

## Submission to the Senate Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related Bills

'concerned Australians' welcomes the opportunity to make this submission to the Senate Committee. Since it is the Commonwealth's intention that the NTNER Act be repealed and be replaced by the Stronger Futures in the Northern Territory Act, and that despite its repeal, there are provisions of the NTNER Act that will be saved or transitioned by this Bill, some comment on the current legislation is also required.

### BACKGROUND

Whatever difficulties Aboriginal people may have been facing in the Northern Territory, the most devastating aspect of the Intervention was the total failure by Government at any stage to appropriately acknowledge them and their leaders with due respect. There was such a lack of courtesy in that Elders were totally ignored, neither communicated with nor their advice sought. That the claims of '*paedophile rings in every community*' were to be later withdrawn did little to undo the extreme harm and damage that had been caused.

Within the short space of only a few years Aboriginal people in the Northern Territory have been crassly re-traumatised by thoughtless actions of the authorities. They have been regulated to the point where they are no longer responsible for the running of their own communities, their language has been removed as a mainstream learning medium from schools, their CDEP jobs terminated, and their daily lives controlled through the use of BasicsCards and the like. While Government demands that Aboriginal peoples take responsibility for their lives, it has continued to remove any vestige of responsibility from them while failing to acknowledge the many successful community programmes that they have developed in the past.

We find recorded in the Cardiff Journal of Law and Society 2011 a description of conditions in Dagaragu under the Intervention,

*Prior to the Intervention we had nearly 300 CDEP workers employed in municipal services, construction and maintenance roles. When the government took over and abolished the community council and CDEP everything came to a halt. We went two years without regular rubbish collection because the truck was seized. Houses and buildings are in desperate need of repair but there's no funding for workers or materials. If you go out to Dagaragu you'll see the evidence these cuts have had on our people. Everything we built has gone and the old CDEP office, the brick making shed, the nursery, the health clinic, the old family centre. Soon we may lose the bakery. Houses that are now under Territory Housing control are overcrowded and falling apart. The damage is just overwhelming. We now we have around 40 workers left on CDEP and training programs. Many are working 35 hour weeks but under the new laws they're working for nothing but a Centrelink payment. It's worse than working for the dole, because half goes onto the BasicCard and can only be spent at approved stores. History is being repeated here, with our people forced to work for rations again.<sup>1</sup>*

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<sup>1</sup> David McCallum, *Liberal Forms of Governing Australian Indigenous Peoples*, JOURNAL OF LAW AND SOCIETY, VOLUME 38, NUMBER 4, (DECEMBER 2011, p 627. Accessed at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1960413](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960413)

During this period we are told by Government that the number of those imprisoned has dramatically increased, as has the incidences of self-harm, while school attendance has decreased.<sup>2</sup> Disillusionment and despair are increasing at alarming rates as can be seen in the comments from the recent Stronger Futures consultations.

Whatever the good intentions of Government, however much money has been spent, the results on the ground at a human level have been devastating. This is not to say that there have not been pockets of achievement particularly some increases in infrastructure in schools, pre-schools and housing, as well as the improvements in some areas of health due to increased funding. However, the constant negative stereotyping and the top down approach have undermined much of what could have been achieved.

## **THE STRONGER FUTURES CONSULTATIONS 2011**

We are led to understand that the consultations were conducted across NT communities for the purpose of listening to the people in order to guide the way ahead. Government is said to want to know from the people what is working for them and what is not.

For six weeks between June and August 2011, Government officials took notes from the consultations held in all prescribed communities. These were the most important consultations conducted because it was possible for those directly affected by the NTER legislation, and who live under it, to provide feedback to Government.

However, the consultations were called at short notice with the inevitable result that not all who wished were able to attend. Information was not provided in a form that could be understood, the agenda had no local input and there is no record of their content.

The failure to provide recordings of the consultations was unforgiveable, especially when the Minister had been publicly requested to do so by leading Australians.<sup>3</sup>

It needs to be said that the facilitators at consultations did allow additional information to be aired but that these items were then disregarded and remained unrecorded in the Stronger Futures Consultation Report.<sup>4</sup>

Consultations lasted between two and three hours in most communities. We are told by the consultant CIRCA (Cultural and Indigenous Research Centre Australia) that interpreters were used at ten of the twelve consultations that they attended but were only used extensively in three (25%).<sup>5</sup>

From the ten consultations of which we hold transcripts, by far the strongest messages to Government were in the form of demands for the return to the people of control over communities, their right to determine their own futures and the restoration of the bilingual learning programme to schools. None of these demands received attention in the Stronger Futures Consultations report.

