



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

STATEMENT TO THE AUSTRALIAN GOVERNMENT
ON THE NORTHERN TERRITORY INTERVENTION

September 2011

Statement of The National Congress of Australia's First Peoples on the Northern Territory Intervention

1. Introduction

- 1 The National Congress of Australia's First People (Congress) welcomes the Federal Government's commitment to finding a new way forward to redress the disadvantage faced by Aboriginal¹ communities of the Northern Territory.
- 2 Congress asserts that the initial policy approach of the Northern Territory Emergency Response (NTER) was seriously flawed. We condemn the imposition of blanket measures on Aboriginal people in the Northern Territory in derogation of human rights obligations, the lack of collaboration and engagement with affected communities, interventions without local Aboriginal community control, the ad hoc provision of services, and the lack of respect for language, culture and existing Aboriginal governance structures.
- 3 The way in which the intervention was devised and imposed disempowered individuals and communities, and thereby contradicted and undermined the Federal Government's stated policy of encouraging community capacity and personal responsibility. Severe negative impacts were felt not just by communities in the Northern Territory, but by Aboriginal people across Australia.
- 4 Congress acknowledges the Federal Government's preparedness to seek community views and modify its approach. We commend the Government for its commitment to review what has and has not worked, and its efforts to identify what needs to be done to overcome disadvantage and strengthen Aboriginal communities in the Northern Territory.
- 5 While there is clearly a great need for a concerted effort against the circumstances confronting many Aboriginal communities and people in the Northern Territory, Congress contends that the NTER was founded upon accusations levelled against Aboriginal people generally, without regard for clear evidence or facts. This approach stigmatises and perpetuates negative stereotypes about all Australia's First Peoples. The extensive damage caused challenges progress made towards Reconciliation in the past decades, and its long-term effects at the national level, cannot be overestimated.

¹ The reference to Aboriginal peoples in this position paper includes Torres Strait Islander peoples living in the Northern Territory

- 6 Despite the hard work and effort of many at the local level, Aboriginal people in the Northern Territory continue to face unacceptably high levels of disadvantage in every aspect of life. On top of difficulties accessing basic services, these communities are working to uphold their responsibilities to their traditional country, maintain their culture and language, and create opportunities for their children.
- 7 One positive aspect of the emergency actions has been the preparedness of Government to allocate and apply additional funds to service delivery in Aboriginal communities in the Northern Territory. While serious doubt remains about the application of additional funding and the results achieved at community level, Congress is aware that communities have welcomed the additional resources where received. The review of the NTER must not result in a reduction of resources available to the Aboriginal communities in the Northern Territory.
- 8 Ultimately, the answers to the problems affecting Northern Territory Aboriginal communities lies within those communities. The Congress seeks to support those communities and ensure they are given every possible opportunity to improve their lives.

2. Key themes

2.1 Aboriginal people have the right to live on their traditional homelands in accordance with their customs and beliefs.

- 9 In overcoming decades of under-investment in services and infrastructure, Congress is of the view that there must be no policy parameters based on the supposition or requirement that Aboriginal people move from their ancestral lands into larger communities or urban areas.
- 10 To do so risks harming and denying the oldest living culture in the world. The United Nations Declaration on the Rights of Indigenous Peoples (Articles 8 and 25) states the right of Indigenous Peoples to live as a distinct group with the right to maintain their cultural values and identities and remain in traditional country.
- 11 It is of great concern to Congress that the significance and importance of culture, including language, was not mentioned in the Stronger Futures discussion paper. The importance of enabling and supporting communities to maintain their culture should be a core consideration in the Government's future involvement in the Northern Territory. This is a basic human right and also has demonstrable outcomes in contributing to the health and wellbeing of individuals, families and communities.
- 12 Congress is deeply concerned by the threat to the security of affected communities by the proposal to create 21 Territory growth towns which will require Aboriginal communities to relocate and adjust their traditional and adapted lifestyles.

13 In the interest of building stronger communities, 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, including homelands, are adequately supported.

14 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.

2.2 One size does not fit all - each community is different.

15 Congress recommends that policies and programs be targeted to local community needs in active partnership and engagement with the community. Accordingly, policy development and implementation must be responsive to local community needs and incorporate flexible processes for engagement with affected communities.

