

Submission to the Community Affairs Legislation Committee

Inquiry into NTER Legislation Amendments, including Welfare Reform and Reinstatement of the Racial Discrimination Act.

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1. Introduction and general comments

- 1.1. ANTaR is a national organisation that exists to promote the rights of Aboriginal and Torres Strait Islander peoples, including by working to change the attitudes and behaviours of non-Indigenous Australians so that the rights and cultures of Aboriginal and Torres Strait Islander people are respected and affirmed across all sections of society.
- 1.2. ANTaR has previously provided submissions on the NTER including to the NTER Review Panel.
- 1.3. While welcoming the significantly increased investment from government that has come with the NTER, ANTaR was critical of the original measures adopted and the lack of consultation and engagement with affected Aboriginal communities on their design and implementation.
- 1.4. The principal policy failings of the original NTER measures were that their design was poorly matched to the stated purposes of the NTER, failed to take account of the available evidence, and applied a racially discriminatory approach, requiring the suspension of anti-discrimination legislation including the *Racial Discrimination Act 1975* (RDA).
- 1.5. ANTaR therefore welcomed the Government's commitment to reform the NTER based on the resetting of the relationship with Aboriginal people to one of genuine consultation, engagement and partnership, and to achieve the reinstatement of the RDA.
- 1.6. In her second reading speech the Minister stated that the current Bill:

...provides the legislative basis to underpin the sustainable, long-term development phase of the NTER. The government will continue to take strong action to close the gap in the Northern Territory, working in close partnership with Indigenous Australians, recognising that they are central to developing effective solutions and driving change.
- 1.7. ANTaR does not believe the content of the Bills in their current form and the process of their development will achieve the aims articulated in the Minister's speech.
- 1.8. ANTaR has strongly advocated the need for an evidence-based approach to addressing the issues of Aboriginal disadvantage. We have stressed that such an approach requires that measures aimed at closing the gap must take account of the social and cultural determinants of health, particularly in the areas of individual and community control. For Aboriginal people this is, in essence, about empowerment – the ability to take responsibility for their lives and for the development of their communities.
- 1.9. ANTaR is strongly of the view that the Government's proposed legislative amendments are not evidence-based and consistently err towards substituting individual and community control with control by the Minister and Government Departments, increasingly through inaccessible mechanisms such as regulations and Ministerial declaration. Such an approach is inconsistent with '*working in close partnership with Indigenous Australians, recognising that they are central to*

developing effective solutions and driving change', and has the potential, in our view, to create more harm than benefit.

- 1.10. Whilst ANTaR has consistently called for the suspension of the RDA to be ended in relation to the NTER, we remain concerned that measures which the government wishes to retain in the guise of 'special measures' do not meet the internationally-recognised criteria for such measures, because the affected people have not widely agreed to them, and it is not clear that they will always generate benefit for the people they are intended to benefit.
- 1.11. Notwithstanding the urgent need for reform to the NTER, ANTaR is also concerned that the short time frame for scrutiny of the Bills, the fact that the submission period fell over the Christmas holidays and a time of busy ceremonial activity for affected communities, and the lack of accessible information about what the Bills contain, means that Aboriginal people affected by the changes will not be able to meaningfully participate in this process.
- 1.12. The remainder of this submission addresses the individual redesign measures and concludes with a discussion of issues that have not been addressed in the current Bills.

2. The community consultation process and the role of 'special measures'

- 2.1. ANTaR believes that the consultation process upon which the redesigned measures are based, was inadequate and flawed.
- 2.2. The Government's *Future Directions* discussion paper that was used to inform the community consultation process did not present a balanced or adequate explanation of the measures and evidence of the benefits and impacts of the NTER. It presented a narrow agenda that offered only minor changes to the NTER measures and relied on the redesigned measures being accepted as 'special measures' under the RDA.
- 2.3. The community consultation process, though extensive in scale, was procedurally flawed and failed to adequately inform or allow for considered discussion by the affected communities, including in relation to the implications of the process in terms of affecting their rights and obligations.
- 2.4. Significant deficiencies in the community consultation process have been documented in the *Will They Be Heard* report and reports from those who attended the meetings. These include the lack of independence and conflict of interest of the government staff conducting the meetings; lack of notice of meetings; lack of time available to discuss the range and complexity issues involved; inadequate and incorrect information provided to participants; lack of interpreters; and lack of priority and adequate explanation given to the issue of 'special measures' and the role that the community consultations process had in obtaining consent.
- 2.5. The Government's approach of maintaining existing measures with only minor changes and attempting to have them recognised as 'special measures' under the RDA cannot be supported on the basis of the outcomes of the community consultation process. There is no evidence that the Government's process has achieved the standard of 'free, prior informed consent' that is one of the core requirements of a 'special measure'.

