



MONASH University
Castan Centre for Human Rights Law

THE NORTHERN TERRITORY INTERVENTION: AN EVALUATION

Castan Centre for Human Rights Law

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Northern Territory Intervention: An Evaluation February 2020

The Castan Centre for Human Rights Law

The Castan Centre, based in the Law Faculty at Monash University, is a world-renowned academic centre using its human rights expertise to create a more just world where human rights are respected and protected, allowing people to pursue their lives in freedom and with dignity. The Centre’s innovative approach to public engagement and passion for human rights are redefining how an academic institution can create important and lasting change.

OVERVIEW

The Intervention and Closing the Gap

WAS	NOW	
3/10	2/10	Employment and Economic Participation Evaluation: Indigenous employment in the Northern Territory has fallen significantly since 2010, due in large part to the discontinuation of the Community Development Employment Projects (CDEP), the lack of work opportunities following the end of the mining boom, the lack of transport infrastructure, low education levels and investment uncertainty due to land tenure changes. To learn more, see pages 17-19.
5/10	6/10	Education Evaluation: Improvements include the introduction of holistic programs to encourage early childhood enrolment, improved reading, writing and numeracy outcomes for Indigenous students and record year 12 completion rates. The Northern Territory still however lags significantly in Indigenous attendance levels, ability to meet national minimum education standards, completion of year 12 and year 12 results. Further, Indigenous students in remote areas continue to face serious barriers to education. To learn more, see pages 20-22.
3/10	4/10	Health and Life Expectancy Evaluation: Improvements include a decrease in child mortality and a decreased life expectancy gap since the last evaluation. Nevertheless, the Northern Territory still has the highest rates of child mortality and the widest life expectancy gap in Australia. Further, Indigenous Australians continue to experience disproportionately high rates of chronic disease and mental illness. To learn more, see pages 23-25.
3/10	4/10	Safer Communities Evaluation: Indigenous women still face the highest rates of domestic violence. Further, Indigenous children are still 8 times more likely than their non-Indigenous counterparts to receive child protection services, and 11 times more likely to be in out-of-home care in the NT. However, there are some signs of positive change, including a recent reduction in assaults and some violent crimes. This is likely to be contributed to by alcohol reduction programs, including floor prices for alcohol and a banned drinkers' register. To learn more, see pages 26-30.
0/10	0/10	Incarceration rates Evaluation: Indigenous imprisonment rates continue to increase in the NT, with ATSI peoples accounting for over 80% of the prison population. Indigenous youth are also disproportionately represented in juvenile justice centres, and subject to appalling and inhumane conditions. Governments have still not committed to a clear target to reduce incarceration rates. To learn more, see pages 31-33.

Human rights and the Intervention

WAS	NOW	
4/10	4/10	Overall Compliance Evaluation: Measures in the Northern Territory have been highly criticised for their impact on human rights including the right to freedom from racial discrimination, the right to self determination, the right to be consulted, the right to social security, the rights of children, and freedom from Genocide. To learn more, see pages 34-36.
NO RATING	3/10	Special Measures Evaluation: Measures in the Northern Territory continue to wrongfully allow racial discrimination against Indigenous peoples under the guise of advancing other human rights. In part this is because these measures were implemented without consultation and consent from Indigenous groups affected. To learn more, see pages 37-38.
NO RATING	2/10	Racial Discrimination Evaluation: Increasingly discriminatory employment measures are being exacted against Indigenous communities in the NT. The proposed introduction of a cashless debit card is likely to exacerbate this issue. Overall, there is substantial evidence to suggest that racial discrimination against Indigenous peoples remains prevalent. To learn more, see pages 38-39.
NO RATING	1/10	Right to Self determination Evaluation: Self-determination has been restricted through the continued disempowerment of Indigenous groups resulting from low voting participation, removal of financial autonomy, and removal of consideration of customary law in bail and sentencing decisions. To learn more, see pages 40-42.
NO RATING	3/10	Social and Cultural Rights Evaluation: Indigenous Australians continue to face barriers to property rights and control of Indigenous territories, and are disproportionately subject to interference with the rights to family and private life. To learn more, see pages 42-43.
NO RATING	2/10	Right to be Consulted Evaluation: There is continued resistance to consultation with Indigenous groups. Most notably, the Uluru Statement, calling for an Indigenous voice to Parliament has failed to garner bipartisan support. To learn more, see pages 44-45.
NO RATING	1/10	Right to Social Security Evaluation: The enjoyment of social security has come under serious threat due to the introduction of Income Management Schemes for prescribed communities such as the Cashless Debit Card. Such interventionist schemes disproportionately impact upon Indigenous communities, and deny them autonomy, dignity and the right to equal enjoyment of social security. To learn more, see pages 46-48.
NO RATING	1/10	Rights of Children Evaluation: The rights of children continue to be undermined in the NT. In particular, the Northern Territory Royal Commission into the Detention and Protection of Children in 2017 found that the treatment of children in juvenile justice centres was in breach of Australia's obligations under the CRC. Further, the age of criminal responsibility remains low in the NT. To learn more, see pages 50-52.
NO RATING	0/10	Genocide Evaluation: The failure to develop adequate mechanism for reparations for for policies that have deliberately inflicted conditions of life calculated to bring about a Indigenous communities' physical destruction - such as the forcible removal of children - remains a critical human rights concern. Further the lack of support for intergenerational trauma exacerbates this issue. To learn more, see pages 53.