16 The Aboriginal people and organisations with whom Congress has consulted have said they support some measures introduced under the NTER. These include the increase in policing, provision of night patrols, improved provision of health services such as child health checks and hearing and dental services, study assistance schemes and improved housing.

17 However, Congress has received mixed views on income management. Some families say income management has helped stop the humbug, but many say it is a blunt instrument that has not worked. While supporting the provision of extra services and infrastructure, Congress notes the widespread sense of deep dissatisfaction with the initial imposition of the NTER measures.

2.3 Blanket imposition of alcohol restrictions and compulsory quarantining of welfare payment is discriminatory and must be repealed.

18 Congress supports the repeated calls to replace compulsory income management with a voluntary scheme and considers the Federal Government should act on good advice it has received in the Report of the NTER Review Board² and many subsequent submissions by Aboriginal groups (including the Central Land Council, the Australian Indigenous Doctors Association, the Aboriginal Medical Services Alliance of the NT and Aboriginal Peak Organisations Northern Territory). Criteria for income management, based on age and length of time a person has been in receipt of Centrelink benefits, must be repealed. The mandatory system must be replaced by a voluntary system with a provision for case-by-case income management where warranted.

² Commonwealth of Australia (2008) Report of the NTER Review Board, October 2008.

19 *“There is no compelling evidence that compulsory blanket income management is an effective tool for helping to improve the living conditions for children and families in indigenous communities, or to support disengaged youth and vulnerable individuals in the broader community.”³*

20 *“Big sticks are not effective – it is disempowering.”⁴*

21 Congress notes that prior to the NTER introducing a general ban on the possession, transportation, sale and consumption of alcohol in prescribed areas, many communities had already introduced alcohol management plans and declared themselves ‘dry’. Recognition and appraisal should have been given to these Aboriginal community-based initiatives. The emergency measures have caused much confusion and frustration within those communities.

22 The imposition of alcohol restrictions for dry communities has been unnecessary and for other communities it has been a disproportionately heavy handed regulatory approach. It has also increased incarceration rates and criminal records for people in those communities for matters that are not crimes elsewhere.

23 Where intervention is warranted in any particular situation, there must also be an intention to end the intervention before it becomes entrenched. In the case of the recent intervention, there must be clear and judicious arrangements to return control of alcohol management to the community as soon as possible.

24 Congress endorses the recommendations of many organisations, including the Australian Human Rights Commission, Australian Council of Social Services, Aboriginal Peak Organisations Northern Territory and the Central Australian Aboriginal Congress Inc, which advise that solutions to alcohol misuse need to be specific to the needs of the community. The next phase requires supporting and building on the success of community based initiatives for alcohol management and for alcohol restrictions to be part of a broad, complementary strategy tackling supply, harm and demand reduction measures which include alcohol treatment services.

2.4 Better integration and coordination of programs and service delivery is needed.

25 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.

³ AMSANT (2008) Submission to the NTER Review Board.

⁴ Stated by an Elder from a town camp at the Alice Springs Consultation on Stronger Futures.

26 *“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.”⁵*

27 Allocation of funding and the provision of services and programs needs to be better coordinated to respond to the contemporary 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.

28 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.

29 Congress urges the Federal Government, the Northern Territory Government and key stakeholders to consult and work jointly with local communities to ensure better coordination and implementation of services and programs, adopting a holistic, community development approach.

2.5 An evidence based approach to policy and program delivery must be adopted.

30 Congress reiterates the concerns expressed by Aboriginal organisations in the Northern Territory such as the Central Australian Aboriginal Legal Aid Service, the Northern Australian Aboriginal Justice Agency, APO NT, Central Australian Aboriginal Congress Inc, that there has been little or no evidence produced to justify the NTER. There is a general lack of robust baseline data to properly evaluate programs and services as to their achievements in regard to Closing the Gap targets, dealing with social exclusion, or addressing social issues such as community safety.

31 Government must ensure that policies and programs for building a stronger future for Aboriginal families and their communities are evidence-based, and sourced from the relevant communities, organisations and services.

⁵ Stated by a member of the public at the Alice Springs consultation on Stronger Futures.

