

This concern was never addressed in the Inquiry, nor by the Minister in the little media attention given to this legislation when first mooted, nor in phone calls made by one of our members to the Minister's office.

2. How is a family is to survive, if after 13 weeks 'suspension' the family still isn't able to comply? As a result of the SEAM legislation, their basic income will be cancelled altogether.

(Family tax benefits and some minor benefits if applicable, like rent assistance for those in private rental and child care assistance for those who use childcare, were to be the only income untouched.)

Our concerns remain.

Namely:

1. There have been assurances that this drastic measure will only take place ' as a last resort' however that would be determined. Unfortunately, this phrase 'as a last resort,' has no place in the actual legislation. Our Circle members are concerned that this section of the Bills package also seems to place too much faith in the ability of Centrelink workers and the Schools to help a family suddenly become organized and ready. For the 'trials' so called, in the 6 NT communities of January, 2009 the Government appointed 3 new Centrelink social workers for an area which stretches from Hermannsburg, Central Australia to the Tiwi Islands north of the Australian mainland (a straight line distance of approximately 1,400 kms!) (Report#1.95 p23)

[1] Senate Committee Report – Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill [Provisions] November 2008 p33

Mr Carters of the Department concerned (DEEWR) in 2008 assured the Senate Standing Committee (Report #1.51-p13) that ' *will be very, very few people suspended.'* We note however that there are reportedly 20,000 child truants currently in Australia and those of us who live in neighbourhoods among the poor of Australia know that many families will be simply be unable to turn their lives around to ensure that all of their often many children regularly attend school. They may make a supreme effort for a few days or weeks, simply be unable to keep it up and so be in breach for the one or all of the following reasons:

- Funds needed for every day breakfast, lunches, recess, travel, clothes and other school expenses on top of the payment of escalating household bills of rent, electricity, car and other regular expenses, simply run out. We hold that this is likely to happen whether or not the family is also under Income Management.
- Overcrowded housing makes 'school readiness' very difficult.
- Many families through poverty, ill health, alcohol, drugs and other related causes are in regular trauma.
- Many are single parent families and currently throughout the nation there are 31,500 children being raised by grandparents (not necessarily all on pensions).

Other factors also have an impact.

- Over the past decade or so, positive programmes including Primary school Abstudy grants, the ASSPA programme, bilingual programmes for Aboriginal students who figure high in the truancy data, have been cut.
- The Australian Education Union and other bodies make clear that there are simply not enough resources including teachers, for all children in the Northern Territory, especially outside the major towns, to be able to attend.

From the Federal Government current website on SEAM, our members see that our fears were indeed realised: *'during 2013, the payments of 60 parents were suspended for not complying with a compliance notice under the attendance element.'*

We affirm the PJCHR report: *The government bears the onus of clearly demonstrating that the measure is justified. In this case the committee would expect a clear demonstration, based on reliable empirical evidence, that the measures are having a significant impact on reducing low school attendance.*
The Josephite SA Reconciliation Circle further believes that there is no such compelling evidence over and against the negative effects of the scheme.

In this claim we present the contrary resolution of the Queensland experience and abandonment of the SEAM scheme: *Minister for Education, Training and Employment the Honourable John-Paul Langbroek. Monday, June 18, 2012.* ***SEAM trial did not work: Education Minister****.*

'The Queensland Government will not participate in an extension of the Federal Government's Improving School Attendance through Welfare Reform Measure (SEAM) trial because it failed to produce any significant change in student attendance rates...
...The Federal Government's own evaluation report into the effectiveness of the trial showed that the suspension of income support payments made no impact on improving school attendance.
This big stick approach just basically doesn't work and at the end of the day, ends up impacting on the kids.'

A grave concern of the members of our Circle is that this SEAM aspect of the *Stronger Futures* legislation is yet another way in which the life of the poor, notably the Aboriginal poor is devalued and disrupted and in the end, becomes another heavy stressful burden to bear - causing family disruption and contributing towards family breakdown.

We have pleaded and plead again instead for the $107.5 million budget allocated to SEAM to be spent instead positive programs so that children will really want to go to school and once there will be motuvated and able to learn.

The Josephite SA Reconciliation Circle make the following Recommendation:
That the SEAM program be immediately abandoned in the NT where SEAM continues to be 'trialled 'and that these administration funds be rather spent on positive educational and socially inclusive

evidenced based programs which would have real and genuine effect - including:

1. **the re - introduction of bi lingual programs and**
2. **other recommendations of educational experts like Chris Sarra and Yalma Yunipingu which will help ensure NT Aboriginal children actually want to go to school.**

3. ALCOHOL legislation

We refer briefly to this vexed question.

Our Members note

- that excess alcohol consumption is a serious problem Australia wide among many groups including mainstream Australians including the NT in general- not only with the Aboriginal population
- that much of the pressure and legislation and practice on the ground seems directed more to the consumers than suppliers.

In this respect we note from personal experience the extraordinary number of outlets - for example in the key town of Central Australia - Alice Springs.