1. WHAT IS THE NORTHERN TERRITORY INTERVENTION?

The Northern Territory Intervention is the colloquial name for the Northern Territory Emergency Response (NTER) which was introduced by the Howard government in August 2007. The catalyst for this suite of measures was the release of the 'Ampe Akelyernemane Meke Mekarle Report' ('Little Children are Sacred Report') which outlined then current allegations of widespread child abuse and family violence in Aboriginal communities, and recommended that 'child abuse...be designated as an issue of urgent national significance'. It is a wide range of complex and controversial measures enacted through the Northern Territory National Emergency Response Act (NTNERA) with bipartisan support.

The Intervention was directed at addressing the disproportionate levels of violence in Indigenous communities in the Northern Territory, as well as the systemic disadvantage of Indigenous people, characterised by economic deprivation, unemployment, social marginalisation, inadequate housing and poor health and justice outcomes. It was also a direct response to the [Ampe Akelyernemane Meke Mekarle Report](#) ('Little Children are Sacred Report') into sexual abuse of Indigenous children. This report was commissioned by the then Northern Territory Chief Minister, Clare Martin, following an [interview](#) on the ABC's Lateline program, in which Alice Springs Senior Crown Prosecutor, Dr Nanette Rogers SC, commented that the violence and sexual abuse of children that was entrenched in Indigenous communities was "beyond most people's comprehension and range of human experience". The then Commonwealth Minister for Families, Community Services and Indigenous Affairs, Mal Brough, indicated in his [second reading speech](#) that "[the NTNERA]... and the other bills introduced in the same package are all about the safety and wellbeing of children and are designed to ensure the protection of Aboriginal children from harm".

The Little Children are Sacred Report was the result of in-depth research, investigation and community consultation over a period of over eight months by members of the Northern Territory Board of Inquiry. The focus of their inquiry was instances of sexual abuse, especially of children, in Northern Territory Indigenous communities. The findings were presented to then Chief Minister Clare Martin in April 2007 and released to the public in June. The striking facts, graphic imagery and ardent plea for action contained in this report saw this issue gain widespread attention both in the media and in the political agenda, inciting divisive debate and discussion.

The NTNERA was enacted by the Howard Government just two months after the report was released to the public, allowing little time for consultation with Indigenous communities. It was framed as a '[national emergency](#)' with army troops being deployed to Indigenous communities in the Northern Territory. This took place in the lead up to the 2007 Federal Election, in which the Labor Party, under Kevin Rudd, defeated the Howard Government after four successive terms of Liberal government.

2. THE NORTHERN TERRITORY INTERVENTION MEASURES

2.1 THE INTERVENTION IN 2007

The Intervention was a \$587 million package of legislation that made a number of changes affecting specified Indigenous communities in the Northern Territory. It included restrictions on alcohol, changes to welfare payments, acquisition of parcels of land, education, employment and health initiatives, restrictions on pornography and other measures.

