Statement to the

Senate Standing Committee on Community Affairs

on conditions affecting Aboriginal communities in the Northern Territory

including the proposed *Stronger Futures in the Northern Territory Bill (2011)*

and accompanying Bills

NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

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Statement by the National Congress of Australia's First Peoples

to the Senate Standing Committee on Community Affairs

on conditions affecting Aboriginal communities in the Northern Territory including the proposed *Stronger Futures in the Northern Territory Bill* (2011) and accompanying Bills.

Executive Summary

1. The National Congress of Australia's First Peoples (Congress) is a national representative body for Aboriginal and Torres Strait Islander Australians. Congress is an independent national voice, a leader, an advocate, and a source of advice and expertise for First Peoples. Drawing strength from culture and history, Congress aims to bring equality, freedom, opportunity and empowerment to all First Peoples. We acknowledge and pay respect to our ancestors, our Elders and all traditional owners of this ancient land.

2. Congress welcomes the opportunity to make this statement to the Senate Committee on Community Affairs in response the proposed *Stronger Futures in the Northern Territory* legislation. The proposed legislation will have a profound impact on the lives of all Aboriginal and Torres Strait Islander peoples, not just in the Northern Territory but throughout Australia. It is therefore fundamentally important that the perspectives and opinions of Aboriginal and Torres Strait Islander peoples and organisations in the Northern Territory are clearly understood and considered. In this respect, Congress supports the submissions made by our Member organisations, some of which cover additional matters such as land reform and community stores.

3. In addition to commenting on provisions in the proposed legislation, this statement by Congress also considers some of conditions faced more broadly in Aboriginal communities in the Northern Territory. Our purpose in speaking broadly on conditions faced by Aboriginal people is not merely to provide the context in which the proposed legislation will be applied, but to demonstrate that adequately funded programs and services are a more effective means of empowering Aboriginal people to develop their communities compared to legislation.

4. Congress supports the *United Nations Declaration on the Rights of Indigenous Peoples* and opposes any legislation or policy which limits or removes the right to self-

autonomy from Aboriginal peoples. Aboriginal communities in the Northern Territory must be allowed to take responsibility for their own affairs.

5. Congress opposes any legislation or policy which is racially discriminatory. Although the proposed *Stronger Futures* legislation is classed as non-discriminatory under the *Racial Discrimination Act* (1975), it is clear that the majority of people living in affected areas in which these regulations and laws will apply are Aboriginal, and we remain concerned that there are provisions in the legislation which will in effect discriminate against Aboriginal people.

6. Congress supports over-arching strategies to advance Aboriginal autonomy and sustain the development of Aboriginal people and their communities. Congress endorses the emerging body of evidence that shows it is investment in programs and services, developed in genuine collaboration with Aboriginal communities and properly funded, that is the key to building capacity and achieving sustained benefit in Aboriginal communities.

7. Whilst acknowledging the *Stronger Futures* policy is an improvement on the previous *Northern Territory Emergency Response (NTER)*, the proposed legislation imposes overly punitive measures which have not proven to be effective. The evaluation of the NTER found it to be very expensive to administer, with $461 million spent on income management alone from July 2007 to December 2010 (*NTER Evaluation*, p 31. See also ACOSS, June 2010, p 6). Administrative expenditure on *Stronger Futures* is allocated to total Aboriginal program expenditure, reinforcing negative public perceptions on the effectiveness of Aboriginal programs.

8. Congress does not support the imposition of a legislative approach when investing in programs and services will achieve a superior result, as measured by key indicators and the empowerment of Aboriginal peoples. We strongly argue that the costs for administering the various *Stronger Futures* initiatives would be better invested in programs and services which have been shown to provide real and sustained benefit to Aboriginal people and communities.

9. Congress proposes a 'Statement of Compatibility with Human Rights' be prepared assessing the compatibility of the Stronger Futures legislation against the United Nations human rights treaties to which Australia is a party and the *UN Declaration on the Rights of Indigenous Peoples*, in accordance with the *Human Rights (Parliamentary Scrutiny) Act* (2011). In the event that the *Stronger Futures* legislation is not compliant with any of the human rights treaties or the UN Declaration, we oppose its commencement until the bills are shown to comply, with full funding of Aboriginal programs to continue in the interim.

10. Congress welcomes the Federal Government's long term commitment of investment into Aboriginal communities. The Federal Government's commitment to reviewing previous legislation and measures in the 2011 consultation and evaluation reports, in an effort to better understand and identify what has worked and what must be amended, is also acknowledged.

11. There remains, however, many areas of concern identified by our Members. Congress contends that the NTER was founded upon accusations levelled against Aboriginal people generally without regard to clear evidence or facts. This approach has left a stigmatised people haunted by perpetuating stereotypes in not just the Northern Territory but throughout Australia. The extensive damage caused by this to future reconciliation efforts and partnerships should not be underestimated or ignored. There has been insufficient effort made to support the empowerment of communities to deal with issues and challenges themselves. Congress honours and celebrates the strengths, resilience, language, culture, and continuing connection to land, seas and waters of Northern Territory families and communities. The positive contribution of the First Peoples of the Northern Territory should be emphasised in the Government's policy response and manner of communication.