## **WILL THE STRONGER FUTURES LEGISLATION ADDRESS THE PROBLEMS?**

To date community Elders have still not been invited to come together to discuss with Government the way forward. Government seems set on a course of ignoring community Elders as a way of undermining their influence in communities. This is a very short-sighted approach and can only lead to a collapse within communities. Already, many of the successful programmes previously run through community have started to unravel as they have been handed over to Shire management and outside contractors. The gradual

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<sup>2</sup>[http://www.facs.gov.au/sa/indigenous/pubs/nter\\_reports/ctg\\_nt\\_monitoring\\_rpt\\_janjun\\_2011/Documents/ctg\\_nt\\_monitoring\\_rpt\\_pt2\\_janjun11.pdf](http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/ctg_nt_monitoring_rpt_janjun_2011/Documents/ctg_nt_monitoring_rpt_pt2_janjun11.pdf) pages, 66 & 17.

<sup>3</sup> <http://www.concernedaustralians.com.au/media/Let-A-Nicholson-Stronger-Futures-27-6-11.pdf>

<sup>4</sup> [http://www.indigenous.gov.au/wp-content/uploads/2011/10/consult\\_1710111.pdf](http://www.indigenous.gov.au/wp-content/uploads/2011/10/consult_1710111.pdf)

<sup>5</sup> p, 21 at [http://www.fahcsia.gov.au/sa/indigenous/pubs/nter\\_reports/Documents/circa\\_qa.rtf](http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/circa_qa.rtf)

termination of CDEP jobs has equally undermined the stability of communities. Community work is often outsourced while local residents now on welfare benefits are left to look on. How does it make sense for those who were happy and proud of their wage earning capacity within their communities, to be left without work, depressed and disillusioned while an outside contractor undertakes the work at twice the price? In the NTER Evaluation, we are told by the consultant, Colmar Brunton, ... *the economic sustainability of the CDEP job conversions is questionable, given that most are related to community services.*<sup>6</sup>

It seems that any new legislation should achieve several things if the slide in conditions in 'prescribed communities' is to be arrested. Most importantly re-establishing a working relationship with community Elders is essential. Over and over again Elders have sought the opportunity to discuss with Government their views as to the way forward. Community consultations, fly-in, fly-out general meetings are not the venues for essential in-depth discussions. Last year Elders called several times for a government supported prescribed areas Elders forum. These calls were ignored.

Working positively and co-operatively with community Elders, restoring confidence in the people, investing in capacity building as a way of returning community management to the people, re-engaging workers to take the lead in areas of community service, removing extreme regulation and encouraging voluntary engagement in self management programmes – these are the changes that any new legislation should underpin. Certainly legislation can only be helpful if it recognises the role of the Elders and respects the culture and language of the people.

## COMMENT ON THE PROPOSED LEGISLATION

- **Section 91 of Current NTER Law**

The continuation of restrictions on judges and magistrates from taking into account customary law and cultural practices when issuing sentences or bail orders on Aboriginal people is discriminatory. This provision results in Australia contravening its international commitments. If there is dissatisfaction with the judiciary in the manner in which it conducts its business, this is where the discussion must lie and not in the removal of the basic rights of Aboriginal people living in the Northern Territory. Former Chief Justice Alastair Nicholson has spoken out on several occasions regarding this legislation, as have other senior members of the legal fraternity. Of this Section he has said,

*And that to me is one of the most racist and offensive pieces of legislation that's ever been passed by the Federal Parliament.*<sup>7</sup>

Justice Mary Ann Yeats of Western Australia has made the following statement,

*Judges sentencing Aboriginal offenders under the new provisions will no longer be able to apply the same sentencing principles when sentencing Aboriginal offenders who live under customary law as are applied when sentencing other offenders. Judges will not be able to consider all the material facts when sentencing such Aboriginal offenders. In some cases aggravating factors based on relationships or breach of trust, will not be able to be taken into account in sentencing. In other cases mitigating factors based on customary law will not be able to be taken into account in sentencing. Requiring such unequal treatment of some Aboriginal offenders is inconsistent with sentencing principles developed in Australia for sentencing Aboriginal offenders and is inconsistent with the spirit of the judicial oath requiring Judges "to do right by all manner of people". In sentencing some Aboriginal*