The package of legislation introduced included:

- Northern Territory National Emergency Response Act 2007
- Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007
- Families, Community Services and Indigenous Affairs and Other Legislation Amendment. (Northern Territory National Emergency Response and Other Measures) Act 2007
- Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008
- Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008

In order to enact this package of legislation, several existing laws were affected or partially suspended, including the:

- Racial Discrimination Act 1975.
- Aboriginal Land Rights (Northern Territory) Act 1976.
- Native Title Act 1993 (Cth).
- Northern Territory Self-Government Act and related legislation.
- Social Security Act 1991.
- Income Tax Assessment Act 1993.

A raft of reforms and regulations were introduced by this package of legislation, including:

- Restricting the sale, consumption and purchase of alcohol in prescribed areas. This included the prohibition of alcohol in certain areas prescribed by the legislation, making collection of information compulsory for purchases over a certain amount and the introduction of new penalty provisions.
- 'Quarantining' 50% of welfare payments from individuals living in designated communities and from beneficiaries who were judged to have neglected their children

- Compulsorily acquiring townships held under title provisions of the Native Title Act 1993 with the introduction of five year leases in order to give the government unconditional access. Sixty-five Aboriginal communities were compulsorily acquired.
- Linking income support payments to school attendance for all people living on Aboriginal land, and providing mandatory meals for children at school at parents' cost.
- Introducing compulsory health checks for all Aboriginal children.
- Introducing pornography filters on publicly funded computers, and bans on pornography in designated areas.
- Abolishing the permit system under the Aboriginal Land Rights Act 1976 for common areas, road corridors and airstrips for prescribed communities.
- Increasing policing levels in prescribed communities. Secondments were requested from other jurisdictions to supplement Northern Territory resources.
- Marshalling local workforces through the work-for-the-dole program to clean-up and repair communities.
- Reforming living arrangements in prescribed communities through introducing market based rents and normal tenancy arrangements.
- Commonwealth funding for the provision of community services.
- Removing customary law and cultural practice considerations from bail applications and sentencing in criminal trials.
- Abolishing the Community Development Employment Projects (CDEP).

Despite the Little Children are Sacred Report emphasising the importance of entering into genuine partnerships with Aboriginal communities, the Government implemented the Intervention measures with speed. When the Bills were referred to the Senate Standing Committees on Legal and Constitutional Affairs, almost every witness lamented the "inability of primary stakeholders to meaningfully interact with the process that was being [established] to govern them."

2.2 CHANGES UNDER SUCCESSIVE GOVERNMENTS

After an initial focus on preventing child sexual abuse, successive Federal Governments re-designed and re-framed the Intervention. This involved linking the Intervention with the broader ‘Closing the Gap’ campaign, introducing new measures such as the ‘BasicsCard’ and tougher penalties for the possession of alcohol and pornography. Changes were also made to the operation of the Racial Discrimination Act (RDA) (see section on Human Rights). The current (2019-20) package of legislation retains the support of the Liberal Government and is due to expire in 2022.

A. 2008 Changes

The Intervention was introduced in 2007 by the Howard Government, but a change of government in September 2007 saw the Labor Government under Kevin Rudd gain power. After some consultation and minor changes, the NTNERA and associated legislation was maintained.

In 2008, Rudd publicly apologised to the members of the Stolen Generations on behalf of the nation. In 2009, Rudd also declared support for the most substantive framework for the rights of Indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The previous Howard government had voted against the ratification of this treaty. Article 3 of the Declaration states that:

‘Indigenous peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development’.

The failure to recognise this right to self-determination became one of the major criticisms of the Intervention.

In 2009, Rudd implemented the BasicsCard. This card is still used to manage income in prescribed areas of the Northern Territory (although a change to a new system, the ‘Cashless Debit Card’, is expected in early 2020). It cannot be used to purchase alcohol, tobacco, tobacco-products, pornography, gambling products or services, home-brew kits or home-brew concentrate.

During the period between 2009 and 2010, the Rudd Government committed itself to a re-design of the Intervention, with a focus on reinstating the

suspended provisions of the RDA. The Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010 (Cth) repealed the ‘special measures’ that had been created under the original Intervention to suspend the operation of the RDA. However, the new legislation continued to fall foul of the RDA because land acquisition and compulsory income management measures overwhelmingly affected Indigenous Australians.