12. Congress continues to support the rights and safety of children as a priority. The stated impetus for the Howard Government's initial intervention into the Northern Territory in 2006 was the health and safety of children and this theme has continued under the Gillard Government. Congress notes, however, that a large number of recommendations made by the *Little Children are Sacred Report* (2007) have not been implemented or have been lost in the political turmoil that has occurred since the original intervention. As an example, Recommendation 40 calls for the development of "a comprehensive long term strategy to build a strong and equitable core service platform in Aboriginal communities, to address the underlying risk factors for child sexual abuse and to develop functional communities in which children are safe" (p 123). The focus on services and programs in this recommendation has been lost in the proposed legislation. Another recommendation calls for all children to continuously receive pre-school education by the age of three (Recommendation 50, p 155), but programs are not in place to achieve this. Government must pursue implementation of the outstanding recommendations from the Report.

13. Given that the safety of Aboriginal children in communities in the Northern Territory is a high priority, Government must consider the long term impact of *Stronger Futures* on children. Unless more emphasis is placed on community control and empowerment, children born in the Northern Territory will spend the formative years of their life under a level of government control that does not exist in other parts of

Australia, observing the disempowerment of their communities, their leaders and parents.

14. Congress supports approaches that are evidence-based and developed in partnership. The disadvantage experienced by Aboriginal peoples in the Northern Territory today is not new, but the result of years of neglect, marginalisation and failed government policies. Our people are dying young, at a rate disproportionately faster than our non-Aboriginal counterparts. The imposition of measures that are not evidence-based, are not developed in partnership, or have disregard to culture, must stop. It is the view of Congress that Government must carry out its responsibilities to provide adequate services and work with communities and their leaders to develop and implement positive solutions.

15. The consultation phase for the legislation has been too short for such a complex and technical package. People affected have a limited understanding of the legislation, its objectives, and how particular provisions will affect their lives. We are concerned that there has been insufficient time to explain what the legislation is so the people affected are adequately informed to participate fully in consultation. We anticipate that as people become more aware of the detail and realise its personal impact, more examples of inequity unforseen by the legislation and this review process will emerge.

16. The provisions allow a rollout of the School Enrolment and Attendance Measure (SEAM) and Income Management across Australia. The focus of the Government's consultation has focused on the Northern Territory, whilst the remainder of Australia has been largely ignored. We are concerned that both Aboriginal people and non-Aboriginal people outside the Northern Territory are not aware that these provisions could affect them, and have not been provided with an opportunity to voice their concerns.

Summary of Recommendations

Congress proposes that:

Human Rights Compliance

- A formal 'Statement of Compatibility with Human Rights' be prepared assessing the compatibility of the *Stronger Futures* legislation against the United Nations human rights treaties to which Australia is a party and the *UN Declaration on the Rights of Indigenous Peoples* in accordance with the *Human Rights (Parliamentary Scrutiny) Act* (2011).
- In the event that the *Stronger Futures* bills are found not to comply with the human rights treaties or the *UN Declaration on the Rights of Indigenous Peoples*, that it does not proceed until it can be demonstrated that it complies, with full continuity of funding for Aboriginal programs in the interim.

Investment in Programs and Services

- The Government diverts funding from the administration of *Stronger Futures* regulations in order to increase investment in front-line services and programs which benefit Aboriginal communities.

Alcohol Management Plans

- Communities be allowed to develop their own Alcohol Management Plan, rather than have legislation imposed upon them.
- The initiative to develop Alcohol Management Plans within Aboriginal communities is adequately resourced.
- Adequate resources are provided for treatment, long-term rehabilitation and prevention programs to reduce alcohol related harm.
- Provisions for alcohol offences should not criminalise or over-penalise the possession and consumption of alcohol in protected areas.
- The definition of "alcohol" is clarified.

Income Management

- The compulsory income management scheme is replaced with a voluntary scheme.
- Prescribed limits are placed on which government agencies will be given authority to make referrals to income management and for what reason.
- The income management administration process is reviewed to facilitate faster transition to independence.
- The complaints and appeals process is strengthened and openly communicated to ensure that the application of administrative processes to individuals is fair and just.

Governance

- There is full autonomy of the local Aboriginal communities in the decision making-processes, with regard to local cultural traditions.
- There is recognition of the diversity in local Aboriginal communities by ensuring communities are able to develop governance models to suit their individual needs and traditions.
- There are flexible funding pools to accommodate the unique circumstances in each community, with communities empowered to direct expenditure to develop socially and economically according to priorities set by them.
- Additional resources should be provided to support the development of Aboriginal-led local governance structures.

Homelands

- The Federal Government negotiates with the Northern Territory Government and affected communities to take a holistic approach to redressing Aboriginal disadvantage by ensuring that the 'non-priority' communities, especially homelands, are adequately supported***.***

Education

- Provisions implementing the School and Enrolment and Attendance Measure (SEAM) do not proceed in their current form.
- That culture and bilingual education is incorporated into schools.

Ensuring sustainability and community control

- Formal structures are established to monitor the implementation of *Stronger Futures* policy, programs and resources, and set goals for the transfer to community ownership and control.
- An independent evaluation of the legislation is conducted within 5 years of its commencement.

Points of Principle

Legislation and policy must conform to the United Nations Declaration on the Rights of Indigenous Peoples

> *"The adoption of the UN Declaration is one thing. Now we face the challenge of real implementation."*
>
> Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner. (AHRC, 2010, p 4).