As fellow Australians we have been ashamed to witness the humiliation resulting from the security guards posted at main liquor outlets in Alice Springs.

The matter of Dry Communities

We recognise that governments may continue to be ignorant or simply ignore the fact that some communities as a result of strong advocacy from, but not only from, Women's groups, had already agitated and succeeded many years since, in establishing communities as dry areas.

We urge politicians to refrain from previously abandoned, unsuccessful compromise schemes such as wet canteens to be introduced despite the particular community expressing a wish to remain a dry community.

The protection of the Permit system

As a collary we deplore the legislation that overrode **the protection of the Permit system** into Aboriginal communities despite the strong advocacy of Communities and notably the President of Police Federation of Australia (PFA) and the NT Police Association Vince Kelly, who strongly advocated retaining it as a 'tool' to assist with drug and grog runners.

'The permit system is a useful tool...' Policing the -grog and drug runners etc is just too hard without the tool the permits provide.[2]

Our Members recommend

- **that the Federal Government work in conjunction with the NT Government to make far stricter place rulings with a banning of food stores and other stores being issued with a licence to sell alcohol.**
- **that the wishes of any community to remain a dry community be respected (without any degrading signs).**
- **that the Permit system be reinstated into Aboriginal communities to help afford some measure of protection to communities and assistance to Police and Community Elders in identifying and prosecuting outside grog and drug runners.**

3. INCOME MANAGEMENT

The very recent (October 2014) government commissioned report on Income Management can be summarised by saying that there has been **no evidence of strengthened money-management skills, better health outcomes, or reduced alcohol and tobacco consumption,** according to the Abbott Government's commissioned *Place Based Income Management – Process And Short Term Outcomes Evaluation*. For those

[2] Police Federation of Australia submission to the NTER Review

forced on Income Management there was no positive change across a range of indicators of well-being. Only the small minority who **volunteered** for the scheme were likely to derive benefits.

Our members strongly agree with PJHRC Committee's inclusion of the Human Rights Commission's strong reservations as expressed below:

212 *The low numbers of people who have engaged with the incentives (matched savings and exemptions), and other support services which are intended to complement income management, may have mitigated the effectiveness of the program as it is the combination of all three components which is expected to improve wellbeing.*

Accordingly, it must be closely scrutinised and the onus is on the government to demonstrate clearly that it pursues a legitimate objective and is based on objective and reasonable criteria and is a proportionate measure to achieve the legitimate objective

1.215 The PJHCR Committee, itself *considers that the income management regime involves a significant intrusion into the freedom and autonomy of individuals to organise their private and family lives by making their own decisions about the way in which they use their social security payments.*

Our members completely concur.

We warn also that it is essential to ensure that the large number of 'volunteer' clients in the NT, which are claimed to be such, are genuine volunteers. Certainly early in the changeover period when Aged Pensioners were permitted to come off CIM, (compulsory I M), our members were acquainted with a number of incidents whereby this change was made extremely difficult and in some cases, immediately impossible by Centrelink staff.

We support the committee's inclusion of 1.183 wherein the Australian Human Rights Commission has raised the question of whether the nature of the communities to which income management has been extended from July 2012 might raise issues of indirect discrimination on the basis of racial or ethnic origin: The Commission noted with concern that the five disadvantaged communities, which were to be subject to the income management scheme from 1 July 2012, *have high culturally and linguistically diverse communities. According to 2006 Census data, people born overseas accounted for 23.8% of the total population of Playford (South Australia). In Bankstown (NSW), 38.7% of the total population were born overseas and 53.7% of the population spoke a language other than English at home. The Commission further understands that the communities of Shepparton and Logan have experienced very high migrant settlement in recent years, particularly humanitarian settlement.*

Further that *the overrepresentation of Aboriginal and Torres Strait Islander peoples and culturally and linguistically diverse communities in the trialling of income management is of significant concern to the Commission. Measures that disproportionately impact upon the ability of a particular racial group to enjoy their rights (such as the right to social security) may raise issues of indirect discrimination, particularly where the scheme is applied too broadly.126*

1.184 It is clear that while the measures have been extended to communities that are not predominantly Aboriginal, the measures still apply overwhelmingly to such.

As Australian citizens, benefitting from and privileged to be living on the country of the Aboriginal peoples in Australia it is with some shame we note that First Nations peoples comprised 91% on Compulsory Income Managed citizens in the 2011 evaluation quoted in the Committee's 2013 report.

Our Reflection: We suspect that one of the underlying reasons for Compulsory Income Management - and now its proposed drastic 100% managed income extension across the nation as one of the basic recommendations of the current **Forrest Review** - is that CIM can be a popular way of showing that a government is '*doing something **about'*** the poor of the country and particularly the Aboriginal poor. We submit that it is *rather doing something **to*** – a something that is divisive, humiliating and in particular something, the usefulness of which is not based on genuine evidence of success.