The focus of the Government then changed slightly, concentrating more closely on the need to ‘tackle the destructive, intergenerational cycle of passive welfare’ (see then Minister for Families, Community Services and Indigenous Affairs Jenny Macklin’s [second reading speech](#)). The Rudd government explicitly linked the Intervention to the Closing the Gap targets, shifting the focus of the Intervention from the protection of children from sexual abuse to the reform of the welfare system.

B. 2012 changes

The legislative basis for the Intervention was due to expire in 2012. It was then incumbent upon the Commonwealth government to make decisions regarding the Intervention’s future. Under the Gillard Government, the Stronger Futures in the Northern Territory Act 2012 (Stronger Futures) replaced the NTNERA and extended the Intervention for a further ten years to 2022. The Stronger Futures legislation comprises three principal Acts (the Stronger Futures package), plus associated delegated legislation. The three Acts are:

- Stronger Futures in the Northern Territory Act 2012;
- Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012; and
- Social Security Legislation Amendment Act 2012.

In 2013, the Parliamentary Joint Committee on Human Rights examined Stronger Futures and the related legislation in their [eleventh report](#). They noted that although the Stronger Futures legislative package repealed the Northern Territory Emergency Response (‘NTER’) legislation, it retained three key policy elements:

- **The tackling alcohol abuse measure:** the purpose of this measure was ‘to enable special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory.
- **The land reform measure:** the land reform measure enabled the Commonwealth to amend Northern Territory legislation relating to community living areas and town camps to enable opportunities for private home ownership in town camps and more flexible long-term leases.
- **The food security measure:** the purpose of this measure was ‘to enable special measures to be taken for the purpose of promoting food security for Aboriginal communities in the Northern Territory’. The modifications create a 10 year timeframe, whilst most provisions, other than the alcohol measures, are reviewed after 7 years.

The key changes imposed under the 2012 Stronger Futures legislation package consisted of:

- Expansion of income management through the BasicsCard and the increase of ‘quarantined’ payments.
- Increased penalties related to alcohol and pornography, with as much as 6-months jail time for a single can of beer.
- Expansion of policy that links school attendance with continued welfare payments.
- Introduction of licences for ‘community stores’ to ensure the provisions of healthy, quality food.
- Commonwealth given power to make regulations regarding the use of town camps.

(Sources: [SBS Factbox](#), [Stronger Futures in the NT](#), [Listening but not Hearing Report](#))

Although consultation with Indigenous communities did take place, there was much criticism of the nature of the consultative process and the extent to which it was acted upon. The ‘[Listening But Not Hearing Report](#)’ by the Jumbunna Indigenous House of Learning concluded that “the Government’s consultation process has fallen short of Australia’s obligation to consult with Indigenous peoples in relation to initiatives that affect them”. The [Australian Council of Human Rights Agencies](#) has also stated that it was ‘invasive and limiting of individual freedoms and human rights, and require[s] rigorous

monitoring’. [Amnesty International](#) commented that the new package of legislation was the same as the original “Intervention, but with the pretence of being non-discriminatory.”

C. 2014 changes

The current Intervention legislation is not due to expire until 2022.

In a speech in February of 2014, then Prime Minister Tony Abbott identified the importance of closing the gap through investment in Indigenous programs, with a specific focus on school attendance. However, his speech was followed by substantial budget cuts to Aboriginal legal and health services, early childhood education and childcare, and the consolidation of 150 Indigenous programs into 5 core programs. While the 2015 Budget reinstated funding to Family Violence legal services, these ongoing cuts were expected to detrimentally affect attempts to Close the Gap in Indigenous disadvantage.

The [2015 Budget](#) modified the Stronger Futures NPA, redirecting \$988.2 million in funds to a new ‘National Partnership Agreement on Northern Territory Remote Aboriginal Investment’ (NPA) over eight years. The NPA prioritised schooling, community safety and employment. This funding also aimed to help the Northern Territory Government assume full responsibility for the delivery of services in remote Indigenous communities. Additional funding was made available to extend the Income Management Scheme until 2017. However, the NPA halved expenditure on health measures, minimising the extent to which the Commonwealth could control Council of Australian Governments (COAG) target measures. The reduction in monetary outlay was particularly incompatible with the NPA’s objective of supporting integrated hearing and oral health services directed at children in remote communities.