17. Congress insists that the rights in the *United Nations Declaration on the Rights of Indigenous Peoples* apply in all policy and law that affects Aboriginal and Torres Strait Islander people. In 2009, the Hon Jenny Macklin, Minister for Indigenous Affairs, described the UN Declaration as "a landmark document", both "historic and aspirational", by which "we show our faith in a new era of relations between states and Aboriginal people grounded in good faith, goodwill and mutual respect".

18. Congress expects the Government to comply with the Declaration and to the overall protection of Aboriginal and Torres Strait Islander people's rights, both collective and individual. Congress calls for application of the Declaration in relation to the *Stronger Futures* legislation. The Declaration requires that where laws and policies are being created that affect First Peoples, these peoples should be properly informed and there should be honest and open negotiation so that affected peoples are able to give their 'free and prior informed consent' in accordance with Article 19.

19. Parliament recently passed the *Human Rights (Parliamentary Scrutiny) Act* (2011), which came into effect on 4 January 2012. We propose an assessment of the Stronger Futures legislation, and any future bills, against the international treaties to which Australia is a signatory and the *United Nations Declaration on the Rights of Indigenous Peoples* in the form of a 'Statement of Compatibility' as described by the Act.

Recognising culture is fundamental to making good policy

> *"Culture is what makes us who we are."*
>
> A Congress Member during the inaugural National Congress meeting, 2011.

20. Congress calls on Government to understand and respect the importance of culture to First Peoples, including language. In our statement to the *Stronger Futures in the Northern Territory Discussion Paper* (Congress, Sept 2011), Congress expressed deep concern at the lack of acknowledgement of culture and the role it plays in the

everyday lives of Aboriginal people. It appears that the Government has once again failed to acknowledge the role of culture, law, lore, kinship and language in the proposed legislation. Imposing laws, policies and programs on communities that do not enable the integration of one's culture is damaging and hinders opportunities for progress.

21. Aboriginal peoples' connection and rights to their lands, seas and waters must be respected and protected. Government must respect the place of customary law in Aboriginal communities.

One size does not fit all – each community is different

22. Congress recommends that policies and programs be targeted to each local community's needs in active partnership and engagement with the community. The diversity of Aboriginal peoples, tribes and clans must be recognised, respected and considered when developing and implementing policies.

23. Geographical attributes, proximity to services, and capacity will also differ by community, requiring approaches to be tailored to a community's unique circumstances.

Empowering individuals, families and communities in decision-making and governance

> *"We want to work together to overcome the poverty, inequality and injustice faced by our communities. We want to work with Government to inform and feel a part of policies that affect our lives and those of our families and communities."*
>
> 'Our Future in Our Hands', AHRC (August 2009)

24. The proposed legislation, supporting policies and implementation plans must empower Aboriginal people to actively participate in the decision making processes on issues that affect their communities.

25. The principle of Aboriginal people being in control of their communities, with active support from partners including governments, NGOs and the private sector, will create the conditions that enable Aboriginal people to break free from the cycle of poverty and welfare dependency.

Consultation must be genuine

26. The form of consultation that Congress endorses is one where Aboriginal people are sufficiently in control of decisions regarding the development of their communities. Aboriginal people have become accustomed to information sessions in place of

genuine consultation. This fails to uphold the rights of Aboriginal peoples to participate in the decision making process and undermines the potential benefits of government programs.

27. The Australian Human Rights Commission *Native Title Report* (2010) contains a guide to developing appropriate consultation processes on a case-by-case basis. Congress urges Government to take on the recommendations of the AHRC in all future consultation efforts.

An evidence-based approach to policy

28. Australia faces major long-term challenges in many areas, including issues affecting Aboriginal and Torres Strait Islander peoples. The Productivity Commission has emphasised the importance of a rigorous, evidence-based approach to public policy. It is not only for the benefit of Aboriginal people but for Australia as a whole that the Government adopts evidence-based policy in all areas.

29. The general lack of robust baseline data and evidence in support of policies initiated by the NTER is clearly demonstrated in reports reviewing the measures and legislation released in the *Stronger Futures Discussion Paper* in 2011. Many measures have been carried forward from the NTER into the *Stronger Futures* bills without evidence they work. This is of continuing concern to Congress.

30. The collection and availability of data overall remains an issue which the Government has previously acknowledged as an area in need of improvement. Due to the lack of baseline data the proper evaluation of programs and services as to their achievements and possible failures in regards to closing the gap targets, dealing with social exclusion, or addressing social issues such as community safety has been hindered and fails to represent the true picture.

31. Government must ensure that policies and programs for building a 'Stronger Future' are evidence-based, sourced from relevant communities, organisations and services.

Better integration and coordination of programs and service delivery is needed

> *"Programs and services have been delivered in a very haphazard way... it is not clear how they have allocated housing...you need to look at need, then how to allocate resources."*
>
> A participant at the Alice Springs consultation session on Stronger Futures, 2011.

32. Congress is of the view that delivery of programs and services under the NTER has been haphazard, the allocation of investment in schooling and housing is uneven, and the type and quality of services between communities remains varied.

33. Allocation of funding and the provision of services and programs needs to be better coordinated to respond to the explicit needs of each community and to ensure that Aboriginal people living on traditional homelands are not disadvantaged. While services that have been provided to this point – such as additional houses – are welcome, there remains huge unmet need. It is critical in this review that the full extent of need is met and that provision is made for future growth in both the larger centres and the homelands.

34. Congress recognises policies of the Northern Territory Government impact on communities that are the subject of attention by the Federal Government and considers it essential that a coordinated Territory and Federal approach be adopted.