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<sup>6</sup> P, 363 at [http://www.fahcsia.gov.au/sa/indigenous/pubs/nter\\_reports/Pages/nter\\_evaluation\\_rpt\\_2011.aspx](http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/nter_evaluation_rpt_2011.aspx)

<sup>7</sup> Listen to audio, *Conversation With Elders* (7th Feb 2011), at 1:09:40  
[http://www.concernedaustralians.com.au/media/A\\_Further\\_Conversation\\_with\\_Elders.mp3](http://www.concernedaustralians.com.au/media/A_Further_Conversation_with_Elders.mp3)

*offenders under the new provisions Judges will be required "to sentence him as someone other than himself" <sup>8</sup>*

We believe the restrictions of s 91 of the proposed legislation should be withdrawn.

- **The Use of Special Measures**

We have considerable concerns over the use of 'special measures' in circumstances that appear to fail the requirements under the United Nations GR32.<sup>9</sup>

Under Section D Conditions for Adoption and Implementation of Special Measures, point 18 states,

*States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.*

As has been stated many times, the 2007 so called 'special measure' failed this test simply because communities were not consulted. It would seem once again that this is the case, even though Government refers to the recent consultations as meeting that requirement. This is patently incorrect. In fact, seeking a consultation with an affected group and with a view to designing and implementing a special measure can only be achieved through appropriate and focused engagement which allows for active participation in the decision making and negotiated in partnership. Comments made during community consultations cannot be interpreted as 'informed consent' to a special measure.

We are told that many people stated that they didn't want alcohol on their communities. Quite right and that was the case before the Intervention. However, it does not necessarily mean they are asking for special measures to be imposed.

The use of special measures in the proposed legislation is equally questionable on the grounds of their time limited nature. Point 27 states,

*The second limitation on special measures is that "they shall not be continued after the objectives for which they have been taken have been achieved". This limitation on the operation of special measures is essentially functional and goal-related: the measures should cease to be applied when the objectives for which they were employed – the equality goals – have been sustainably achieved. The length of time permitted for the duration of the measures will vary in the light of their objectives, the means utilized to achieve them, and the results of their application. Special measures should, therefore, be carefully tailored to meet the particular needs of the groups or individuals concerned.*

One might ask, for how long should Aboriginal people in the Northern Territory be banned from accessing pornographic materials? For how long will Aboriginal people in the Northern Territory be fined for possessing a bottle of beer in their homes? For how long will store managers be subjected to increasing fines for non-compliance? And, changes to land reform are for how long?

Clearly, such measures are not goal related and are unable to reach a point where the results of their application can lead to their termination. Special measures are temporary and should be designed and implemented on the basis of need. Eighty percent (80%) of Homelands were 'dry' communities. This did not happen because of special measures but rather through respectful cooperation within communities.

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<sup>8</sup> p, 20-21 <http://www.jca.asn.au/attachments/2007-MaryAnnYeats.doc>

<sup>9</sup> <http://www2.ohchr.org/english/bodies/cerd/docs/GC32.doc>

In 2008, the NTER Review Board expressed concern that the newly imposed alcohol restrictions were interfering with the actions already taken by the communities themselves. Working with Elders and community leaders is something that Government has failed to do since 2007. Giving financial support, ownership and responsibility to communities has a far greater chance of success than attempting change through punitive legislation. Elders have been calling on Government for cooperation and for support for the development of a prescribed areas leader's forum as a way to exploring options. We are of the opinion that after five years of Intervention it is now time to invest in sustainable community driven approaches as a way of moving forward, not in extending non-compliant so-called 'special measures'.

- **Food Security**

Food security refers to the availability of food and one's access to it and there are numerous UN definitions in support of this. Since 2007 there has been an increase in availability of fresh foods in community stores.

A report entitled "*Everybody's Business Remote Aboriginal and Torres Strait Community Stores*"<sup>10</sup> was published in November 2009 by the Government's own House of Representatives Committee. The Committee received 112 submissions from a wide range of sources including Commonwealth, State and Territory government departments, store owners, store managers, freight providers, health experts and providers, individuals living in remote Indigenous communities, academics, and Indigenous representative organisations. It is an excellent report which appeared to recognise the need to address not only the availability of healthy food but also its affordability.