Government administered funding of \$1.4 billion, previously available under Stronger Futures, was transferred to the NPA, but was delivered by the Departments of Prime Minister and Cabinet and Social Services, outside the NPA framework.

2.3 THE INTERVENTION AND CLOSING THE GAP CAMPAIGN

In 2008, following the change of government after the 2007 Federal Election, the Rudd Labor Government re-framed the Intervention through a new national policy focus on Closing the Gap. Mr Rudd's intention to re-work the Intervention to focus more closely on reforming the welfare system linked closely with the already existing targets of the Close the Gap Campaign. The aims of the campaign were set out in the 2012 'National Indigenous Reform Agreement'.

The Council of Australian Governments (COAG) had identified six areas of Indigenous disadvantage to target as the basis for the Closing the Gap Campaign. These were:

1. Early childhood;
2. Schooling;
3. Health;
4. Economic Participation;
5. Safe Communities; and
6. Governance and Leadership (see Right to Self-Determination below).

The Closing the Gap in the Northern Territory National Partnership Agreement (2009) ceased on 30 June 2012. The Stronger Futures in the Northern Territory package which started on 1 July 2012 continued to support the Closing the Gap reforms.

The 6th Annual Progress Report on Closing the Gap was tabled in Parliament by then Prime Minister Tony Abbott on 12 February 2014. It outlined the commitments made by the Coalition government, including:

- Consolidating the administration of Indigenous programs from eight government departments into the Department of the Prime Minister and Cabinet.
- Establishing the Prime Minister's Indigenous Advisory Council.
- Increasing Indigenous school attendance through providing \$28.4 million funding for a remote school attendance program.
- Improving Indigenous access to employment by commissioning a review and funding employment initiatives.

- Supporting a referendum for the recognition of the First Australians in the Australian Constitution.

However, in the 10th annual progress report of 22 February 2018, then Prime Minister Malcolm Turnbull acknowledged that although there is "much to celebrate", "continued effort and action is required". Mr Turnbull applauded the fact that Aboriginal and Torres Strait Islander people are, on average, living longer. He also celebrated the improvements in early childhood education enrolment, and improved Year 12 Attainment rates. However, the report concluded that only 1 out of 7 targets are on track to be met at a national level, and within the Northern Territory only the target to halve the gap in Year 12 attainment remained on track.

Thus, four of the Closing the Gap targets expired in 2018 (see CTG, Prime Minister's report, 2018, p. 12). These were closing the gap in school attendance by 2018 (not achieved); halve the gap in reading and numeracy by 2018 (not achieved); halving the gap in employment by 2018 (not achieved); halving the gap in Year 12 attainment by 2018 (achieved).

Ten years on from the initial Framework, the Government recognised a need to "recommit and renew our collective efforts". In 2019, the final Closing the Gap report stated that 'we should not let our failure to meet targets overshadow the successful, thriving lives of many Aboriginal and Torres Strait Islander Australians and the great work that many in our communities have been doing'. It notes that the targets were 'ambitious, complex and aimed at long-term, intergenerational change, without all the levers to make it happen' (CTG Report 2019, p.12).

The report claimed to mark a transition to "doing things differently", primarily by working in partnership with Aboriginal people. There is nothing new about governments claiming to be working in partnership with Aboriginal people; the test will be whether they are actually doing so.

A 'Closing the Gap refresh' process is currently underway.

Closing the Gap Refresh

On the 12th of December 2018, the Council of Australian Governments (COAG) committed to a formal partnership with key Indigenous Australian organisations to provide a forum for consultation with respect to the Closing the Gap Refresh. COAG also released a draft framework which sets out 15 targets, accountabilities and reporting requirements that would form the basis for the next phase of the Closing the Gap strategy. The partnership was formalised and came into effect in March 2019. The agreement establishes the Ministerial Council, known as the Joint Council on Closing the Gap which includes representatives from COAG and twelve representatives from Coalition of Peaks. The Government announced that the Joint Council will be responsible for finalising the refreshed Closing Gap framework and targets, play an "ongoing role" in the implementation and performance monitoring of the jointly agreed framework and targets, and review the National Indigenous Reform Agreement by the end of 2019.