35. Congress urges the Federal Government, the Northern Territory Government and key stakeholders engaging with local communities in decision-making to ensure better coordination and implementation of services and programs, adopting a holistic, community development approach.

Response to *Stronger Futures in the Northern Territory Bill* and Accompanying Legislation

The Consultation Process

36. Congress acknowledges the Government's efforts in attempting to better engage and consult with Aboriginal people. Despite this, the process and content of the consultations could be improved. Members of Congress have reported the consultations as inhibiting full effective and meaningful engagement with community members and leaders. We have been advised that Government officials had made promises to return to communities who were consulted to confirm minutes and go over proposed initiatives before the release of the draft Bills. This has not occurred.

37. The Government must recognise that meaningful and effective consultation is an opportunity to devise positive partnerships with Aboriginal leaders and communities in which tangible solutions are identified by the people themselves, and practical steps are taken to achieve them. The ways in which the consultations were recorded in comparison with other Government consultations, the ineffective use of interpreters and the lack of time and notice for community members to prepare for consultations have inhibited the building of positive partnerships between Government and communities.

Inadequate Consultation outside the Northern Territory

38. The impact of the *Social Security Amendment Bill* (2011) has been obscured by the focus on the Stronger Future in Northern Territory legislation, even referred to as a "related bill" in this enquiry. We note that proposed insertion of the definition of a 'recognised State or Territory' in the legislation enables SEAM and income management to be rolled out nationally.

39. We are of the view that consultations on these proposed amendments have been inadequate, with the majority of people outside the Northern Territory, Aboriginal and non-Aboriginal, unaware it could affect them. More time is required to explain these amendments to both Aboriginal and non-Aboriginal people and provide them an opportunity to raise their concerns.

Special Measures

40. In 2009, the *UN Special Rapporteur on Indigenous Peoples*, James Anaya, reported that the racially discriminatory aspects of the NTER could no more qualify as "legitimate special treatment" as they could "special measure" (UN Humans Rights Council,

2010:65). He cited compulsory income management, assertion of powers over Aboriginal lands, and alcohol restrictions in prescribed areas as racially discriminatory aspects incompatible with Australia' humans rights obligations.

41. It is intolerable that Aboriginal and Torres Strait Islander peoples are subject to race-based and discriminatory laws unless, based on evidence, and with the consent of the people affected, these laws are clearly necessary and beneficial. If this cannot be demonstrated, these race-based laws separate our rights and status from the rest of the Australian population and this contributes to discriminatory attitudes and behaviours from people and institutions.

42. For example, under the proposed legislation, a person who has alcohol in their possession in an "alcohol protected area" is in breach of the law and may face penalties of up to six months imprisonment. However it is a defence to prosecution if the defendant was engaged in recreational boating or commercial fishing activities or the activity was organised by a tourism operator - exemptions that appear to be aimed at non-Aboriginal people. This double standard is an example of how Aboriginal people are treated differently to the rest of the Australian population.

43. The Government has stated that the *Stronger Futures* bills comply with the *Racial Discrimination Act* (1975) and the provisions within with Bills that clearly target Aboriginal people meet the legal criteria of 'special measures'.

44. Congress is aware that Government intends the bills to be special measures under the *Racial Discrimination Act*, but does not believe they meet the requirements for special measures.

45. The following principles should apply to the application of special measures. Special measures must:

- Have the sole purpose of ensuring equal human rights.
- Obtain the prior, informed consent of the people affected.
- Be designed and implemented through prior agreement with the people concerned.
- Have clarity in regard to the results to be achieved from the special measures.
- Have accountability to the people concerned.
- Be appropriate to the situation to be remedied and grounded in a realistic appraisal of the situation to be addressed.

- Have justification for the proposed special measures including how they will obtain the perceived outcomes.
- Be temporary and only maintained until disadvantage is overcome.
- Have a system for monitoring the application and results of special measures.

Tackling Alcohol and Substance Abuse

46. Alcohol misuse is an Australia-wide problem and not limited to Aboriginal peoples.

47. Congress recognises the serious and widespread problem of alcohol misuse and strongly supports a holistic program of action to reduce alcohol related harm in Northern Territory communities, however Congress does not believe the Government's legislation meets the legal criteria for a special measure. The measure was not formulated with the participation and acceptance of Aboriginal people and there is no clear evidence that it will achieve its intended objective.

Alcohol Management Plans

48. Congress supports the proposed initiative of community developed Alcohol Management Plans in replacement of blanket imposition of alcohol measures. This measure allows communities to develop their own plan enabling community control in regards to alcohol management, however the planning process must be adequately resourced. This includes access to drug and alcohol expertise, administration support, program development and sustainability guidelines and resources for monitoring success and achieving the outcomes of the plan. Each community-based Alcohol Management Plan should be allowed to develop in reference an over-arching strategy which entails tackling issues of supply and demand, treatment and diversionary programs incorporating early intervention, education and health promotion.

49. It has been reported to Congress that where alcohol is not available, people are accessing other substances such as glue, paint and petrol sniffing. In any plan that looks at stamping out alcohol abuse it must also consider the side effects such as access to alternative substances and provide mechanisms that address this problem as well. Alcohol and drug abuse must be addressed holistically and individually which includes mental health wellbeing.