3. Income Management

- 3.1. ANTaR strongly opposes the extension of compulsory income management as proposed in the Government's Bill.
- 3.2. The Government has failed to provide sufficient evidence of the widespread benefits of compulsory income management. The Minister states that income management has helped 'by reducing the amount of welfare funds available for substance abuse and other risky behaviours', and that the measure has resulted in improved health. However, the findings of the Australian Institute of Health and Welfare's evaluation report of income management¹, commissioned by the Minister, highlighted the uncertainties of the available evidence. The AIHW report found significant deficiencies with the research studies referred to it for evaluation, concluding that these were 'towards the bottom of an evidence hierarchy'. This included a key study that was based on less than 80 respondents from only four communities. The AIHW also found that it was difficult to conclude that evidence of benefit was the result of income management or other measures.
- 3.3. ANTaR submits that the available evidence does not support the use of income management as a blanket, first resort measure. The Cape York Welfare Reform trial, for example, has applied income management to only a small proportion of welfare recipients in the Cape trial communities, as a last resort compliance measure².
- 3.4. ANTaR welcomes the lifting of compulsory income management from groups of people such as students, aged pensioners, veterans and disability support pensioners. However, the Government's new income management scheme will, however continue to be applied on a blanket basis instead: to 15-24 year olds in receipt of welfare payments for 3 months or more ('disengaged youth'), and; to those aged between 25 and pension age who have received welfare payments for more than 12 months ('long term welfare recipients'). The Cape York evidence suggests that income management would need to be applied to only a small proportion of these targeted groups, on a case by case basis.
- 3.5. The Government states that these two groups have been chosen because of 'their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours'³. Insufficient evidence has been provided to show that income management is an effective tool for addressing these issues. Conceivably other measures could be far more effective and more valuable in the longer term, for example, providing out-of-school and adult educational and training opportunities, and employment generating programs.
- 3.6. Two years' experience of income management under the NTER has provided evidence of significant negative impacts on the lives of those subject to the measure. Income management has turned many people's lives into a bureaucratic and logistical ordeal – hardly the makings of a sound policy. Many individuals reported strong feelings of shame and stigmatisation at being subject to a racially-targeted policy and being forced to stand in separate queues with their BasicsCard

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

² <http://www.atsip.qld.gov.au/government/families-responsibilities-commission/>

³ Minister's Second Reading speech.

or find at the checkout that they don't have enough money on their card for their chosen purchases. The limited number and range of stores approved to accept BasicsCards has meant that many people have to travel long distances at considerable cost to access stores for basic items, including groceries, and are limited in their choice of shops. Those travelling away from their homes have faced considerable inconvenience in attempting to access their money, often requiring lengthy and frustrating phone calls or visits to Centrelink offices. Income management overburdens welfare recipients in that they effectively have to run two sets of books, having to juggle their cash and income managed reserves separately.

