



Aboriginal Catholic Ministry

Sydney Archdiocese

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Submission to the Senate Community Affairs Committee: Social Security Legislation Amendment Bill 2011 and Stronger Futures in the Northern Territory Bill 2011

31st January 2012

Introduction

The Aboriginal Catholic Ministry (ACM) is a ministry of the Catholic Archdiocese of Sydney. It aims to support Aboriginal people to live and express their faith as Aboriginal Catholics. In addition to providing pastoral care the ACM is the interface between Aboriginal peoples and the Catholic Church. It gives voice to the concerns of Aboriginal and Torres Strait Islander peoples and is actively engaged in advocating for the rights of Indigenous peoples. The ACM also aims to promote a greater understanding of Aboriginal and Torres Strait Islander peoples, cultures and social justice issues amongst the wider community.

The Catholic Church has been involved with advocacy relating to the Northern Territory Emergency Response (NTER or the Intervention) through its various agencies since it was introduced in 2007. In addition, the authors of this submission have had significant involvement through the National Council of Churches' National Aboriginal and Torres Strait Islander Ecumenical Commission, of which the Catholic Church is a member. In particular, they participated in a World Council of Churches Living Letters visit to the Northern Territory in 2010. This International delegation of Church leaders was organised to investigate the impact of the NT Intervention on the lives of Aboriginal communities¹. The ACM sees the NT Intervention as a social justice issue that has violated, and continues to violate, many rights of Indigenous peoples. The ACM is particularly concerned that the Government has failed to provide evidence that the Intervention has been an effective policy and that life under it has improved for Aboriginal people.

The ACM urges the Senate not to pass these Bills and to also ensure that any future legislation upholds the rights of Aboriginal people in the Northern Territory (NT).

¹ For details about this visit and relevant statements

<http://www.ncca.org.au/departments/natsiec/advocacy/issues/558-wcc-living-letters-visit>

Comment on the Stronger Futures in the Northern Territory Bills

The ACM has several concerns with the content and the intention of the Bills and will address the following in this submission:

- The rationale underpinning the Intervention and its measures
- The lack of consultation with Aboriginal people in the NT
- The lack of proper evaluation and reporting
- Specific concerns with the content of the Bills.

Intervention rationale

There is no doubt that there was, and remains, a very great need for a concerted effort and far reaching action in the Northern Territory to address disadvantage. Living conditions for many Aboriginal people at the time of the Intervention were shameful and remain so. Without rehashing all the arguments that we and others made at the time we maintain that the language used in implementation of the Intervention was misleading and continues to cause problems. The idea of an ‘emergency’ implies that this was something that had suddenly happened and needed an immediate and drastic intervention. As we know, these conditions were known about for a very long time, Aboriginal people and other advocates have been trying to draw attention to the need for action for years. These conditions were the result of decades of neglect by Governments at all levels and many had been trying to address the issues in an environment characterised by lack of support and appropriate funding. Unfortunately, the focus on ‘emergency intervention’ has contributed to the perception that Aboriginal people are somehow responsible for their own disadvantage and that Government has to take control to ‘fix it’.

The Government has said that they acknowledge that there were problems with the implementation by the previous Government and that they want to “reset” the relationship with Aboriginal people. Now the language being used is “stronger futures” rather than emergency intervention. However, Government actions do not support this rhetoric. This legislation continues to cast Aboriginal people as unable to manage their own affairs. It further removes Aboriginal rights over land and continues to disempower and disenfranchise people through the use of punitive measures connected with alcohol management, income management and school attendance amongst others. The fact that the suicide rate has doubled in Aboriginal communities during the Intervention should not be dismissed. It speaks to the depths of despair that many in NT Aboriginal communities are feeling. During our own visit in 2010, we were not told about the improvements that had supposedly flowed from the Intervention, rather we were told about how life was worse, how people felt like they were being treated like children and how much had been taken from them.² We believe that many

² Beyond Intervention Many Voices, One Purpose: Standing in Solidarity, World Council of Churches

of the Intervention measures are insidious and are a cynical move to micro manage and control Aboriginal people and their lives. There is nothing in the current proposed legislation that leads us to believe that this will change.