In the 2009 consultations and in the survey conducted in 24 communities in June 2010, residents acknowledged the availability of more fresh food in their stores but stated the prices were so high that most people were unable to afford to buy it.<sup>11</sup> Again in the 2011 consultations, the unaffordability of fresh food was raised with Government.

The proposed legislation, however, gives focus to store licensing which is valuable in itself but which alone cannot address the very real problems of food security. The incidence of malnutrition in the Northern Territory is well known and we have learnt through a recent Red Cross publication that there are pockets of child malnutrition in parts of Arnhem Land that compare with that of Ethiopia.<sup>12</sup>

The report mentioned, "*Everybody's Business Remote Aboriginal and Torres Strait Community Stores*", includes suggestions such as freight subsidies, as has been called for by several non-government organisations over the last few years. Other suggestions in the report were also made by communities during the recent 2011 consultations. These include:

- *Where it is demonstrated that long term sustainability can be attained, support community garden, traditional food and farming projects in remote Indigenous communities for the local production of food, particularly in schools.*
- *Examine ways to facilitate remote Indigenous communities undertaking collaborative arrangements with stores to distribute and/or sell locally grown or harvested produce in partnerships with local food production and harvest industries. These last two can also potentially reduce food costs and create further employment.*

The proposed legislation gives high priority to the regulation of community licensing while totally ignoring the desperate need to address the issue of affordability. In fact the cost of additional regulation may drive prices up. There is no doubt that the subject of food security urgently needs to be addressed. This will best be achieved by a more holistic approach, working closely with communities to explore all options especially those aimed at ensuring affordability. If nutritious food is to be available to all a good place to start would be by

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<sup>10</sup> <http://www.aph.gov.au/house/committee/atsia/communitystores/report/Everybody's%20Business%20Report.pdf>

<sup>11</sup> *Loss of Rights*, (July 2010), p 41-42 at [http://www.concernedaustralians.com.au/media/Loss-of-Rights-Rept-2010\\_v2.pdf](http://www.concernedaustralians.com.au/media/Loss-of-Rights-Rept-2010_v2.pdf)

<sup>12</sup> <http://www.redcross.org.au/world-disasters-report-2011.aspx>

considering the recommendations contained in the Government's own report, "Everybody's Business Remote Aboriginal and Torres Strait Community Stores". The legislation in its current form is inadequate.

- **Land Reform**

The mention of land reform in the legislation is not immediately obvious as it rates little attention in the actual 'Reading of the Bill', nor is it highlighted on the Fahcsia website as are other aspects of the legislation.

The proposed land reform is presented as a special measure and applies to the Town Camps and to the Community Living Areas. We are told by Government that the Bill *will enable the Aboriginal landholders of town camps and community living areas to make use of their land for a broader range of purposes, including for economic development and private home ownership*, and that, *this bill builds on what Aboriginal people in the Northern Territory have told us about the changes they want to see for themselves and for their children*.

Of the eighty-two Community Living Areas listed on the Fahcsia site, most are small with populations of around 100 people. Seventy of these community living areas were not visited during the recent consultations and one has to ask, if the proposed land reform is to proceed as a special measure, how has consent been gained from the affected communities? And have the people of these communities been made fully aware of the impact of such legislation which would result in their loss of control over their land?

The Former Chief Justice Alastair Nicholson makes the following observation,

*An essential prerequisite for this to be a special measure is that there was prior consultation with the people concerned and arguably, the informed consent of those people. There is no evidence of any such consent, whether informed or otherwise, and extremely limited evidence of consultation. There is nothing in the Stronger Futures report to suggest that these particular measures were discussed with the people although support for measures that enable private enterprises in the nature of small business to develop was apparently expressed by a number of people. We do not know whether these people were residents of town camps or community living areas or how many of them there were or whether their views were in any way representative of others.*

When the original Aboriginal Communities Living Areas Bill was passed back in 2000, it tells us that the *primary intention of the community living areas was to provide secure tenure for those Aboriginal groups in need, particularly for those Aboriginal groups presently or recently resident on pastoral leases. Excisions will be granted under a special freehold title to be provided under Northern Territory legislation:*

NORTHERN TERRITORY OF AUSTRALIA  
Miscellaneous Acts Amendment (aboriginal community living areas) ACT <sup>13</sup>  
As in force at 1 December 2000, and

with a number of clauses including:

Actual living areas will have a *buffer zone* of one kilometre reserve from mineral exploration and mining. There will also be a provision for compensation from disturbance.