2.6 Lack of consultation and contravention of human rights has disempowered Aboriginal communities.

32 Congress continues to be deeply concerned that the legacy left from the imposition of the NTER and the lack of consultation has extensively disempowered and vilified Aboriginal communities. ‘Emergency’ measures have:

- undermined some good governance structures and systems that existed in those communities;
- removed the autonomy of Aboriginal people and their communities to make decisions (e.g. alcohol bans, income management, five year leases);
- undermined community participation in, and initiatives for, community development projects; and
- imposed measures rather than relied upon good faith negotiations with Aboriginal people.

33 The effect of the NTER on local governance has been described as “...a return to command-and-control-style hierarchical governance...as well as a complete reversal of any remnants of self-determination for Indigenous Australians.”⁶ Congress supports the view of the Aboriginal Peak Organisations Northern Territory that “Community members are hurt and disappointed by the top-down approach by the government which determines ‘how, when and on what the community’ is consulted and lament the loss of their community councils.”⁷

2.7 ‘Special Measures’ criteria must conform with human rights standards

34 Government has referred to imposed measures as ‘special measures’ to overcome disadvantage in communities. However many of the special measures, including the five year leases over land, lack of recognition of customary law in bail and criminal matters, compulsory income management and imposed alcohol bans, do not conform with basic criteria for special measures which are intended to overcome disadvantage, and are arbitrary attempts to impose untested and ill-considered solutions upon communities.

35 Congress is of the view that these measures were acts inconsistent with international human rights standards, as documented in numerous human rights treaties. The imposed measures are opposite to the spirit of partnership and

⁶ Hunt, J., 2008. *Between a rock and a hard place: self-determination, mainstreaming and Indigenous community governance*. IN *Contested Governance: culture, power and institutions in indigenous Australia*. Editors: Janet Hunt, Diane Smith, Stephanie Garling and Will Sanders. Centre for Aboriginal Economic Policy Research, Australian National University. Research Monograph No. 29.

⁷ Aboriginal Peak Organisations Northern Territory, 2011. Response to Stronger Futures Consultations page 39.

community decision-making as intended by the Declaration on the Rights of Indigenous Peoples.

36 Congress agrees with the view of the United Nations Special Rapporteur on the Rights of Indigenous People, James Anaya, that the measures adopted to address disadvantage in Northern Territory Aboriginal communities did not qualify as special measures under the Convention to Eliminate Discrimination⁸. Special measures must have legitimate and articulated aims. These aims must have a positive purpose and be appropriate to the situation to be addressed, observing principles of fairness and proportionality. They must be determined according to need and based on accurate assessment and evidence regarding any disadvantage to be addressed. Of paramount importance, they must be temporary and have identified goals or targets for overcoming disadvantage. In all instances, special measures must be developed and decided in consultation with concerned communities.

37 Special measures must not be confused with the permanent rights of the Aboriginal communities such as the rights to their own culture and their lands. These rights must be protected in accordance with the principle of non-discrimination and equality.

3. Building trust, consultation, partnership, community development and governance

38 Building stronger futures for Aboriginal families and their communities requires learning from the lessons of the NTER and making a commitment to a new approach.

39 Future initiatives will require developing new ways of engaging with affected communities. To reset the relationship and genuinely build partnership and trust requires not only effective communication and consultation but also the active participation and consent of Aboriginal people.

40 It is essential for the Government to commit to genuine consultation in the development, execution and evaluation of policies and programs for Aboriginal people. Congress calls for the Council of Australian Governments agreement to be revisited to guarantee effective Aboriginal participation, input and consent where policies and programs have direct impact on their communities.⁹

⁸ United Nations Human Rights Council. *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Addendum – Situation of indigenous peoples in Australia*. In this report the Special Rapporteur examined the Northern Territory Emergency Response.

⁹ Aboriginal Peak Organisations Northern Territory, 2011. Response to Stronger Futures Consultations.

41 *“What is required is a determined, coordinated effect to break the cycle and provide the necessary strength, power and appropriate support and services to local communities, so they can lead themselves out of the malaise: in a word, empowerment.”¹⁰*

42 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.

3.1 Community Decision-Making

43 Congress Members identified sovereignty as one of the key policy priority areas for our organisation to focus on. In the context of the NTER, sovereignty means that future strategies aimed at Aboriginal disadvantage must be owned and controlled by Aboriginal people and their communities.