Evaluation and reporting

The Government has regularly reported on the NTER, indeed in the latter half of 2011 there was a flurry of reports. Given the number of reports published over the past few years the effectiveness of the various measures of the Intervention should be very clear. However, despite the quantity of reports, the quality of reporting has been consistently inadequate. Benchmarks and proper goals were not set at the beginning. Since then regular NTER reports talk about quantitative measures of implementation, i.e. how many police have been provided, how many reports to police have been made, numbers of teachers etc. What is missing from these reports is twofold. Firstly, what is not identified is what was in place before the NTER and also what is needed in total to bring services and socio economic status in NT Aboriginal communities on a par with the rest of Australia. For example, in the Enhancing Education chapter of Northern Territory Emergency Response: Evaluation Report 2011 it is clearly stated that school infrastructure in the NT is insufficient if all eligible children did actually go to school. The figures reported about expenditure and quantities of personnel placed etc are meaningless without knowing other facts such as the starting point, the total need and how far off meeting that need we are.

Secondly, the NTER reporting regime fails to report comprehensively on impacts or outcomes of these measures. There is a vagueness to the reports that fails to explain, describe or analyse what affect more teachers, more police and other measures are having. On raw data it can be seen for example that school enrolments have fallen and reported incidents of domestic violence have risen. There is little quality data available to suggest that any of these measures are working.

Most recently a very comprehensive evaluation of the NTER was released (the evaluation report)³. This report contained some interesting and salient points. What was striking about this report however was that the chapters were written on the basis of “desk top reviews”, i.e. the authors were provided with the Government’s previous reports and some unpublished surveys commissioned by the Government. Therefore the evaluation was really an evaluation of the Government’s data, rather than an objective study of the impact of the NTER. The veracity of much of this ‘data’ reported by Government must be questioned. Some of it relies on perceptions which are not fully explained, for example is the school “better”? Has safety “improved”? There are also issues around who was asked and how the responses were facilitated. The advocacy group ‘concerned Australians’ in their report on the evaluation report discuss the lack of inclusion of local community people, and particularly leaders in the decision making process⁴. According to ‘concerned Australians’ some of the key concerns

http://www.ncca.org.au/files/Natsiec/2495_LivingLettersReport_Beyond_Intervention_2010_f_lowres_r.pdf
accessed 24/01/2012

³ Northern Territory Emergency Response: Evaluation Report 2011, FaHCSIA 2011

about the evaluation process were that no leading representative from a prescribed community was invited onto the Advisory group for this Evaluation and that there was a failure to acknowledge Elders as leaders in communities⁵.

While, as you would expect, the tone of the Evaluation report is generally positive about the NTER in most chapters the authors claim to be unable to verify the veracity of the information due to lack of data. In several chapters comments are made about the failure of Government to initiate proper recording of program activities. There are also several instances where authors comment that due to concurrent changes to other policies, particularly NT Government policies, it is not possible to know whether it is the NTER measures or other measures that have caused any perceived changes. It is concerning that the Government has now introduced legislation that continues the implementation of policies that have not yet been proven to be effective. In fact, Eva Cox makes the point that “the situation is worse” and that “despite Government claims management of ‘evidence’ for the benefits of the new program, its own evaluation proposal makes it clear the evidence is not there.”⁶

Furthermore, it is concerning that not only has the Government failed to address well known data collection issues it has in fact continued to make strong statements about the validity of ‘evidence’ it uses to support its position. It is hard to not conclude that the Government is wilfully ignoring the evidence before it and is intentionally promoting its own agenda no matter what the evidence is saying.

In relation to this current legislation, given the lack of proper evidence it is also worrying that this Bill will not be reviewed for seven years. If the Government continues to fail to provide proper evidence Aboriginal people will be subject to up to 13 years of interventionist policies which have not been rigorously and independently evaluated.

Consultations and Special Measures

The Government has claimed that some aspects of the current and proposed legislation are special measures. This means that they can create legislation specific to Aboriginal people on the grounds that it is for their benefit and is not racially discriminatory. The Committee on the Elimination of Racial Discrimination clarifies the following conditions for the adoption of special measures.

D) Conditions for the Adoption and Implementation of Special Measures⁷

⁴ NTER Evaluation 2011, concerned Australians <http://www.concernedaustralians.com.au/media/NTER-Evaluation-Opinion-2011.pdf> accessed 24/01/2012

⁵ NTER Evaluation 2011, concerned Australians <http://www.concernedaustralians.com.au/media/NTER-Evaluation-Opinion-2011.pdf> accessed 24/01/2012

⁶ Cox, E (2011) Journal of Indigenous Policy Issue 12, Evidence-Free Policy Making? The Case of Income Management

⁷ Committee on the Elimination of Racial Discrimination, Seventy-fifth session, August 2009, General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination

16. Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned.

17. Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural ⁸status and conditions of the various groups in the population and their participation in the social and economic development of the country’.

18. 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.

