



Submission to the Community Affairs Legislation Committee Inquiry into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009 and other NTER related Bills

February 2010

Introduction

1. Central Australian Aboriginal Congress is a large Aboriginal community controlled health service situated in Alice Springs. It has a client population of 6500 permanent residents and provides services to an additional 2200 visitors each year..
2. Congress welcomes this opportunity to provide comments on the Bills before the Committee. CONGRESS has previously provided submissions and other input to government and relevant inquiries, including the NTER Review Panel, on the impacts of the NTER on Aboriginal health and wellbeing.
3. Congress has welcomed the significantly-increased government investment targeted at the issues of Aboriginal health and disadvantage that has been provided under the NTER.
4. Congress notes that the NTER measures, including those included in the Bills, primarily address or impact on issues that are important social and cultural determinants of Indigenous health – housing, employment, education, poverty, the significance of land and culture, substance misuse, the impacts of discrimination and marginalisation, and the level of control that individuals and communities are able to exert over their life circumstances.
5. Given that the NTER has now passed to a ‘sustainable development’ phase and has been re-badged “Closing the Gap in the Northern Territory”, Congress believes that the redesign of the NTER measures should have taken more account of the available strong evidence relating to these determinants of health.
6. Congress submits that some of the Government’s proposed legislative amendments are not sufficiently or substantially evidence-based and consequently have the potential to create more harm than benefit, and to dilute efforts towards ‘closing the gap’
7. Congress believes that the Government has failed to make a cogent case that redesigned measures that are racially discriminatory are special measures under the *Racial Discrimination Act 1975* (RDA).

8. In relation to the Bills which are the subject of this inquiry:
- a. Congress supports the restoration of the Racial Discrimination Act. However Congress supports the following amendments presented by Senator Siewart, that (i) amendments are required to repeal the sections of the NTER legislation that exclude the operation of the RDA (Cth) and State and Territory laws that deal with discrimination, and, (ii) new provisions should be inserted ensuring the application of the RDA takes precedence over all other legislation;
 - b. All of the measures of the NTER should be redesigned to ensure that they comply with the RDA and other human rights obligations, including the United Nations Declaration on the Rights of Indigenous Peoples, and;
 - c. The restoration of the RDA should take place as soon as possible, not at the end of 2010 as currently envisaged in the Government's amendments. The major problem with the intervention is the racially discriminatory aspects which are causing much anger and hardship and include:
 - The quarantining of welfare payments to all people of one racial group living in certain areas irrespective of their behaviour or record in caring for their own children
 - The forced prohibition of alcohol to all people of one racial group living in certain areas. This is coupled with the introduction of extraordinary police powers that allow the police to enter any house in a prescribed community without a warrant if they suspect alcohol is being consumed
 - The forced removal of land title without compensation
 - The negative stereotypes of Aboriginal people, especially Aboriginal men

All of these problematic measures have been made possible by the suspension of the Racial Discrimination Act and Congress calls for its immediate reinstatement.

There are more appropriate alternatives to these measures which are not racially discriminatory including:

- The quarantining and income management of welfare payments for all Australian families who are not appropriately caring for their children as determined by FACS or some agreed measure of school attendance
- A comprehensive approach to alcohol including supply reduction, demand reduction and harm minimisation measures especially a minimum price benchmark and reduced take away trading hours. Prohibition should only be implemented at the request of Aboriginal communities.
- Ensuring land title is with either traditional owners or native title holders in all cases in accordance with the Land Rights Act
- Exploration of further alternatives for reform of infrastructure ownership on the land drawing on models of best practice for housing cooperatives and ensuring the infrastructure on the land remains in Aboriginal control

Comments on specific measures

Community consultation process and ‘special measures’

9. Congress submits that the community consultation process undertaken by the Government for the redesign of the NTER was inadequate for the purpose of deeming any measures as ‘special measures’ under the RDA.
10. The Australian Government supported the Review Panel’s overarching recommendation that “Government actions affecting Aboriginal communities respect Australia’s human rights obligations and conform with the *Racial Discrimination Act 1975*”.
11. While the Government is to be congratulated for its support for these recommendations, Congress is concerned that the actions of the Government in implementing them in relation to the redesign of the NTER fall well short of the standards required to fulfill such commitment.