44 International evidence compellingly demonstrates that sovereignty for Indigenous people works. The key finding of the Harvard Project on American Indian Economic Development is that when Native Americans “make their own decisions about what development approaches to take, they consistently out perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care and social service provision”¹¹

45 Australian evidence confirms that success is achieved with the full participation of the communities in the design and delivery of programs and services¹², and that Government has failed in reaching targets and goals where input from communities has been inadequate¹³.

3.2 Community development framework

46 The Federal Government must apply a community development framework under the Stronger Futures policy direction and adopt international best practice in community development when working with Aboriginal people. The Government

¹⁰ Anderson, P and Wild, R, 2007. Ampe Akelyernemane Meke Mekarle ‘ Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Darwin, p.12.

¹¹ See <http://hpaied.org/about-hpaied/overview>.

¹² Closing the Gap Clearing House (AIHW, AIFS), 2011. What works to overcome Indigenous disadvantage: key learnings and gaps in the evidence. Produced for the Closing the Gap Clearinghouse. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.

¹³ SCRGSP 2009, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission, Canberra.

must also commit to applying the principles of the Declaration on the Rights of Indigenous Peoples to such a framework.

47 Congress is of the view that for Aboriginal programs and services to be successful, they must not only be accountable and evidenced based in delivering desired outcomes, but must also have cultural integrity for the community, by building on what Aboriginal communities say has worked.

48 Congress suggests that one approach could be the use of local and regional action plans¹⁴ tailored to the needs of the particular community. These might map out:

- baseline data about the actual gap, inequity or issue to be addressed, and evidence for the causes of the gap, inequity or issue;
- the priorities areas identified and agreed to by the community;
- the relevant stakeholders, including local communities, community organisations, and government agencies;
- how the stakeholders can work with communities to meet a target;
- what capacity building is required; and
- processes of consultation and obtaining broad informed community support and consent.

49 Under this proposed approach, NGOs, Governments (local, state and federal), stakeholders, community leaders and service providers could come together to do needs based planning, in partnership with the community developed initiatives to redress the particular inequity or issue.

3.3 Governance and capacity building

50 Fundamental to the success of any local or regional plan will be capacity building which develops or draws from, and strengthens, effective forms of Aboriginal governance.

51 *“If communities are poor in making decisions, then we will continue to suffer. There needs to be new ways of making group decisions and to apply decision making processes as a group. This is where the power is. Our community members need to be empowered to make the decision makers accountable as to how the money is spent and we need to know what the rules are to do this.”¹⁵*

¹⁴ In relation to the proposal to develop local and regional action plans, the Congress acknowledges and thanks Stephanie Bell, Chief Executive, Central Australian Congress, for sharing her vision and views on re-engineering the NTER so that there is constructive engagement which addresses the structural determinants of inequality.

¹⁵ Statement to Congress by Janice Harris, CEO of the Institute of Aboriginal Development.

52 Congress strongly believes that a fundamental element of the next phase is a commitment to long term investment in and support for local Aboriginal leadership, as well as in strengthening communities at the local level to be able to manage their own lives. Local Aboriginal businesses and organisations should be encouraged and enabled to take more responsibility for the delivery of services and programs.

53 The Federal and Northern Territory Governments should take note of the recommendation of the Report of the NTER Review Board:

54 *“[That the] Australian and Northern Territory Government jointly develop a process for (1) redeveloping their own approach to funding, supporting and sustaining capable legitimate community and regional governance system; (2) encouraging Aboriginal communities to rethink and redevelop capable legitimate community leadership and governance systems...These joint initiatives will be essential to ensure the ongoing stability and wellbeing of communities.”¹⁶*

3.4 Funding, accountability and a long-term commitment

55 Closing the gap or underwriting sustainable development in the Northern Territory will inevitably be expensive because of the remoteness of communities and the decades of neglect in providing basic services and infrastructure to these communities. Programs and policy need to be geared to long term achievements that are negotiated with Aboriginal communities and this requires government commitment to investment and ongoing support for programs that work.

56 Congress suggests that monitoring by an independent body will also be essential to achieving long-term change, by identifying those programs that are effective.

4. Overarching principles

57 Congress is strongly of the view that Government must commit to fundamental principles that are taken into account when identifying programs and initiatives under the Stronger Futures policy platform. These principles must be in accordance with and based upon the Human Rights Framework of the Government of Australia.

¹⁶ Commonwealth of Australia (2008) Report of the NTER Review Board, October 2008.