It is understood that these leases are very restrictive and that the changes planned by the Federal Government will increase flexibility of land use. However, the concern that we have is related to the control of the land in the event of a proposed economic development. Subsections of the legislation describe the requirements in relation to the owner's position in such circumstances:

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<sup>13</sup> [http://www.austlii.edu.au/au/legis/nt/consol\\_act/maaclaa583.txt](http://www.austlii.edu.au/au/legis/nt/consol_act/maaclaa583.txt)

**Subclause 35(4)** provides that a regulation cannot be made in relation to a community living area without prior consultation with: the Northern Territory Government; the owners of the land that is the community living area (on request from the relevant owners); the Land Council in whose area the community living area is located; and any other person the Commonwealth Minister for Indigenous Affairs considers appropriate to consult, including, for example, the Northern Territory Cattlemen's Association.

It is intended that a public notification will be made to enable owners of community living areas to request to be consulted.

**Subclause 35(5)** provides that a failure to consult as required under subclause 35(4) will not affect the validity of the regulations.

It is clear that the owners, even if they object to the proposed regulation, are being provided with no avenues for formally opposing it. It is the Minister who has control over decision making.

The Hon Alastair Nicholson makes the following points,

*The effect of this legislation is to give the Minister almost unlimited control over the uses of town camps and community living areas and in particular to enable their development for private purposes, presumably for profit. This is characterised as a special measure for the benefit of the Aboriginal people. It is true that the objects of the legislation are stated to enable measures to be taken for the benefit of the Aboriginal people, but the power conferred by the legislation rests entirely with the Minister and not with the people or their representatives – a classic example of white paternalism.*

And with regard to the ten year period as set out in the legislation, he goes on to say,

*The provision of a ten year sunset clause is somewhat illusory in legislation of this sort because it preserves any action that has been taken under it after the expiration of the relevant period, by which time most, if not all, of the relevant land will have been alienated. This is important in considering whether the measures are special measures because it means that their effect will be a permanent one, despite the presence of a sunset clause. If therefore the Minister thought that it would be advantageous to sell a particular piece of land to a mining company, the people most affected would not only have no say in that process but would have lost the land permanently.*

This legislation excludes Aboriginal people from the process and decision making regarding development on their land. We therefore oppose it.

- **Welfare Cuts to Parents of Non Attending and Unenrolled Children**

It is alarming that the Government would attempt to move into law a programme, SEAM (School Enrolment and Attendance), for which there is no evidence to show that it has resulted in improved attendance rates. This information may well be available but has not been released by Government.

International and local research suggests that factors affecting school attendance is a complex social problem. A comprehensive suite of incentives is recommended and punitive measures such as changing adult behaviour are not among the recommendations.

[What Works Core Issue 5;](#)

[What works research](#), US, 2008

*Seen and heard: priority for children in the legal process*, [1997 ALRC report 84](#)

Once again the proposal is for punitive approaches in attempting to change behaviours, even though there is no evidence to prove that this has positive results. The very poor school attendance rates of young children in

Brazil's poorer suburbs were dramatically turned around with the introduction of the Bolsa Familia programme which is based on rewarding mothers for each of their children's attendance.

We are told that during the consultations Aboriginal parents asked for welfare cuts for non-school attendance. Again there is no evidence to show this. Certainly, in all Aboriginal communities there is a great desire for education and there are constant demands for more opportunities for improved access to educational activities. However, because people want education for their children, it does not mean they are asking for welfare cuts for non-attendance. In fact during ten of the consultations a list was provided to the facilitators explaining some of the difficulties parents faced in getting their children to school. No doubt they expected that Government might assist in finding solutions to the issues that they had raised. This list includes the need to:

- Return Bilingual Learning Programmes to Schools
- Acknowledge Culture in Curriculum
- Ensure School Transport
- Increase the Number of Aboriginal Teachers and Assistant Teachers in Schools
- Improve the Support to Homeland Children in Mainstream Schools
- Acknowledge Cultural Responsibilities
- Encourage Greater Involvement of Families in School Programmes
- Provide Full-time Qualified Teachers to Homelands

We are aware that Government is working on several strategies to assist Aboriginal men and women take up studies for a career in teaching and we commend the Government for this. On other fronts a great deal needs to be done. Working with communities on the ground and linking with communities to explore ways of overcoming the obstacles to attendance is by far the better way to go. Not a single one of the participants who attended the recorded consultations (10), asked for cuts to welfare benefits for the parents of non-school attendees.<sup>14</sup>

To set an arbitrary attendance rate of 90% is clearly unhelpful, especially as children are starting from different levels. Surely a programme that rewards increases in attendance would be far more appropriate. This should be pitched equally at schools so as to encourage the development of innovative and engaging curricula.