- 3.7. One of the most common complaints about income management is that it takes responsibility away from the majority of people who responsibly manage their money. People talk of feeling like they are being punished or treated like children.
- 3.8. The Government should not ignore the deep well of resentment that policies such as income management have generated, which will continue to undermine the Government's efforts at 'resetting the relationship'.
- 3.9. It is noted that affected Aboriginal communities have expressed considerable opposition to compulsory income management.
- 3.10. ANTaR notes that the new scheme of income management will likely result in most of those currently on income management being forced to remain on it. Furthermore, the complicated exemption process and the long timeframe for lifting the suspensions of anti-discrimination legislation, including the RDA, will leave many people stuck on income management for longer than is necessary.
- 3.11. ANTaR believes that the new income management scheme will continue to be discriminatory as it will disproportionately impact on Aboriginal Territorians, who are more heavily represented in the target categories, and perpetuate the negative impacts it will bring to their lives. It will be cold comfort to Aboriginal people on income management that non-Indigenous people will now also be subject to it.
- 3.12. ANTaR believes that a simple cost-benefit analysis of income management should immediately rule it out as a rational and efficient policy option. At a cost running just shy of \$100 million per year, expenditure on income management is roughly equivalent to the annual total expenditure on Aboriginal primary health care in the NT, servicing a population of approximately 40,000. Income management is currently applied to only 15,000 people and is slated to apply to 20,000 under the proposed new scheme. As a further comparison, the total cost of income management over the seven years to 2013-14 is expected to be roughly equivalent to the entire budget of the SIHIP scheme – \$672 million – a figure gushingly described by the Government as 'the largest investment ever made in Indigenous housing in the NT'.
- 3.13. ANTaR also notes that the costs to and impacts on the private sector and small business resulting from the extension of income management is yet to be investigated.
- 3.14. The evidence clearly shows that achieving the goals of closing the gap and in particular, reducing the impacts of community dysfunction, would be far better served by a redirection of expenditure on income management to other policy areas, such as community support services, intensive case management or further reducing housing overcrowding.

- 3.15. One prospective, strongly evidence-based and less expensive option for achieving such outcomes would be to improve the Australian Government's response to alcohol control under the NTER (see section below).
- 3.16. If income management may have a legitimate role then it would be as one of a suite of options directed at helping individuals and families to address dysfunctional behaviours. Such a model would be based on intensive case management linked to appropriate evidence-based 'triggers' applied via a process that is both transparent and open to administrative appeal.

4. Five-year leases

- 4.1. The declaration of five-year leases over prescribed communities under the NTER was an inappropriate and unnecessary measure. The reasons for declaring the leases – providing security of tenure, access for service delivery, building repairs and infrastructure upgrades – were not supported by evidence. On the contrary, there were already mechanisms under the ALRA for achieving the stated aims of the leases.
- 4.2. The Government's apparent main objective and the major effect of declaring the leases, was to remove the control of traditional land owners, supported by the Land Councils, over land use decisions within towns and communities on Aboriginal land.
- 4.3. The proposed amendments envisage the transition of the five-year leases over time to long-term leases. This will have the effect of excluding traditional land owners and residents from land use and development decisions over Aboriginal communities for generations to come.
- 4.4. This land tenure reform has been underpinned by an inflexible policy to refuse approval for funding for new housing and other government funded infrastructure unless a long-term lease is in place. Such leases cannot therefore, be regarded as 'voluntary'.
- 4.5. The linking of the provision of new and upgraded housing with long-term leases is related to the Government's policy to transfer of all government-provided Aboriginal housing to the public housing sector and away from Indigenous community housing organisations. Under this policy, ownership and control will be transferred to the Northern Territory's public housing authority – Territory Housing – with the intention that mainstream housing tenancy arrangements be applied.
- 4.6. The Coordinator General for Remote Indigenous Service Delivery noted that '*While communities are impatient for new and refurbished housing, during my visits individuals have concerns about some aspects of the reforms being implemented. There is some confusion and differences of view in some communities about governments' insistence that new housing is underpinned by long term leases and mainstream tenancy management arrangements. Those with concerns are wary of reforms that relate to land tenure because of their connection to the land and governments' changing approach to tenure issues.*' (CGRIS Report p 88).
- 4.7. These policy changes are not only unnecessary, but they have the effect of removing or significantly reducing Aboriginal control of decision-making and housing and infrastructure management within Aboriginal communities. Evidence shows that

the lack of control over community governance is a determinant of poorer socioeconomic outcomes.⁴

- 4.8. ANTaR supports the scrapping of the existing five-year leases and recommends that the Government instead commences negotiations in good faith with Aboriginal land owners and Land Councils to develop leasing and other arrangements that protect the property rights of Aboriginal land owners and maintain the ability of Aboriginal communities to determine and control their own futures.