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These principles could include:

- All Government initiatives must be in line with Australia's international human rights obligations.
- Policy and program initiatives should be consistent with responsibilities set out in the United Nations Declaration on the Rights of Indigenous Peoples.
- All policies and programs to improve the social and economic disadvantage faced by Aboriginal people in the Northern Territory should be evidence-based and in compliance with the Racial Discrimination Act.
- Negotiations with Aboriginal and Torres Strait Islander peoples must be undertaken in good faith, recognising the duty of governments to consult with the communities concerned.
- Communities must freely commit to an agreement or consent to measures, including special measures, before Government implements those measures.
- The criteria and character of special measures should be clearly identified.
- Programs are designed to include capacity-building and to recognise and respect community governance and decision-making, or where needed to assist with restoring community governance and decision-making.

59

Congress also urges the Government to heed the lessons of its own Strategic Review of Indigenous Expenditure¹⁷ with regard to sound principles and design features of Aboriginal-specific programs.

5. Conclusion

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Congress endorses the Federal Government's decision to identify a new way forward to address Aboriginal disadvantage in the Northern Territory. Congress concludes that the initial imposition of the NTER was flawed and resulted in a number of negative consequences for affected communities. These consequences are unacceptable. The Government's public acceptance of the need to reset the relationship, restore trust and modify legislation, programs and services in response to community views, is welcomed by Congress.

¹⁷ Department of Finance and Deregulation. Strategic Review of Indigenous Expenditure. Australian Government, February 2010.

- 61 In particular, governments must accept and acknowledge that it has a duty, not only through its international obligations but also through its own fundamental concepts of democracy, equality and non-discrimination, to respect and comply with the decisions of communities regarding their futures and basic interests.
- 62 The Federal Government must act to remove any residual elements of the NTER that are not in full compliance with the Racial Discrimination Act. There is no justification for the Government to limit rights of persons of Aboriginal descent or to discriminate against Aboriginal people in general.
- 63 Congress encourages the Government to continue to seek and respect community views as a matter of elementary procedure in its development of policy and programs. In particular, we suggest the Government take account of what has and has not worked in the view of communities, and consider what additional effort is needed to overcome disadvantage and strengthen each unique community in the Northern Territory and elsewhere.
- 64 Where demonstrated, the leadership and effort of local Aboriginal people and the progress they have achieved in overcoming obstacles to develop and strengthen their own communities must be acknowledged and respected.
- 65 Government now has the opportunity to devise a positive new partnership with Aboriginal leaders and communities in which tangible solutions are identified by the people themselves, and practical steps are taken to achieve them.
- 66 The Federal Government must ensure the lessons of the past are learned and applied. In particular the Government must commit to long term, recurrent funding to provide necessary infrastructure and essential services to communities, principally in the areas of policing, health, housing and education.
- 67 Finally, Congress urges the Federal Government to make extra effort to ensure policies and programs are fully consistent with the standards affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

6. Consultation and research undertaken

- 68 To prepare this position, Congress representatives travelled to the Northern Territory to meet with key organisations and observe one of the public consultations. Congress acknowledges and supports the submissions and voices of the many Aboriginal and Torres Strait Islander organisations and peoples on the NTER and Stronger Futures consultations. These include the Australian Indigenous Doctors Association, the Land Councils, the Aboriginal Medical Services Alliance of the Northern Territory, the Aboriginal Peak Organisations Northern Territory, Jumbunna Indigenous House of Learning, the Central Australian Aboriginal Congress and the Aboriginal and Torres Strait Islander Legal Services. Congress Delegates were invited to submit views.
- 69 Congress has analysed previous reviews, reports and submissions on the Government's response in the Northern Territory. Comprehensive advice on research, evaluations, past reports and the perspectives of various stakeholders was provided by the Indigenous Policy and Dialogue Research Unit (University of NSW).
- 70 Congress also as acknowledges the reports received from the International Committee on the Elimination of Racial Discrimination, the United Nations High Commissioner for Human Rights, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, the Australian Human Rights Commission, the Human Rights Law Centre, Amnesty International, Oxfam Australia, and the Law Council of Australia.
- 71 Congress acknowledges the shared message in all instances from these consultations, reports, submissions, meetings and research that all actions and measures to address Aboriginal disadvantage must be consistent with Australia's Racial Discrimination Act 1975.