Alcohol Offence Penalties

50. Under Section 8, 75B of the proposed Stronger Futures Bill 2011, a person commits an offence if he or she **supplies, possesses or consumes** alcohol of 1350 ml or less in a protected area. The maximum penalty is 100 penalty units or imprisonment for 6 months.

51. Congress does not support this measure and calls for its removal from the proposed legislation. The Government previously assured Congress that the maximum penalty of 6 months imprisonment for offences less than 1350 ml of alcohol was only directed at grog runners, the bill states otherwise.

52. Congress supports the concerns raised by the Australian Human Rights Commission in relation to criminalising acts otherwise considered non-criminal in other states and territories and believes that such a measure would inflict further harm on an already disadvantaged people. The proposed measure goes against recommendations made by the Royal Commission into Aboriginal Deaths in Custody, *Doing Time - Time for Doing* (2011) and will effectively contribute to an already gross over-representation of Aboriginal and Torres Strait Islander people in the Northern Territory criminal justice system.

53. The funds associated with incarcerating a person for up to six months would be better spent on addressing the underlying causes of alcohol abuse, investing in healing centres and early intervention and prevention initiatives around the risks associated with alcohol use.

54. Congress calls for a clear definition of alcohol in reference to the proposed legislation to be adopted. The legislation does not stipulate that 1350 ml of alcohol is of 'pure' alcohol only, in which Government has previously communicated to Congress. The possible interpretation of this in law is a concern and so we urge the Government to accurately define alcohol.

RECOMMENDATIONS:

That communities be allowed to develop their own Alcohol Management Plan, rather than have legislation imposed upon them.

That the initiative to develop Alcohol Management Plans within Aboriginal communities is adequately resourced.

That adequate resources are provided for treatment, long-term rehabilitation and prevention programs to reduce alcohol related harm.

That the provisions for alcohol offences should not criminalise or over-penalise the possession and consumption of alcohol in protected areas.

That the definition of "alcohol" is clarified.

Income Management

55. Congress remains adamant that the mandatory system must be replaced by a voluntary system with provision for case by case income management where warranted. Although income management has been extended to include all Australians, the majority of those affected on welfare are Aboriginal people and hence the measure continues to discriminate against Aboriginal people.

56. In cases where people are placed on income management, the period of quarantine must also be accompanied with culturally appropriate training so they are empowered to manage their own finances and budgeting.

57. Processes surrounding income management must be reviewed, especially in regard to the exemption process. It has been identified that once placed on income management, it is very difficult for people to get themselves off the system.

58. The legislation does not specify exactly which government departments and agencies have the authority to refer people to income management, instead providing broad governmental powers. There is a need for greater transparency to define which government departments and agencies this section refers to.

59. Congress is concerned with the availability of a recipient's personal information to external agencies without their consent. Congress is concerned that fundamental privacy principles are maintained.

60. The complaints and appeals process needs to be strengthened and openly communicated to ensure that the application of administrative processes to individuals is fair and just. Congress is concerned that a principal complaints process is that of the Commonwealth Ombudsman's office. We have received information that this service is not being utilised to make complaints unless representatives of the Commonwealth Ombudsman's Office go out into communities to undertake research. Congress calls for complaint services to be made readily available on a local level.

61. On behalf of our Members, Congress advises that complaints have been received about the limited number of outlets accepting the 'Basics Card'. If people are to be forced onto income management, it is the Government's responsibility to ensure that all outlets provide this service. Greater distribution will encourage participation.

> *"My sister is on the 'Basic Card'. We went clothes shopping on the weekend and she was extremely restricted in shops she could buy clothing for herself and her baby girl. This was very embarrassing for her and very inconvenient. If you're going to have the initiative, have all outlets have the facilities to accept it. It's very discriminative to the shopper."* (A Northern Territory Congress Member).

RECOMMENDATIONS:

That the compulsory income management scheme is replaced with a voluntary scheme.

That prescribed limits are placed on government agencies will be given authority to make referrals to income management and for what reason.

That the income management administration process be reviewed to facilitate faster transition to independence.

The complaints and appeals process is strengthened and openly communicated to ensure that the application of administrative processes to individuals is fair and just.

Governance

> *"Whatever the design and implementation problems with the Territory intervention, the fundamental mistake made by the Coalition and Labor is that the intervention was heavily premised on governmental leadership and delivery. An Aboriginal reform leadership and active involvement in delivery was imperative, but this didn't happen. Aboriginal reform organisations needed to be identified or encouraged to form, with clear incentives to pursue reforms, but they weren't. "*
>
> (Noel Pearson, 2011)

62. Congress restates its concern expressed in its *Statement in Response to the Stronger Futures in the Northern Territory Discussion Paper* (Congress, September 2011) that the NTER was imposed without agreement with the Aboriginal communities affected. It was implemented in contravention to Aboriginal peoples' right to self-determination and autonomy, a right affirmed in Article 4 of the UN Declaration on the Rights of Indigenous Peoples, which has since been endorsed by the Australian Government.

> *Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*
>
> Article 4 - UN Declaration on the Rights of Indigenous Peoples

63. The top-down approach of the Federal Government in the Northern Territory has disempowered Aboriginal communities from having a voice on issues that affect them, and undermined progress towards developing good governance practices in those communities.

64. There is extensive Australian and international research which consistently concludes that active participation of Aboriginal people in decision-making on issues affecting their communities is fundamental to effective governance and a precursor to sustained development (see for example the Indigenous Community Governance Project conducted by Reconciliation Australia and the Centre for Aboriginal Economic Policy Research, and the Harvard Project on American Indian Economic Development). Furthermore, the legitimacy of governance arrangements is conditional on the structures and processes being recognised as conforming to the cultural norms within each community. As communities differ in their traditions and culture, no single model of governance will suit all communities.

