

Oxfam Australia

Submission to the Senate Community Affairs Committee

Inquiry into Welfare Reform and Reinstatement of Racial Discrimination Act Bill 2009 and other Bills



1. Introduction

1. Oxfam agrees with the assessment made by United Nations Special Rapporteur (UNSR) James Anaya on the situation of human rights and fundamental freedoms of indigenous people. In a statement made on 27th August 2009 the UNSR stated that:

“affirmative measures by the Government to address the extreme disadvantage faced by indigenous peoples and issues of safety for children and women are not only justified, but they are in fact required under Australia's international human rights obligations. However, any such measure must be devised and carried out with due regard of the rights of indigenous peoples to self-determination and to be free from racial discrimination and indignity. In this connection, any special measure that infringes on the basic rights of indigenous peoples must be narrowly tailored, proportional, and necessary to achieve the legitimate objectives being pursued.”

2. This submission is not intended to comprehensively address all of the measures contained in the NTER legislative amendments, including the Welfare Reform and Reinstatement of Racial Discrimination Act. Rather it makes a series of recommendations linked to Oxfam's expertise and relevant to the Terms of Reference of this Inquiry. It draws on the following to do so:
 - Relevant aspects of Oxfam Australia's work in Indigenous Australia for more than thirty years and our experience in community development around the world (refer section 3); and
 - The Australian Human Rights Commission *Draft Guidelines for income management measures under the Racial Discrimination Act* and the Aboriginal and Torres Strait Islander Social Justice Commissioner's Social Justice Report 2007 recommendations for the NTER
3. Oxfam welcomes the Government's intention to reinstate the *Racial Discrimination Act 1975* and reform NTER measures so that they are no longer discriminatory. Oxfam, however, remains concerned that aspects of the proposed measures will continue to have a discriminatory effect. The recommendations in this submission are made so as to avoid these concerns being realised.

2. Restatement of previously identified concerns:

4. Oxfam refers the Committee to concerns it has previously expressed with aspects of the NTER measures relevant to the Inquiry. These concerns remain valid and, as they are relevant to this particular Inquiry, they are re-stated.
5. In the submission made by Oxfam Australia to the *Northern Territory Emergency Response 12 Month Review* conducted by the Northern Territory Emergency Response Review Board in 2008 Oxfam said the following about income management:

“Of specific note is the potential for more effective use of resources in relation to income management and a need to assess whether the current regime has or is likely to contribute to lower alcohol use and increased school attendance. International experience suggests it will not.”

6. In that Submission, Oxfam made the following recommendations that relate to the issues being considered by the current Inquiry:

We recommend that the Australian Government specifically look at the Centrepay scheme and the potential for it to replace compulsory income management in the NT. [Recommendation A]

We recommend that the Australian Government immediately change the compulsory nature and racial basis of income management and provide increased resources for financial assistance for families not based on compulsory measures. [Recommendation B]

We recommend governments look at ways to implement the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples and its various protections with a particular focus on Free, Prior and Informed consent. [Recommendation F]

We recommend immediate reinstatement of access to complaints mechanism for all aspects of the NTER including the Social Security (Administration) Act 1999 and the Racial Discrimination Act 1975 (Cth). [Recommendation G]

We recommend the Australian and Northern Territory governments immediately implement the 12 recommendations regarding the NTER outlined in the HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner's 2007 Social Justice Report. [Recommendation H]

We recommend that the Government develop an inclusive monitoring, evaluation and learning process for the next phase of the intervention which allows for the effective engagement of Indigenous communities and their representatives, produces disaggregated information and evidence which allows for differences in impacts between different groups and communities to be properly captured, and provides dynamic and real-time feedback. [Recommendation I]