The actual evidence (as quoted in the Oct 2014 evaluation cited at the beginning of this section),

concludes, while Voluntary I M can be quite useful, Compulsory I M simply doesn't work, causing more misery and frustration among those forced on to it. Our members have submitted our own evidence of this from personal encounters with people so affected or from relevant research of others with CIM 'clients'. We have wondered that this and other failures of the Stronger Futures and previous NTER legislation are simply ignored or refuted by governments and governments' representatives and public servants including during several at face to face meetings that our members have initiated. Our concerns and documented evidence have often been dismissed although two or three members of parliament/senators with whom we have had arranged meetings, were obviously concerned - yet seemingly powerless.

Wasted expenditure of taxpayer's funds. Our members consider it a scandal that the extraordinary $1 billion dollars wasted on this social experiment to date has not instead been used on desperately needed positive programs which would have had much more chance of success.

It is of serious concern to our members that such legislation originally for Aboriginal people in the Northern Territory, now carefully legislated for by both major parties in successive governments, has proved to be what some, including our members suspected - the proverbial thin edge of the wedge.
NB **Certainly any further extension like the cruel recommendation of 100% Income Management as proposed by the recent Forrest Review puts the seal on the arrival in Australia of the Two Class System.**
Our members are at a complete loss to know how it is possible to '*empower'* people and '*increase their capacity'* as claimed, by controlling their day-to-day lives in taking away the basic freedom of people to use cash.

We will be interested to know if the Committee's existence, and current and later findings, will have any influence in stemming this further extension of negative control over the lives of their fellow Australians as recommended by the Forrest Review.

This is our challenge to the Committee.

In conclusion we highlight the 2013 Committee's concern (126)
Right to social security, the right to an adequate standard of living and right not to have one's privacy, family and home unlawfully or arbitrarily interfered with.

We challenge the 2014 Committee to be rigorous and unbiased, taking into account evidence from people who have direct involvement with voiceless numbers who have been adversely affected.

Recommendations re Income Management
Our members call for the abandonment of the Compulsory Income Management regime

- **in the NT,**
- **in the original 5 placed based areas outside of the NT**
- **in the growing number of placed based**
- **and category based impositions which have caused the numbers to grow exponentially in the past 12 months as a direct result of the passage and enactment of the various sections of the *Stronger Futures* bills.**

We call on the same significant funds to be redirected into positive community programs.
We further call upon the Committee to give a strong warning to the current Federal Government and as corollary, any State governments (notably the South Australian government) which are seriously considering taking up the Recommendations of the current Forrest Review: that the proposed 100% Healthy Welfare Card scheme (and other punitive recommendations) similarly *might raise issues of indirect discrimination on the basis of racial or ethnic origin: thereby contravening Human Rights legislation*

Conclusion

The Josephite SA Reconciliation Circle members have been and continue to be concerned that the Intervention of 2007 and the further extension of much of the punitive legislation in the *Stronger Futures* legislation have both continued to control the lives of Aboriginal peoples while undermining their own self determination. Factors abound: the forced demise of the Community Councils and the Community Development Employment (CDEP) scheme, the loss of the permits, excessive legislation on local community stores and so on.

We strongly agree with the PJCHR as indeed with so many significant submissions since 2007 to the successive governments that -

1.275 The first is the critical importance of ensuring the full involvement of affected communities, in this case primarily Indigenous communities, in the policy making and policy implementation process. The right to self-determination guaranteed by article 1 of each of the International Covenants on Human Rights, as well as the UN Declaration of the Rights of Indigenous Peoples, require meaningful consultation with, and in many cases the free, prior and informed consent of, Indigenous peoples during the formulation and implementation of laws and policies that affect them...To do otherwise risks producing the disempowerment and feelings of exclusion and marginalisation that were revealed in the evidence presented to the Senate Community Affairs Legislation.

Since 2007 the signals of despair, as evidenced in the increase, not the lessening, of alcohol and drug abuse and family and community violence. are growing, not diminishing. We can only ask - what did the legislators expect? In necessary partnership with the NT Government, a complete turn around from this legislative quagmire which surrounds the lives of Aboriginal people, seems to be the only clear way ahead for the Federal Government. We, like the many expert organisations and individuals within Australia and internationally, have serious concerns how such policies and practices can be part of a genuine democratic society. In the words of a Senior Aboriginal Elder, Bagot Community, Darwin. Government consultation 2009:

And now, you set up this Intervention in Australia, amongst Australian Indigenous people. And we Indigenous people say we should be living together, one country, one Prime Minister, and seeing each other and and treating each other equal. But nothing happens like that.

You are dividing the nation into two, and you said that Intervention policy is two different policies, one for black and one for white. See. And that is very wrong. You should be shame for yourself for that, you know.

The Josephite SA Reconciliation Circle strongly recommends that the PJCHR urge the Federal government to abandon the *Stronger Futures* legislation and in consultation *with the full involvement of Aboriginal Communities themselves (Art 1.275)* to employ the same substantial resources instead to empower those communities, community members and all citizens affected by aspects of the legislation, nation wide.

Thank you for receiving our Submission.

Michele Madigan for *the Josephite SA Reconcilation Circle*. 29/10/14