5. Restrictions on alcohol

- 5.1. The alcohol restrictions brought under the NTER were imposed on top of existing Northern Territory alcohol legislation and we believe that this has had the unfortunate consequence of delaying urgently needed reform of alcohol legislation and policy in the Northern Territory.
- 5.2. Imposed prohibition of alcohol on Aboriginal communities is discriminatory. The advice of the Australian Human Rights Commission that alcohol restrictions could only be considered a special measure under the RDA where there is full support of affected communities, suggests that the NTER alcohol measures do not qualify as special measures.
- 5.3. ANTaR supports an approach where communities are able to decide their own need for alcohol restrictions and other measures to control alcohol. Many 'dry' communities have been declared in the NT at the request of the Aboriginal communities themselves. The Government should be seeking to provide support for a Northern Territory-based process that offers Aboriginal communities advice and support in developing and implementing their own Alcohol Management Plans. This is consistent with the recommendations of the NTER Review Board report.
- 5.4. Where communities request the prohibition of alcohol, this should occur under the existing NT mechanism via the NT Licensing Commission.
- 5.5. Such an approach would make the proposed amendments to provide a process for lifting or reapplying alcohol restrictions in a prescribed area under the NTNER Act unnecessary.
- 5.6. ANTaR is encouraged by the stated intention of the Australian Government to work together with the Northern Territory Government and communities to implement locally negotiated alcohol management plans. However we do not believe that Commonwealth legislation is the appropriate vehicle for regulating and administering the development of alcohol control measures in the NT. We need a comprehensive and effective Northern Territory system.
- 5.7. ANTaR believes that the Government should repeal the alcohol restriction sections of the NTER legislation and instead work in cooperation with the Northern Territory Government to develop comprehensive and effective NT-based alcohol control policies, including through the reform of the NT Liquor Act.
- 5.8. Reducing alcohol consumption is essential across the entire NT, where average consumption rates are almost twice the national average.

⁴ See, for example, the Harvard Project on American Indian Development. <http://www.hks.harvard.edu/hpaied/>

- 5.9. Australian and international evidence shows that reducing alcohol consumption is best achieved by a combination of pricing and sales restrictions and locally based alcohol measures, such as Alcohol Management Plans.
- 5.10. Such measures require the support and involvement of communities in their design and implementation.
- 5.11. While some of the proposed amendments improve aspects of the measures, the improvements do not change the overall inappropriateness of the alcohol measures.

6. Community store licensing

- 6.1. The primary objectives of community store licensing policy should be to improve store governance standards, provide assistance to store associations in meeting their responsibilities, and to help ensure that stores carry an adequate, affordable range of fresh foods and other necessities.
- 6.2. ANTaR remains concerned that the NTER legislative provisions dealing with community store licensing are overly-bureaucratic and interventionist, providing wide discretionary powers that risk imposing excessive administrative burdens on store associations and store managers, while at the same time restricting choice in the business models open to individual community stores.
- 6.3. ANTaR opposes the legislative linking of community store licensing with income management. The onerous infrastructure needs and reporting requirements for stores registered for income management and the overly-prescriptive conditions for stores obtaining a license has perverse outcomes where some community stores haven't been able to accept income managed funds, forcing community residents to travel excessive distances to the nearest licensed store.

7. Australian Crime Commission law enforcement powers

- 7.1. The granting of special law enforcement powers to the Australian Crime Commission (ACC) in relation to serious violence and child abuse in prescribed Aboriginal communities was a measure which many Aboriginal people felt further stigmatised them.
- 7.2. The ACC is viewed by many NT Aboriginal people as an inappropriate body for responding to the sensitive and challenging issues surrounding child abuse.
- 7.3. The minor reduction of the ACC's powers as proposed in the Bill represents a slight improvement. There may be a role for the ACC where serious organised crime is identified. This is in line with its core mandate. We are not aware of such evidence having been identified in relation to Aboriginal communities in the NT. However, the ACC is not the most appropriate agency to tackle the more general issues of violence and child abuse in Aboriginal communities. Other agencies are far better placed to deal with these issues, and should be adequately resourced for the task.
- 7.4. Furthermore, it is arguable whether the ACC's powers and role in relation to the NTER would qualify as a special measure.