Income Management

12. Congress believes that income management, if it is to be applied, should only be applied equally to all citizens and we therefore welcome this aspect of the redesigned NTER legislation
13. There is currently no evidence that compulsory blanket income management is an effective tool for helping to improve the living conditions for children and families in Indigenous communities, or to support disengaged youth and vulnerable individuals in the broader community. There is level 5 or anecdotal evidence in support of this measure as well as against the measure. This is not an acceptable level of evidence for such a major policy initiative.
14. In fact, the available evidence questions its efficacy. The claims that quarantining welfare income under the NTER has significantly improved health and reduced alcohol consumption cannot be sustained on the evidence presented. Indeed, the report most strongly relied on by the Government - the Australian Institute of Health and Welfare’s evaluation of income management¹ – is full of doubts and qualifications, stating that the research studies used were “towards the bottom of an evidence hierarchy”; and that “the overall evidence about the effectiveness of income management in isolation from other NTER measures was difficult to assess”. A key research study relied on included only a small number (76) of non-randomly selected clients from four locations.
15. Available evidence also questions the application of income management as a compulsory blanket, first resort measure. For example, the Cape York Welfare Reform trial shows that income management is applied to a minority of welfare recipients as a last resort compliance tool. Only 80 out of 424 intensively case-managed clients were on income management as at September 2009².
16. Despite this, the new scheme of income management will be applied on a blanket basis to two classes of welfare recipients: people aged 15-24 in receipt of welfare

¹ At www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/income_management_evaluation.aspx

² Families Responsibilities Commission Quarterly Report No. 5, July – September 2009.

payments for thirteen weeks or more (so-called “disengaged youth”); and people aged between 25 and pension age who have received welfare payments for more than 12 months (“long term welfare recipients”). The Minister’s explanatory material states that “these groups have been chosen based on their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours”. Yet it is clear that the majority of 15-24 year old and 25 to pension age welfare recipients will not satisfy these criteria and therefore will be unnecessarily subject to income management and its attendant restrictions on their lives. For those that may satisfy the criteria there is no evidence that first resort compulsory income management is an effective means of providing such support.

17. Congress has always maintained the view that income management should be trailed for all Australian families who are not appropriately caring for their children as determined by FACS or some agreed measure of school attendance. It must be linked to particular behaviors and not provided in a blanket fashion. It could also be applied to individuals who have a demonstrated problem with alcohol and violence. NGO’s, especially health services should be able to refer people to be considered for income quarantining.
18. There needs to be good data collected so that any form of income management that is introduced can be properly evaluated against clear objectives such as better school attendance, less child neglect and less welfare dependency. If it cannot be shown to be effective against these objectives it should not be retained otherwise it is simply an ideological measure aimed at punishing people on welfare without a clear benefit.
19. The uncertain benefits of income management cannot, at this stage, justify the enormous cost of the measure. At a cost of almost \$100 million per year to date to income manage 15,000 people, together with a budgeted figure that will push the cost of income management in the NT to in excess of \$650 million for the seven years between 2007-08 to 2013-14, a serious question arises regarding the opportunity cost of the measure. There is a significant opportunity cost in this investment. For example, this amount of money could provide desperately-needed community services and intensive case-management for those in real need. It could almost double the amount available for new and upgraded housing. Current budgeted expenditure will provide new housing in **only 16** out of the 73 prescribed communities and over 600 non-prescribed communities in the NT. Given that housing is a critical determinant of health and wellbeing, the inability of current funding levels to significantly or even marginally reduce overcrowding in most Aboriginal communities will deliver a continued dividend in poorer health outcomes and ongoing risk of neglect and abuse.
20. Congress is of the view that blanket income management should only be applied at a community level where there is demonstrated support from the community for the measure. This is consistent with the approach supported by Congress in relation to the restriction of alcohol in communities and consistent with the positive discrimination provision of the RDA.
21. Congress also supports the provision of voluntary income management to individuals who request it.

22. Congress notes that the proposed exemption process is administratively cumbersome and discretionary in nature and, in our view, will present significant difficulties for those on income management who would wish to apply for an exemption. Many who should qualify for exemption will remain unnecessarily stuck on income management for a considerable period. This system needs to be improved.