65. The top-down approach has proven to be ineffective in addressing fundamental issues of good governance, as highlighted by the findings of the 2011 independent review. Of the of Non-Government Business Managers surveyed as part of the evaluation, 35% responded that local cultural traditions were never considered; 43% responded that local cultural conditions were considered only some of the time; and only 18% responded that local cultural conditions were considered most of the time (NTER Evaluation Report, November 2011, p 136).

66. Similarly, there has been insufficient attention given to building capacity in governance and strategic management in the Aboriginal communities affected by the NTER. 49% of respondents to the NTER Evaluation indicated that leadership and governance capability had never been developed to support better engagement between government agencies and the community, with 47% indicating it has been developed only some of the time (NTER Evaluation Report, November 2011, p138). Community leadership, with local Aboriginal leaders focusing on establishing the institutions and processes for representing their communities and engaging with government, is necessary for sustained development.

67. Considerable work has been undertaken by Reconciliation Australia and the Centre for Aboriginal Economic Policy Research through the Indigenous Community Governance Project, which has culminated in the *Indigenous Governance Toolkit* (Reconciliation Australia, 2011). Such initiatives which support the development of local community governance should be actively encouraged by the Government. There is now ample evidence from Canada and the US about the value of supporting and resourcing communities to develop effective local governance and decision making.

68. Congress is of the view that a portion of the major expenditure by government to administer the *Stronger Futures* laws should be allocated to a flexible funding pool for use by local communities. This would give communities the ability to resource locally-driven initiatives.

RECOMMENDATIONS:

There is full autonomy of the local Aboriginal communities in the decision making-processes, with regard to local cultural traditions.

There is recognition of the diversity in local Aboriginal communities by ensuring communities are able to develop governance models to suit their individual needs and traditions.

There are flexible funding pools to accommodate the unique circumstances in each community, with communities empowered to direct expenditure to develop socially and economically according to priorities set by them.

Additional resources provided to support the development of Aboriginal-led local governance structures.

Homelands

> *"Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."*
>
> Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples.

69. Aboriginal people have not only the right to both live on their traditional lands, but to have access to adequate housing and infrastructure that other Australian citizens enjoy.

70. Congress recommends that the Government incorporate into its Stronger Futures policy a commitment to implement, in consultation with homeland communities, an overarching plan to ensure the long-term continuation and viability of homelands.

71. Although Congress acknowledges that the Federal Government has no intention of forcibly removing people from their homelands, the lack of access to even the basic services such as clean water means that many Aboriginal people are faced with little choice but to leave. Homelands that represent 35% of the Aboriginal population in

the Northern Territory and received $7.1 million, whereas the identified 21 'Growth' towns representing 24% of the population received $1.3 billion.

72. Congress acknowledges the work of Amnesty International in regard to protecting the rights of Aboriginal people to live on their traditional homelands. We support their recommendations in relation to future policy development around Homelands and outstations.

Housing:

73. As a party to the *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*), Australia has an obligation under Article 11 to take concrete steps, using the maximum available resources, to progressively fulfil the right to adequate housing.

74. The UN Committee of Economic, Social and Cultural Rights (CESCR) has made clear that the right to adequate housing should not be interpreted narrowly to mean "merely having a roof over one's head or view shelter exclusively as a commodity". Rather it should be seen as "the right to live somewhere in security, peace and dignity".

75. Contrary to this right, the historical under-investment in Aboriginal homelands and outstations has meant that even the basic services such as clean running water for drinking and showering does not exist in many Aboriginal communities. Congress is deeply concerned by the lack of commitment to policies that address the full spectrum of disadvantage in the Northern Territory. Amnesty International has identified that remote Aboriginal communities in the Northern Territory are increasingly being separated into different layers or tiers, and differential living standards between the tiers are likely to increase. Small communities classed as outstations, including homelands and most excision communities under the current legislation receive no new houses, no refurbishments and a low level of maintenance funding.

76. Congress calls on transparency in relation to the collection of "rent" on homelands from an occupant of a household where $50 is automatically deducted each fortnight from a person's Centrelink account for "services". Transparency is required to demonstrate how these funds are used or directed. In an overcrowded house of fourteen people the Government would receive $700 a fortnight. As the conditions that these people live in have been identified as among the worst living conditions in the world, it is unclear what services are exactly being provided.

77. Aboriginal people have the right to both live on their traditional lands and access to adequate housing and infrastructure that other Australian citizens enjoy.

Health:

78. Aside from the right of Aboriginal peoples to live on their traditional lands and their desire to do so for cultural reasons, the health benefits that come from life on homelands are significant.

79. A longitudinal study of people living on the Utopia homelands found that despite the steady rise of obesity and diabetes among Aboriginal peoples nationally, the Alyawarr and Anmatyerr Peoples were significantly healthier than other Aboriginal and Torres Strait Islander Peoples. The Alyawarr and Anmatyerr Peoples have worked to address the problems of obesity, diabetes and smoking so successfully that adult mortality rates from all causes have been consistently 40 per cent lower in Utopia than among Aboriginal peoples in the Northern Territory generally, and deaths from cardiovascular disease are 50 per cent lower (Rowley, et al, 2008).