The Government’s use of special measures fails these conditions. As already discussed above there are issues with the lack of evidence supporting the Government’s position so it cannot be claimed that there is “accurate data”.

Additionally, special measures are to be “***designed and implemented on the basis of prior consultation***”. The Government claims it has held “extensive consultations” however the ACM has concerns about the validity of such consultations and whether they meet the criteria for free and prior informed consent. The inadequacy of the Government’s consultation process was highlighted during its first consultations in 2009 which were characterised by inadequate notice, lack of translations and seeking confirmation of policy already formulated⁹.

Likewise, this most recent round of consultations appeared to be engineered to meet the needs of Government and not the communities who are affected. Of particular concern was the fact that the consultation agenda was set by the Government and community members were unable to respond to issues outside the Government’s agenda. In fact several groups explicitly wrote in their submissions that their engagement in the consultation process could not be construed as supporting special measures.

Concerned Australians who taped and attended several of the consultations say that “Many of those who spoke during the consultations did so reluctantly. They stated that there was no real capacity within government to listen and the consultations were a waste of time. There was also much criticism of the intervention as a whole. In some communities attendance was very low”¹⁰.

⁸ Article 2.2. includes the term ‘cultural’ as well as ‘social’ and ‘economic’.

⁹ See for example ‘Will they be heard?’ <http://www.concernedaustralians.com.au/media/Will-they-be-heard-report.pdf>

¹⁰ Ibid p 13

In no way was Government policy designed *after* these consultations, as is required to meet the criteria of special measures. In fact, the consultations were held to seek agreement with a predesigned policy agenda. Government needs to redesign legislation to ensure that it either does not rely on special measures or that those special measures are designed with the full involvement and consent of Aboriginal people from communities that are affected by the special measures.

Comment on specific issues in the Bills

Tackling Alcohol Management

While there is no dispute that alcohol continues to have a debilitating effect on many, the alcohol management regime as outlined in this legislation seems to deny the fact that Aboriginal Communities were already creating and participating in alcohol reduction strategies prior to the Intervention. The proposed legislation appears to extend the Minister's powers, is paternalistic and undermines Aboriginal ownership of solutions. It also appears to be highly bureaucratic and focused on penalties and policing. Like other areas of the Intervention the evidence is not conclusive that such an approach is having a positive effect. While there is some evidence that people feel safer in communities, there is dispute about whether this is attributable to alcohol management plans and what it is that they feel safer about. Nor is there evidence to show whether harm for women and children is being reduced.

The ACM is concerned that although the legislation provides for an independent review of alcohol management plans after three years, the appropriate benchmarks and data collection processes will not be put in place to allow for proper evaluation.

Income Management

The ACM is concerned about the continuation and expansion of Income Management. We have not read or heard about any substantive evidence that supports such a punitive regime. Colmar Brunton¹¹ in their review of the Welfare reform and employment measures say:

There is some evidence suggesting welfare reform had some positive effects, such as strengthening communities and making them more sustainable and safer, particularly for women and children. However, given the limitations of the evaluations and consultations conducted to date, further research is necessary to confirm these findings.

This view is supported by many Welfare agencies and Aboriginal controlled groups who have spoken out against the legislation.

¹¹ Colmar Brunton, 2011, Chapter 9 Welfare Reform and Employment, Northern Territory Emergency Response: Evaluation Report 2011, FaHCSIA p333

Of particular concern is the expansion of the *The Improving School Enrolment and Attendance through Welfare Reform Measure* (SEAM). While the ACM is supportive of a Government focus on ensuring all children receive a good education, we do not support this measure. As well as disagreeing with the punitive nature of this measure, we are particularly concerned that withdrawing income from parents will cause greater hardship for children who are already disadvantaged.

Particularly insidious is the Government's repeated claim that Aboriginal people want welfare cuts to address school attendance rates. Minister Macklin said, "well, the message loud and clear from Aboriginal people, from parents and grandparents is that they want this"¹². However, according to 'concerned Australians' this cannot be concluded from the consultations.

Facilitators brought the issue before their audiences and in most instances there was strong opposition to such a development...there was not a single person at the meeting who stated they believed that welfare cuts would be beneficial...there would appear to be virtually no evidence of community support for legislation in these transcripts that would introduce welfare cuts for parents where children were not attending school¹³.

The Government should end SEAM and work with communities, education bodies and welfare agencies to implement programs that are effective in increasing attendance without causing greater hardship.