8. Business management area powers

- 8.1. The business management area powers included in the original NTER legislation are excessive and unwarranted. This measure gives the Government wide discretionary powers over any organisation providing a service within a prescribed community. It can vary and terminate funding agreements and directly intervene and make directions in relation to the assets and operations of such organisations.
- 8.2. Such powers are totally unreasonable and reflect the deep distrust of Government towards Aboriginal organisations and the ability of such organisations to effectively manage their responsibilities. The fact that these powers have not been used to date is an indication that they are unnecessary.
- 8.3. The Government itself argued in the *Future Directions* discussion paper that the power to terminate funding agreements was unnecessary and that it intended to remove this power, however it has not done so.
- 8.4. Given that the business management area powers enable the Minister to adversely interfere with and impact on Aboriginal organisations against the wishes of their governing bodies it cannot be regarded as a special measure and should be removed.

9. Controls on access to pornography

- 9.1. Two NTER measures address the Government's identified need to restrict access to pornography in prescribed communities: a ban on the possession of pornography within prescribed communities; and compulsory audits of government-provided computers in communities.
- 9.2. The government has failed to explain why existing restrictions on the use of publicly funded equipment and controls on pornographic materials are inadequate, and why additional controls are necessary specifically for Aboriginal communities. It has also failed to provide evidence of the effectiveness of the measures to date.
- 9.3. Aboriginal people affected by these measures report that it has contributed to the stigmatisation of prescribed Aboriginal communities, suggesting the misuse of pornography in these communities is far in excess of that in the broader community. There has also been considerable concern expressed that the display of the pornography ban on the prominent 'Prescribed Area' signs outside communities has added to feelings of shame and stigmatisation.
- 9.4. There was inadequate consultation over these measures during the community consultation process because the issue was seen as culturally inappropriate and therefore was not discussed at many community meetings.
- 9.5. Given the lack of demonstrated benefit and inadequate consultation, the measures do not appear to meet the requirements of a special measure under the RDA and should be removed.
- 9.6. Education rather than criminalisation is a far more effective tool for preventing harm caused by the use of pornography. ANTaR urges the government to implement the recommendation of the Little Children Are Sacred report (LCASR) relating to pornography:

'Rec 87. That an education campaign be conducted to inform communities of:
a. the meaning of and rationale for film and television show classifications
b. the prohibition contained in the Criminal Code making it an offence to intentionally expose a child under the age of 16 years to an indecent object or film, video or audio tape or photograph or book and the implications generally for a child's wellbeing of permitting them to watch or see such sexually explicit material.'

10. Issues not addressed in the NTER redesign Bills

- 10.1. While the need to reinstate the RDA has been important, it is only part of the story in terms of reforming the NTER into a policy framework that is truly based on *'working in close partnership with Indigenous Australians, recognising that they are central to developing effective solutions and driving change'*.
- 10.2. ANTaR is disappointed that the Government has failed to relinquish most of the unreasonable and unnecessary wide arbitrary powers that were included in the original NTER legislation. In fact, it has added a number of new ones through the amendments contained in the Bills.
- 10.3. We have to ask why the Government is wedded to such an approach, as it remains perhaps the most significant unaddressed issue in the Bills before parliament.
- 10.4. The Australian and Northern Territory Governments' response to the NTER Review Board Recommendations⁵, gives the impression that there is overwhelming support for the recommendations. Yet, in terms of *acting* on the recommendations very little has been done.
- 10.5. Some of the unaddressed issues include many of the NTER Review Panel's positive action suggestions, such as:
 - shifting from a punitive, regulatory approach to one of building services to support local efforts to address the well known problems;
 - letting local people take the lead and take ownership of the problems and solutions;
 - where Aboriginal leadership or governance is lacking, placing competent, experienced community development workers to assist in developing that leadership and governance.
- 10.6. The recommendations on governance, agreement making and capacity building found on p57 of the NTER Review Board report should be adopted. These include:
 - The Australian and NT Governments working in partnership to develop, in consultation with Aboriginal communities, supporting programs and structures to enhance Indigenous governance bodies at local and regional levels that will enable these communities to achieve their cultural, political, economic and social development goals.

⁵ http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/response_to_reportNTER/Pages/default.aspx
Accessed 2 Feb 2010.

- Priority be given to capacity building for Indigenous leadership and governance at the local community level.
- The development of local and regional partnership agreements, negotiated equitably between the communities and governments, as the basis for determining and organising delivery of services.