We are well aware of the health problems related to overcrowding. Aboriginal children suffer a higher incidence of health issues not experienced by their peers affecting their general health, behavior and school attendance.

- Painful middle ear infections are chronic through early childhood
- Boils and other localized infections are chronic and painful
- High levels of scabies infestations are debilitating
- Ear ache and tooth ache are common

The NTER Evaluation released in November<sup>15</sup> advises that there are still children awaiting surgery following the child health checks of 2007 – 2008.

The reasons for school non-attendance are varied. Blanket measures imposed on welfare recipients are only more of the same and it is quite clear that it would be irresponsible to place further pressure on the least coping members of communities. Positive changes will not be created by more punitive approaches, but by listening to the people while Government addresses the practical problems such as transport and the schools are encouraged to expand their curricula to include more culturally appropriate materials.

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<sup>14</sup> Read more p 15-16, at <http://www.concernedaustralians.com.au/media/Welfare-Cuts-Requested-or-Imposed.pdf>

<sup>15</sup> [http://www.facs.gov.au/sa/indigenous/pubs/nter\\_reports/Pages/nter\\_evaluation\\_rpt\\_2011.aspx](http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/Pages/nter_evaluation_rpt_2011.aspx)

Aboriginal community leaders have told us,

*Blanket measures have been central to the Intervention and have been the source of much distress. Here there are problems they must be addressed on a case by case basis, and preferably with the assistance through the appropriate community channels.*<sup>16</sup>

'Blanket measures' very often net the wrong people. The anecdote below is a good example of this point:

*Our grand-daughter attends School, most of the time. Because of her parents and her 'Oma' (grandmother) she achieves approx. 80% attendance and regularly brings home Certificates of Achievement ('Best Attendance' etc.). Our daughter-in-law is a Luritja speaker. Our son is unemployed. Both are on 'Income Management' because their daughter's school attendance doesn't reach the mandatory minimum. They have to front to Centrelink and be told they are bad parents. When the new legislation regarding school attendance comes into force they'll have to attend "family conferences" with Alice Springs based visiting bureaucrats and social workers and their meagre social welfare income will be in jeopardy. They will be told they are bad parents. Should they force (rather than persuade) their daughter to go to school so as to increase her attendance and so as to protect their meagre social welfare income, they could fall foul of child-abuse legislation. They are not about to do this, and not because of the rules and increased reporting and policing. Not because the screws are being tightened. They love their daughter and she loves them.*

We do not support the implementation of the SEAM programme, not only because there is no evidence that it will improve school attendance but also because there has been no genuine engagement with the people as part of a follow-up to the ideas they have already presented during the consultations. These require further discussion in each community. The barriers to school attendance will no doubt vary greatly from community to community and there needs to be follow-up with each.

Most especially we believe the way forward is through the direct resourcing and involvement of the communities themselves and the reintroduction of bilingual learning programmes to those schools that request it.

- **Social Security**

The legislation introduces changes whereby the delegation of social security powers can be transferred to other bodies, both State and Territory and this is of concern. There are issues of privacy quite apart from the continuation of a determined regulative policy approach which increases control and is punitive in nature. We know that health is enhanced by increasing a person's control over their life and yet we are employing policies which are increasingly removing control from them. We also know that during this period there has been an increase in depression, self harm and suicide. It is time to change course. We would like to see voluntary Income Management introduced as soon as possible, as was proposed in the NTER Review of 2008.

The manner in which the legislation allows for the extension of this programme across the nation to other disadvantaged groups is disturbing. This appears to give to the Minister increasing power without the need for independent review or parliamentary scrutiny at each stage. We do not believe that this is appropriate and we don't support it.