2. Oxfam role in Indigenous affairs in Australia

Oxfam Australia's Role in Indigenous Affairs in Australia

7. Oxfam Australia has supported opportunities for Aboriginal and Torres Strait Islander peoples to exercise their rights to basic social services, sustainable livelihoods, a strong voice and cultural diversity, for more than 30 years. Our program has a particular focus on Western Australia and the Gulf of Carpentaria in Queensland, as well as nationally through our initiatives to support the Close the Gap campaign, Indigenous young people and the right of Indigenous people's to self-determination.
8. As part of this work, we have sought to address the different issues faced by Indigenous men and women and have supported organisations that focus on issues of abuse. For example, we work with the Yorgum Aboriginal Corporation to help provide a culturally safe healing environment with programs addressing child sexual abuse, family violence and community development.
9. More recently, we have worked with and supported NT-based organisations to monitor and evaluate the impacts of the NTER including Larrakia Nations Aboriginal Corporation, Tangentyere Council and some in kind support to Central Land Council.

Our Experience in Development

10. Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 13 Oxfam affiliates that work together to fight poverty and injustice in more than 100 countries around the world. We have worked with local communities around the world to combat poverty and injustice for over 50 years.
11. Our organisation undertakes long-term development projects, provides emergency response during disaster and conflict, and conducts campaigning and advocacy for policy and practice changes which promote human rights and justice. We support over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.
12. Our experience confirms that effective development relies on the key principles of participation, transparency, collaboration and coordination, monitoring and evaluation, respect for human rights and establishment of mechanisms for review.

Rights-based Approach

13. Oxfam Australia adopts a rights-based approach (RBA) to community development. This approach focuses on the full achievement of the rights of human beings and looks at the drivers of inequality, poverty and conflict, rather than focusing on an immediate needs analysis alone. Oxfam's experience is that RBA has the potential to have a far greater impact within various levels of society because it uncovers and proposes solutions to multi-levelled barriers.
14. Significantly, rights-based approaches are no less 'practical' than other approaches and they look holistically at both rights and responsibilities.

"RBA programs emphasise not only needs and rights, but also responsibilities, in particular the government's legal obligations to promote and protect people's rights. RBA projects also build the capacity of rights bearers, so that they can insist on their rights and on government accountability".¹

15. The human rights obligations of governments include the duty to protect against the violation of rights by others, which includes taking action to ensure the safety, security, access to adequate food and other fundamental human rights of women, men and children where these rights are being denied by the actions of other members of a community. In so doing, however, governments must develop appropriate actions to avoid further undermining human rights.

3. Recommendations

16. Oxfam refers the committee to recommendations one (1) to fourteen (14) below that will be made by the Australian Human Rights Commission² (AHRC). Oxfam endorses these recommendations and the supporting rationale provided by the Australian Human Rights Commission and supports their immediate adoption.

¹ Rights-based Approaches learning project, CARE and Oxfam America, 2007.

² Based on a draft Submission provided by the Australian Human Rights Commission

17. In addition to supporting the recommendations made by the AHRC, Oxfam makes two further recommendations: fifteen (15) and sixteen (16).

- The Government Bills be amended to:
 - Include notwithstanding clauses in order to specify that the provisions of the *RDA* are intended to prevail over the NTER legislation and that the NTER legislation does not authorise conduct that is inconsistent with the provisions of the *RDA*;
 - Remove Item 4 of Schedule 1 of the Government Welfare Reform Bill (relating to retrospectivity and section 8 of the *Acts Interpretation Act 1901*) **[Recommendation 1]**.
- The Government lift the suspension of the *RDA* for all NTER measures no later than 1 July 2010 **[Recommendation 2]**.
- The Government reinstate state/ territory anti-discrimination legislation for all NTER measures no later than 1 July 2010 **[Recommendation 3]**.
- The categories of 'disadvantaged youth' and 'long-term welfare payment recipients' be reformulated to apply on a case-by-case basis as follows:
 - Welfare recipients be offered in the first instance the option to be voluntary income-managed;
 - Welfare recipients that do not choose to be voluntarily income-managed, and who fit a defined category, are assessed for inclusion based on their individual circumstances;
 - The decision to income manage the welfare recipient be made reviewable;
 - The welfare recipient have the option to apply for an exemption from income management at any stage of the process; and
 - Provide for a defined period of income management and make continuation of income management subject to regular review **[Recommendation 4]**.
- The Government develop proactive strategies to provide sufficient and appropriate information about the new exemption provisions **[Recommendation 5]**.
- The Government Welfare Reform Bill be amended to include a full definition of 'vulnerable welfare payment recipient' **[Recommendation 6]**.
- The Government supplement any income management scheme with additional support programs that address the rights to food, education, housing, and provide support in the form of financial, literacy/budgeting skills development for welfare recipients, safe houses for women and men, and alcohol and substance abuse programs **[Recommendation 7]**.
- The Government establish rigorous and comprehensive monitoring and evaluation mechanisms to progressively assess the effectiveness of income management measures, in advance of the 2012 evaluation **[Recommendation 8]**.