10.7. The importance and urgency of attending to improvements in the governance of both some Indigenous communities and the complex and dysfunctional intergovernmental and interdepartmental governmental arrangements are also highlighted in the first report of the Coordinator General for Remote Service Delivery (CGRSD):

'Strong governance and strong leadership in remote Indigenous communities are preconditions for the normalisation of relations, improved service provision and closing the gap in life outcomes. It encompasses how governments organise what they do and how they relate to communities, how communities manage themselves and relate to government and the exercise of personal responsibility and leadership.

It is already apparent there is a clear delineation between communities in which government is present and positively engaged and where communities have a means of coming together and individuals are exercising leadership, and those where any or all of these elements are weak or absent.'(p97)

He went on to say:

'It is critical for governments to recognise that there is a capacity gap with respect to the new ways of working required under the National Partnership Agreement on Remote Service Delivery which goes well beyond basic cultural competency training for staff. Agencies need to communicate to their staff at all levels that they are authorised to implement the new approach, and to assist them with acquiring the skills and knowledge required for working in a whole-of-government way and to increase their understanding of service delivery in a remote community context. Agencies need to ensure there are strong and streamlined working connections between their officers and the Single Government Interface.'(p98)

This is not the first time that such comments have been made – there are countless reports which make these same points. Furthermore, international evidence from the Harvard Project on Native American Indians indicates that getting the governance right is a precondition for closing the gaps. This area needs urgent needs attention.

10.8. The role of Government Business Managers (GBMs) was misconceived and the position of GBM has been compromised in the eyes of many prescribed communities. The Government should have followed the recommendation of the NTER Review Panel that the GBM role be re-configured with a community development focus.

10.9. There is a need for more adequate family support services, especially for families dealing with violence. The recommendations of the NTER Review Board in this area emphasise that funding priority should be given *'to enable Aboriginal communities to build community integration and ownership of a child and community safety system that has the capacity to interface effectively with government agencies.'*

They also make a number of important recommendations about the management and operation of existing and any new Safe Houses, and call for a strategy to develop youth services to be developed (NTER Review p 35).

- 10.10. There is a need for more local employment and this could be achieved by local workers being trained and employed as health, education, welfare and community development workers in communities as well as in construction (see LCASR recommendations nos. 80–85).
- 10.11. There is scope to accelerate the roll-out of child & family centres to designated and other NT communities, as highlighted in the Coordinator General for Remote Service Delivery Report (p 64). He notes that many services already approved will not actually be operational in many communities until mid 2011 or later, making achievement of year 12 attainment rates in the medium term difficult.
- 10.12. There is also scope to boost vocational education and training programs (CGRSD p 83) and accelerate the roll out of Trades Training Centres for secondary schools; many locations will not gain the benefits of this roll out until towards the end of a ten-year program (CGRSD p 72).
- 10.13. There is an urgent need to boost support for end stage renal disease services in Alice Springs and community dialysis services in more remote locations, co-located with primary health services (CGRSD p 77).

11. Concluding remarks

ANTaR believes that the overwhelming evidence of successful models in Australia, combined with international experience, provides compelling argument for restoring a greater sense of control back to NT Aboriginal communities through policies that promote individual and community agency. Control over one's circumstances is one of the major social determinants of health. The major reports referred to in this submission emphasise the importance of people being empowered, taking ownership and leadership and solving their own problems with the right sort of support from governments working together, and in a responsive, coordinated way. The proposed legislation fails to grasp and support such an emphasis. Rather, it perpetuates a high degree of government control over Aboriginal lives with uncertain and unproven long term benefit. ANTaR believes that government resources can be redirected to far more strategically effective programs and activities that existing evidence already tells us would help close the gaps and sustain such closure over the longer term.

Thus, while ANTaR welcomes the ending of the suspension of the RDA over prescribed communities in the NT we believe the proposed legislation requires further amendment to deal with many of the issues raised above. We would urge, however, that making these amendments not delay lifting income management from people such as students, aged pensioners, veterans and disability support pensioners who would immediately be exempt from income management if this legislation were to pass in its current form. We trust the Senate will be able to find creative ways to enable this to occur.