80. The study concludes that contributors to lower than expected morbidity and mortality are likely to include the nature of primary healthcare services as well as the decentralised mode of living with its attendant benefits for physical activity, diet and limited access to alcohol. Connectedness to culture, family and land are also cited as important factors. The study also found that genuine partnership with Aboriginal peoples in the design, delivery and control of services has tangible health outcomes.

81. Congress calls on Government to acknowledge the health benefits of Aboriginal peoples living on traditional homelands. These benefits can continue to be increased by providing the appropriate funding and infrastructure to homelands that support healthy environments, behaviours and community controlled health care and service delivery.

Education:

82. Amnesty International has identified a number of issues concerning access to, and resourcing of, education facilities on homelands that deeply concern Congress. Real and meaningful education opportunities are the foundation to reducing disadvantage and poverty experienced by Aboriginal people in the Northern Territory. Education is also key in empowering Aboriginal peoples and communities.

83. Any policy in relation to improving education outcomes among children in the Northern Territory must include Homelands. It is understood that Homelands have been excluded from the national Aboriginal and Torres Strait Islander Education Action Plan being implemented in line with the Working Future policy. This is unacceptable.

RECOMMENDATION:

Congress calls on the Federal Government to negotiate with the Northern Territory Government and affected communities to take a holistic approach to redressing Aboriginal disadvantage by ensuring that the 'non-priority' communities, especially homelands, are adequately supported. While recognising the challenges of providing services to remote areas, residents of these communities must have access to the basic services that Australians generally take for granted.

Education and SEAM

84. Education for children is a basic human right. Congress views education as a very high priority and supports measures to give every Aboriginal and Torres Strait Islander child access to a quality education.

85. Congress opposes the proposed legislation in its current form, as it inadequately addresses these concerns:

- The right for Aboriginal children to have an education in their own culture and provided in their own language, in accordance with Article 14 of the *UN Declaration on the Rights of Indigenous Peoples*.
- The provision of teaching infrastructure, such as culturally competent and qualified teachers and the provision of teaching facilities which ensure an effective learning environment for Aboriginal children.
- The provision of social support structures to address complex issues that affect attendance.
- The consequences for schools of non-compliance with enrolment and attendance management plans.
- There are excessive penalties proposed for non-attendance which are directed at whole families, even when only one child is not attending school.
- There are no processes in place for obtaining community agreement in the implementation of this measure.

86. While agreeing that parents and carers must take responsibility for ensuring all children attend school, Congress asserts that Government has the responsibility of providing children with a meaningful, worthwhile education that respects the culture and language of local communities. Experience and evidence suggests this responsibility has not been adequately fulfilled. The *Social Justice Report* (AHRC,

2008) found that "many remote Indigenous students receive a part-time education in sub-standard school facilities – if they receive a service at all."

87. Congress is concerned that the threat of income suspension is the principal tool for lifting school attendance. We believe this punitive approach is detrimental to the long-term welfare of children and families. First, the negative stigma attached to being viewed as responsible for income suspension risks a child becoming further alienated from their family, schooling and other support structures, in effect making SEAM a self-fulfilling prophecy. A safer, more constructive solution, are programs which build on the strengths of the child. Second, income suspension penalises a whole family, including other children in the family who may be regularly attending school, by taking away their means of support.

88. Notwithstanding our ongoing concerns with income suspension, we oppose outright the proposed 13 week income suspension penalty under SEAM, as it is excessive. As an example, a family of four children, even retaining all their family tax benefits, would be expected to survive on just the base rate of $52.64 per child per fortnight for a full 13 week period whilst on income suspension. We find this expectation unreasonable.

89. National and international research shows that the majority of reasons for non-attendance relate to a lack of recognition by schools of Aboriginal culture and history; failure to fully engage parents, carers and the community; and ongoing disadvantage in many areas of the daily lives of Aboriginal Australians (AIHW and Australian Institute of Family Studies, 2010).

90. It is the view of Congress that there is insufficient evidence to support improved attendance and educational outcomes through an expansion and extension of SEAM and that these resources would be better directed at alternatives such as changing the school environment and supporting community-driven initiatives. We note that the Department of Education, Employment and Workplace Relations released an evaluation report on SEAM for 2010 at the concluding stages of the consultation period of this review. Due to the late timing of the release, there has been insufficient time to analyse the evaluation report and its implications. Accordingly, we reserve our position on the evaluation report.

91. The implementation of SEAM under the *Social Security Amendment Bill* (2011) does not address the underlying issues and rather seeks a punitive approach to address non-attendance.

92. The measure places on children an increasing burden of responsibility for a family's receipt of income support and consequently their financial wellbeing. It is the experience of Congress, based on feedback from Members, that children who do not

attend school may already be living in difficult home situations where there may be poverty, over-crowding, substance abuse and violence. A child who is viewed by parents or carers as the cause of the withdrawal of income may be subject to further victimisation. The withdrawal of a family's income may result in the family struggling to pay for basic requirements and therefore pressuring other family members for money. This "humbugging" was identified as a behaviour that income management is trying to reduce.

93. Programs that link parents' welfare payments to school attendance are based on assumptions of questionable validity, including the fact that they implicitly define the problem as one of parent or student negligence.