Restrictions on alcohol

23. Congress has developed considerable expertise around the issues of alcohol control and alcohol-related health and wellbeing issues.
24. Government-imposed prohibition of alcohol in Aboriginal communities does not meet the requirements of a special measure under the RDA for two reasons. Firstly, Congress believes that such an approach does not have community support and secondly the evidence is clear that such an approach does not work. The Australian Human Rights Commission has provided an opinion that alcohol restriction implemented with the full support of communities can qualify as a special measure under the RDA³.
25. Prior to the NTER, many Aboriginal communities had been declared 'dry communities' in the NT at the request of the Aboriginal communities themselves. This has occurred through the processes of the Northern Territory Licensing Commission. This demonstrates the preparedness of communities to provide leadership and take responsibility on this issue and to support alcohol restrictions.
26. There is a lack of evidence demonstrating that imposed alcohol prohibition on communities and town camps under the NTER has made a significant contribution to addressing the alcohol problem.
27. The approach of blanket prohibition of alcohol impedes or avoids confronting the urgently needed evidence-based reform of alcohol policy in the Northern Territory.
28. Locally based alcohol measures, such as Alcohol Management Plans (AMPs), are a more effective way to reduce alcohol consumption. Such measures require the support and involvement of communities in their design and implementation.
29. International and Australian research shows that the primary strategies for reducing levels of alcohol harm are adopting minimum pricing regimes and a graded volumetric tax for alcohol; reducing the availability of alcohol through reducing trading hours; and reducing availability of alcohol through a reduction in the number and density of outlets.
30. The Alice Springs Alcohol Supply Reduction Plan, commenced in October 2006, has demonstrated the effectiveness of supply reduction strategies. The Plan provided for restrictions on the hours of sale for port and wine, restrictions on the size of wine and port casks, restrictions on sale quantity, and the removal of long-neck beer bottles from sale.
31. Evaluation of the controls under the Plan by the Menzies School of Health Research⁴ indicated an 18 percent overall decline in pure alcohol consumption since October 2006. Furthermore, there has been a 50 percent reduction in homicides and

³ See 2007 Social Justice Report. At http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/index.html

⁴ At http://www.menzies.edu.au/sites/default/files/images/file/Alice_Springs_AMP_report.pdf

- suicides, a 20 percent reduction in grievous bodily harms, and a substantial reduction in other alcohol related harms in Alice Springs over the same period.
32. Congress has worked with CONGRESS to develop a policy document, *Options for Alcohol Control in the Northern Territory*,⁵ that outlines key measures for addressing alcohol, utilising the experience of Aboriginal community-controlled health services in the NT and evidence-based research on alcohol misuse from Australia and overseas. The document is appended to this submission.
 33. CONGRESS's *Options for Alcohol Control* document recommended that the NTER alcohol measures should be amended to ensure:
 - a. *Dry areas are determined according to the wishes of communities and supported by the provision of adequate policing, the retention of permit access (where on Aboriginal land), and that nearby liquor outlets, such as roadhouses, are subject to appropriate alcohol restrictions;*
 - b. *Wet canteens on communities are well run and do not permit takeaway alcohol;*
 - c. *The measures do not override existing alcohol management plans and liquor supply plans;*
 - d. *There are adequate treatment and rehabilitation programs according to need.*
 34. Any alcohol measures put in place need to be evaluable. The NTER failed to ensure that key data - alcohol sales, apparent per capita consumption and alcohol harms data such as homicides, suicides, MVAs, alcohol attributable hospital admissions and ED presentations - were available over time at a regional level. As such it is not possible to properly assess the impact of the measures. This is the antithesis of the evidence-based approach that is needed to address the harms created by "the rivers of grog" flowing along the Stuart Highway and its major feeder routes in the NT.
 35. Congress supports the intent of proposed amendments that improve aspects of the current NTER alcohol measures, particularly in providing flexibility to meet the individual needs of communities. However, the amended legislation retains an overall discriminatory, uncoordinated and inadequate approach to alcohol control.

Five-year leases

36. Congress did not support the compulsory declaration of five-year Commonwealth leases over prescribed communities under the NTER and believes that the leases should be rescinded or, at the very least, just compensation paid.
37. The current amendments will result in the five-year leases being immune from challenge under the RDA. This is unacceptable and inconsistent with the government's commitment that the redesign legislation will bring the NTER measures in line with the RDA.
38. Congress notes that the Australian Government has never provided adequate evidence of the need for compulsory five-year leases, as mechanisms already existed under the *Land Rights Act (Northern Territory) Act 1976* to obtain leases and to negotiate conditions that address issues such as security of assets and community housing management standards.