- The Government:
 - Ensure the participation of Indigenous peoples in developing, implementing and monitoring alcohol management plans and ensure all alcohol management processes are consistent with the RDA
 - Ensure alcohol restrictions are supplemented by investment in infrastructure in the health and mental health sectors (including culturally appropriate detoxification facilities) and investment in culturally appropriate community education programs delivered by Indigenous staff **[Recommendation 9]**.
- The Government Welfare Reform Bill be amended to remove clauses Schedule 3, item 10 (s 18), item 11 (s 19), item 12 (s 19A) in order that community consultation is a critical determinant of whether to support a community driven alcohol ban or not **[Recommendation 10]**.
- The Government Welfare Reform Bill be amended to remove clauses Schedule 4, Item 5 (s100A (5) and 100B (5)) **[Recommendation 11]**.
- The Government Bills be amended to remove the capacity to compulsorily acquire any further five-year leases under Part 4 of the NTNER Act and commit to obtaining the free, prior and informed consent of traditional owners to enter into voluntary lease arrangements for existing compulsory lease arrangements **[Recommendation 12]**.
- The Government Bills be amended to remove the statutory rights provisions, set out in Part IIB of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* **[Recommendation 13]**.
- The Government Welfare Reform Bill be amended to remove the business management areas powers **[Recommendation 14]**.
- That in relation to recommendation 8, Government ensures the effective engagement of Indigenous communities and their representatives, produces disaggregated information and evidence which allows for differences in impacts between different groups and communities to be properly captured, and provides dynamic and real-time feedback **[Recommendation 15]**.³
- That Government ensure that all legislative amendments are consistent with principles set out in relevant human rights treaties and declarations, with particular attention to the United Nations Declaration on the Rights of Indigenous Peoples **[Recommendation 16]**.

³ International experience would suggest that a number of important principles would inform the development of an effective monitoring and evaluation process for the ensuring programs have the intended outcomes and operate within a rights based framework. Amongst the most important of these would be: robust engagement of indigenous communities throughout the process so that they have an effective voice in assessing outcomes and process; allowing for disaggregated information and evidence to be collected which allow for differences in outcomes between groups to be properly captured and represented; building a program logic map which clearly links what Government is trying to achieve overall with how this will be done; the need for the process and findings to be transparent, and easily communicated; and creating a system which provides 'real-time' feedback where appropriate.

Recent international experience around social accountability, which refers to a broad range of actions that citizens can use to hold governments, NGOs and others accountable, have proved to be particularly effective in improving governance, increasing development effectiveness, and in empowering communities. Any approach to monitoring and evaluation will need to explore how best such mechanisms might be integrated.

3. Conclusions

18. Oxfam welcomes the Government intention to reinstate the Commonwealth *Racial Discriminations Act 1975*, and reform NTER measures to ensure they are no longer discriminatory.
19. However, we are concerned that aspects of the proposed measures will continue to have a discriminatory impact. Human rights concerns in relation to these measures remain and recommendations have been made to remedy this.
20. While Oxfam believes that the proposed amendments to the legislation do not adequately address all of our concerns, they are overall, an improvement on the measures currently in place that apply to prescribed communities in the Northern Territory.