94. The administration costs for SEAM have been estimated by ACOSS to cost and average of $200,000 per school per year. Despite the trials, school attendance has been falling in Aboriginal communities in the Northern Territory. The evaluation report into the NTER concluded "There has been no observable improvement in school attendance between 2006, before the NTER was introduced, and 2010, the last year for which data are available" (*NTER Evaluation Report*, November 2011, page 3).

95. The evaluation of the SEAM trials found that the model is unable to address a number of the barriers to school attendance including cultural obligations, health problems and language barriers. During the consultations a number of obstacles to school attendance were also identified, including parents not being convinced about the value of education and concerns that children will lose their culture if they attend school.

96. In October 2011, Minister for School Education, Early Childhood and Youth Mr Peter Garrett, addressed the National Aboriginal and Torres Start Islander education Conference in Darwin. He said;

> *"We know what works. The tragedy of low attendance is we know what works to fix it. More than anything else, the [community] points to four things:*
>
> *• A strong relationship between school and community;*
>
> *• Well prepared and well supported teachers;*
>
> *• Following students through with Personalised Learning Plans; and*
>
> *• What's been referred to as a "culture of high expectations".*

97. It is Congress's view, based on the Stronger Futures consultation and feedback from Congress Members, that while communities agree on the need to improve attendance, ways of achieving this goal include the re-introduction of bilingual learning, access to full-time education in homelands, support for Aboriginal teachers

and staff, acknowledging culture in the curriculum, engaging parents, elders and community members in schools, and distributing funds more equitably.

98. Congress agrees with the Government's goal of lifting attendance and supporting children to receive a quality education but does not view the expansion of SEAM as the optimal measure to achieve this outcome.

99. We reiterate our comments in previous sections that communities must be involved and in control of the decision-making on all issues that affect their communities.

100. We are concerned that the Commonwealth's Stronger Futures legislation will co-exist with Northern Territory legislation addressing the same issue, leading to Aboriginal people being subject to two sets of laws, and potentially two avenues of penalty. We are not confident that effective communication structures exist between Commonwealth and State agencies to prevent duplication, and seek greater protection against this risk within the Commonwealth legislation.

RECOMMENDATION:

That provisions implementing the School and Enrolment and Attendance Measure (SEAM) do not proceed in their current form.

That culture and bilingual education is incorporated into schools.

Ensuring community control

> *"While Governments and many non-government organisations have endeavored to address the many problems of our people, it must be us that drive the solutions and anything short of this renders us passengers in our own development. This in turn leads to more dependency."*
>
> (AHRC, Our Future in Our Hands, 2009)

102. The pathway to a sustainable benefit to Aboriginal people is the transfer to community control.

103. Congress supports continued Federal Government involvement in the Northern Territory so that communities can be supported to overcome the legacy of the past and build a stronger future. Significant and sustained expenditure is needed to address the backlog of need in terms of basic services such as health, housing and education. However, Congress remains very concerned at the continued top-down approach and imposition of control via the proposed legislation.

104. The Government is proposing the legislation will be implemented with a sunset period of 10 years. We commend the Government's long term commitment but emphasise the need for Government to provide resources, tools, education and training required for a full hand back of control to the Aboriginal people of the Northern Territory by 2022 or before.

105. Congress calls for formal structures to be established to monitor the implementation of legislation and set a road map for transfer to community control.

106. Congress calls for a full independent evaluation within 5 years of commencement. This is to ensure the empowerment of communities in not just the immediate future, but the long term. It calls for justification of all measures and laws and a system that monitors the impact and success of measures implemented under Stronger Futures. Government must be held accountable to the lives in which they seek to exert control.

107. To ensure that the objectives of the legislation are met, communities must be given support, responsibilities, employment and training that guarantees the implementation of and respect for community governance systems, and community control.

108. To empower Aboriginal communities, new ways of engaging must be based on listening and acting on those communities' aspirations and needs. Ultimately,

sustainable change will only occur when Aboriginal people fully participate in the design, delivery and oversight of programs and services. This is a long-term intergenerational vision which Government must recognise and respect. It is time to commit to providing the tools to empower Aboriginal and Torres Strait Islander families, individuals and future generations.

RECOMMENDATIONS:

That formal structures are established to monitor the implementation of *Stronger Futures* policy programs and resources for the transfer to community ownership and control.

That an independent evaluation of the legislation is conducted within 5 years of its commencement.

Conclusion

109. There is a clear need to address the severe disadvantage in the Northern Territory and while Government has initiated a long term commitment to bridging the gap, Congress would like to see more effort to build a genuine partnership with Aboriginal communities, their service providers and peak organisations.

110. Over the past months Congress has spoken to and worked with our Member organisations in the Northern Territory. Our Directors and Co-chairs have spent time in the Northern Territory and have been told of the despair felt by Aboriginal people. The message they have consistently heard is that consultation has been inadequate, the measures overtly discriminate against Aboriginal and Torres Strait Islander people, and rely on punitive 'big stick' approaches.

111. Congress urges the Federal Government to ensure policies and programs are fully consistent with the standards affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples*. Congress welcomes further conversation with the Senate Committee and Government Ministers to develop a more sustainable approach to Stronger Futures in the Northern Territory. It is time for Government to see our people's culture as form of strength and incorporate this with respect, into all future policy initiatives in the Northern Territory in genuine partnership with community leaders.

112. As the approach proposed by the *Stronger Futures* and related legislation leaves many gaps and risks, Congress remains committed to continued engagement with Government, our Members and communities, to develop sustainable solutions based on empowerment and respect of Aboriginal peoples and cultures.

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