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<sup>16</sup> <http://www.concernedaustralians.com.au/media/Statement-4-11-11.pdf>

- **ACC Australian Crime Commission**

We are told during the Senate Standing Committee on Legal and Constitutional Affairs in February 2008<sup>17</sup> that,

*In relation to the Northern Territory Emergency Response announced in 2007, the Families, Community Services And Indigenous Affairs And Other Legislation Amendment (Northern Territory National Emergency Response And Other Measures) Act 2007, allows the extension of the ACC's special coercive powers to include Indigenous violence and child abuse. The Board approved the use of these coercive powers on 5 February 2008 to enable the NIITF [National Indigenous Intelligence Task Force] to undertake a special intelligence operation on Indigenous Violence and Child Abuse.*

The claims of paedophilia were investigated by the Australian Crime Commission and in 2009 the crime commission chief, John Lawler, admitted his agency's investigation had found there was no "organised paedophilia" in Indigenous communities in the Northern Territory, as had been loudly proclaimed by the then Minister.<sup>18</sup> This whole episode of stigmatising Aboriginal men has caused great harm.

We are also told that,

*The ACC also briefs the Australian Government Business Managers who are contracted under the NTER to coordinate Australian Government work with communities in the NT.*

The role of Government Business Managers, while actively engaged with the Intelligence Task Force, has devalued chances of trust building within communities and we believe that the time is long overdue to bring to a close the engagement of the Task Force. It is also time for Government to review what is meant by building trust and developing respect for Aboriginal people.

## **THE VIEWS OF ABORIGINAL PEOPLE**

The most important views of the legislation are those of Prescribed Community Aboriginal people themselves. In November a group of Elders and leaders spoke out quite clearly.

*We will not support an extension of the Intervention legislation. We didn't ask for it.*<sup>19</sup>

During the last five years there have been constant offers from Elders to Government asking for better engagement and the opportunity to work co-operatively together. It can only be hoped that this will happen.

More recently Rev Dr Djiniyini Gondarra OAM said,

*The Government and the people of Australia are only able to achieve true reconciliation with Aboriginal people of the Northern Territory if the environment for negotiation is changed and justice that was so brutally removed by the Intervention is restored. Only through respectful dialogue and working together can we call Australia a nation based on the principles of democracy.*<sup>20</sup>

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<sup>17</sup> [http://www.aph.gov.au/senate/committee/legcon\\_ctte/estimates/add\\_0708/ag/2.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0708/ag/2.pdf)

<sup>18</sup> *Loss of Rights*, p 62-65 [http://www.concernedaustralians.com.au/media/Loss-of-Rights-Rept-2010\\_v2.pdf](http://www.concernedaustralians.com.au/media/Loss-of-Rights-Rept-2010_v2.pdf)

<sup>19</sup> <http://www.concernedaustralians.com.au/media/Statement-4-11-11.pdf>

<sup>20</sup> <http://www.concernedaustralians.com.au/media/MR-Dr-Djiniyini-Gondarra-Resp-26-6-11.pdf>

## **AUSTRALIA'S INTERNATIONAL COMMITMENTS**

Australia's international commitments are many. If this legislation were to be passed in its current form, the contravention of such commitments would be numerous.

### **Committee on the Elimination of Racial Discrimination General Recommendation No. 23: Indigenous Peoples**

Articles 4 (a), (b), (c) (d), (e)

Article 5

### **International Covenant on Civil and Political Rights**

Article 1(1)

### **International Covenant on Economic, Social and Cultural Rights:**

Article 1(1).

### **United Nations Declaration on the Rights of Indigenous Peoples**

Articles 1, 3 , 4, 8, 9, 14, 18, 19, 23, 26, 27 and 32

## **CONCLUSION**

In summary, the legislation as a package is very disappointing. The continued misuse of special measures and inability to recognise that punitive approaches are unlikely to lead to the desired outcomes are unfortunate. Even more alarming is the proposed plan to remove from Aboriginal people control over the development of their lands. This is wrong. The legislation should be withdrawn.

Government needs to think hard about its commitment to evidenced-based policy, to listen to the advice of genuinely independent consultants, to align new policy to the Declaration on the Rights of Indigenous People and to recognise that this will require it to change course. Now is the time when a whole new approach to working with Aboriginal people in a ground-up partnership should be commenced before the opportunity is lost. It is only this approach that will establish trust and eventually respect.