Land Reform measure

According to the Government, these land reform measures are essential in order to meet its agenda of private home ownership and business investment. This push for so called land reform continues despite there being little consensus amongst Aboriginal people living in those communities about whether this is what they want or see as necessary. There is a fundamental clash of cultures on this issue which the Government is failing to acknowledge. The Government claims that they need secure tenure to be able to deliver services, many of which the communities would have the right to expect as citizens of Australia. However, according to KPMG¹⁴ it is not clear how the five year leases have contributed to long term security of tenure and economic development.

According to KPMG, lease payments have not been made in several cases and land is undervalued. Also of concern is the use of money from the Aboriginal Benefits Account to "advance" lease money which, according to KPMG is then paid back and an administrative levy taken¹⁵. The ACM is concerned that Government is using Aboriginal money to lease Aboriginal land. Public clarification is required to identify:

¹² Macklin, J (2011) quoted in Cuts to Welfare Payments for School Non-Attendance requested or imposed, concerned Australians, October 2011, p13.

¹³ Ibid p12-13

¹⁴ KPMG, 2011, Chapter 10 Housing and land reform, Northern Territory Emergency Response: Evaluation Report 2011

1. Where the money that Government is using for lease payments is coming from;
2. The extent to which the Government is using the ABA in such a manner and;
3. The reasons the Government is using the ABA;
4. The ethics and/or the legality of using the ABA in such a way.

It is also questionable whether new voluntary leases are really voluntary. The ACM hears anecdotally that many people felt pressured, even ‘blackmailed’ into new leases in order to receive new housing and so on. What is clear is that these so called reform measures are undermining hard won land title and once again are undermining the ability of traditional owners and their communities to control what is developed on their land. The control is being put back in the hands of the Minister irrespective of what the community wants or needs. This is remarkably similar to days of the Protector of Aborigines. The legislation also allows the Commonwealth to ‘modify’ northern Territory legislation relating to leases. The ACM would like to know what effect this will have on Land Rights in the Northern Territory. As is expressed in the Bill’s explanatory memorandum “if Northern Territory reforms are implemented in a manner that meets the Commonwealth commitment to more flexible land tenure arrangements, the Commonwealth regulation will not be required”; it is this sort of language that leads us to believe that the Government believes that Aboriginal voices are irrelevant. There is no reassurance in the provision for consultation of all relevant stakeholders, including non-Indigenous groups, given the Government’s lack of ability in holding proper consultations in the past; and their clearly stated land tenure agenda.

The need to listen to Aboriginal voices

A concern long held by the ACM is the lack of Aboriginal voices from the Northern Territory being heard in discussion about the Intervention and its impact on people. The Government consultations have not facilitated meaningful consultation and both the Government and media are complicit in negative stereotyping of Aboriginal people. The Government interpretation of the consultations has further disenfranchised Aboriginal dissent by failing to acknowledge the depth of feeling expressed against the Intervention. While there are always those that support Government policy, or indeed find aspects beneficial while also finding aspects problematic, it is hard for those who disagree to find a platform to voice their discontent. The Minister is renowned for referring to “the women” who tell her that the policies are making it safer for women and children. While there is no doubt that some people may have experienced some benefits from NTER measures it should also be recognised that there are also many women who disagree¹⁶. There are also many men who also disagree and are working hard to make changes in their communities, but who are cast as paedophiles, drunks and dole bludgers by a Government who consistently uses the safety of women and children to justify their draconian policies. This is despite the fact that the Government

¹⁵ Ibid p 381

¹⁶ See for example the Statement by Elders and the Kalkaringi statement available to download from www.concernedaustralians.com.au

commissioned review suggests that there is no conclusive evidence to say that women and children are in fact safer. There is in fact a cohesive 'voice' in the Northern Territory against the Intervention made up of Elders, individuals and Aboriginal organisations. These voices are systematically ignored by Government.

Conclusion

The ACM urges the Senate not to simply rubber stamp these Bills and pass them into legislation. Since 2007, there has been consistent and comprehensive evidence that highlights the failure of the Intervention to effectively transform the lives of Aboriginal people in the NT. At the same time there has been a dearth of evidence to support its continuation. The passage of these Bills into legislation will confirm that the Government is not interested in the hopes dreams and desires of Aboriginal peoples and that it has failed to reset its relationship and continues to push its own agenda to the detriment of those it affects.

Rather, the Government should drop this legislation engage in proper and meaningful negotiation with Aboriginal people about how they want to create stronger futures. A good start would be to listen to and acknowledge the many voices calling for change. There are a plethora of reports, research and guides on both the Intervention and how to engage properly with Aboriginal peoples. The Government would do well to take note of these existing resources, agree to meaningfully address Aboriginal disadvantage in the NT and elsewhere and make a real commitment to enabling change in Aboriginal lives.

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