⁵ At <http://www.Congress.org.au/CONGRESSPolicyAlcoholControlFinalJan08.pdf>

39. The effect of declaring the five-year leases was to override the decision-making powers of traditional land owners and the statutory role of Land Councils with respect to approvals for activities and developments within prescribed town and community areas on Aboriginal land.
40. The government's commitment to "the progressive transition" of the five-year leases to so-called 'voluntary' long-term leases confirms its intention to exclude traditional land owners from participation in decision-making over the development of Aboriginal communities for the foreseeable future. Traditional land owners and community residents will have no decision-making powers in relation to the administration of long-term leases.
41. The so-called 'voluntary' leases could be more accurately described as coercive, as the government has imposed the non-negotiable condition that no new or upgraded housing or any other Commonwealth-funded infrastructure will be approved in a community unless a long-term lease is in place.
42. A further objective of the Government's policy is to ensure the transfer of all government-provided Aboriginal housing to the public housing sector, under the control of the Northern Territory's public housing authority – Territory Housing. This is not consistent with the governments national agenda which is to transfer responsibility fro public housing from state and territory governments to community controlled housing cooperatives. The different approach being taken in Aboriginal communities appears to be racially discriminatory
43. Congress notes that the effect of these policies is to dramatically reduce the level of Aboriginal control and participation in decision-making over the development of their communities and management of community housing.
44. Congress draws the attention of the Committee to existing evidence that shows that increased control afforded to Indigenous communities produces positive socio-economic outcomes. For example, one of the main findings of over 20 years' research by the Harvard Project on American Indian Economic Development is that when Indigenous nations "make their own decisions about what development approaches to take, they consistently out-perform external decision makers—on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision"⁶.
45. Article 23 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which the Australian Government has endorsed, states that "Indigenous peoples ... have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."
46. Congress believes that new and existing housing and other infrastructure in communities should be owned and managed by appropriate Aboriginal-controlled bodies and that the government should be actively encouraging such outcomes.
47. Congress recommends that the government scraps the existing five-year leases and immediately commences good faith negotiations with Aboriginal land owners and Land Councils on leasing and other arrangements that protect the property rights of Aboriginal land owners and preserves the ability of Aboriginal communities to determine and control their own futures.

⁶ At <http://www.hks.harvard.edu/hpaied/overview.htm>. Accessed February 2010

Community store licensing

48. Congress believes that the licensing of community stores has been a positive development and has the potential to improve governance standards and the role of stores in food security.
49. Congress notes that the proposed legislative amendments to remove the licensing of store managers and only license store owners, and to mandate the registering of store associations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), are not adequately explained or supported by evidence. These provisions have the effect of reducing choice and the potential for increasing the administrative burden of store associations.
50. The government seems to have given priority to providing itself with a wider range of options for intervention rather than on the more important need for the provision of appropriate support services to ensure that community store associations are able to effectively meet their responsibilities.

ACC law enforcement powers

51. Congress supports the additional police capacity in the NT provided by the ACC for the investigation of possible sexual abuse. However, Congress believes that the ACC should be required to operate within the existing laws.
52. The granting of special law enforcement powers to the Australian Crime Commission (ACC) in prescribed Aboriginal communities was an unnecessary and inappropriate measure it has meant that the ACC has the power to request confidential medical records without any need to show cause as to why such records are being requested. This has very serious negative public health implications in terms of impeding the access of Aboriginal people to medical care.
53. The slight reduction in scope of the ACC's powers proposed in the Government's Bill does not alter the inappropriateness of the ACC's role. It should be removed completely
54. The ACC's powers and role in relation to the NTER do not qualify as special measures and should be removed.
55. Congress believes that the best response to the issues of violence and child abuse in Aboriginal communities is through reliance on the NT Police and relevant child welfare agencies, and most importantly, ensuring that these agencies are adequately resourced for the task and that there is appropriate engagement and participation of the communities themselves in achieving solutions.

Business management area powers

56. These measures give the Government the power to unilaterally vary and terminate funding agreements and the Minister can make intrusive directions in relation to the assets and actions of organisations providing services in prescribed communities.
57. The business management powers are unprecedented, excessive and unnecessary, and have not been used – there is no reason to keep them, particularly as the NTER is supposed to have moved to a 'sustainable development' phase.

58. The powers are not special measures as they permit unilateral adverse decision-making by the Minister against the wishes of the governing bodies of Aboriginal and other organisations. The powers are intrusive and coercive and extend inappropriate control over the assets of such organisations.

Restrictions on pornography and Controls on use of publicly-funded computers

59. These two measures are similar in that they were originally introduced to protect women and children from inadvertent exposure to pornography.
60. There has been no evidence provided by the Government demonstrating that greater protection has resulted from the measures.
61. The government has also failed to explain why existing restrictions on the use of publicly funded equipment and access to pornographic materials are not sufficient and why additional controls are necessary for Aboriginal communities.
62. Both measures have contributed to the stigmatisation of prescribed Aboriginal communities by suggesting their use of pornography is considerably in excess of such misuse in the broader community. This is made very apparent by the “no pornography signs” which publicly and continuously reinforce this stigmatization. These signs must be removed as they have no support from the community and cannot be construed as a special measure.
63. Consultation over the measures has been inadequate as they were not discussed at many of the community consultation meetings because the subject was considered culturally inappropriate.
64. The measures do not appear to meet the requirements of a special measure and should be removed.