The draft targets are as follows:

Families, children and youth

- Increase the proportion of Aboriginal and Torres Strait Islander children assessed as developmentally on track in all five domains of the Australian Early Development Census to 45% by 2028.
- 95% of all Aboriginal and Torres Strait Islander four-year-olds enrolled in early childhood education by 2025.
- Significant and sustained progress to eliminate the over-representation of Aboriginal children in out-of-home care.
- A significant and sustained reduction in violence against Aboriginal and Torres Strait Islander women and children.

Health

- Close the gap in life expectancy between Aboriginal and Torres Strait Islander and non-Indigenous Australians within a generation by 2031.
- By 2028, 90-92% of babies born to Aboriginal and Torres Strait Islander mothers have a healthy birth weight.

Education

- Increase the proportion of Aboriginal and Torres Strait Islander students in the top two bands of NAPLAN reading and numeracy for years 3, 5, 7 and 9 by an average of 6 percentage points by 2028.
- Decrease the proportion of Aboriginal and Torres Strait Islander students in the bottom two bands of NAPLAN reading and numeracy for years 3, 5, 7 and 9 by an average of 6 percentage points by 2028.
- Halve the gap in attainment of Year 12 or equivalent qualifications between Aboriginal and Torres Strait Islander and non Indigenous 20-24 year-olds by 2020.
- 47% of Aboriginal and Torres Strait Islander peoples (aged 20-64 years) have completed Certificate III or above, including higher education, by 2028.

Economic development

- 65% of Aboriginal and Torres Strait Islander youth (15-24 years) are in employment, education or training by 2028.
- 60% of Aboriginal and Torres Strait Islander people aged 25-64 years are employed by 2028.

Housing

- Increase the proportion of Aboriginal and Torres Strait Islander population living in appropriately sized (not overcrowded) housing to 82% by 2028.

The COAG draft targets are notable for their modesty, particularly compared with the original Closing the Gap targets of 2008. The new Closing the Gap Refresh framework claims a change in emphasis, away from the failure to meet (presumably unachievable) targets, and towards emphasis on areas where progress is being made. This is encapsulated in the 2019 Closing the Gap report, which describes Closing the Gap Refresh as a "draft strengths-based framework, which prioritises intergenerational change and the aspirations and priorities of Aboriginal and Torres Strait Islander peoples" (CTG Report 2019, p.14).

2.4 EVALUATING THE INTERVENTION

The lack of impartial data available has impacted on the quality of the debate surrounding the Intervention. While a large number of reports have been undertaken, most are commissioned by government. Significant issues with the quality of statistical data available further impede the ability to reliably evaluate the effectiveness of the Intervention.

Quantity of Evaluation:

The controversial nature of the Intervention and the need for expenditure to be accounted for has meant that there have been a large number of evaluations undertaken regarding various aspects of the Intervention. Within five years of the establishment of the Intervention, by December 2012, 98 reports, seven parliamentary inquiries and hundreds of submissions had been completed. However, the sheer quantity and length of these reports actually hinders the evaluation process, as it obstructs proper evaluation of effectiveness. This process has only accelerated by 2019. To take a couple of the more significant examples, the Australian Law Reform Commission's report 'Pathways to Justice' of 2017, and the Royal Commission into the Protection and Detention of Children in the Northern Territory' (2017), total many thousands of pages, to say nothing of the appendices, transcripts of evidence and other supplementary documents.

Impartiality of Evaluation:

The majority of evaluations of the Intervention have been undertaken by government departments and paid consultants. Australian National University researchers Jon Altman and Susie Russell suggest that the evaluation of the Intervention, instead of being an independent objective process, has been merged into the policy process and, in many cases, is performed by the policy-makers themselves. This means there is a real risk of evidence being ignored or hidden to suit an agenda.

Independent reports and government commissioned reports have often contradicted each other, with the Government seeking to discredit independent reports rather than gathering additional data. This includes independent reports by researchers at [Jumbunna Indigenous House of Learning](#) at the University of Technology Sydney, [Concerned Australians](#) and the

[Equality Rights Alliance](#), all of which have often come to different conclusions than government reports. More recently, the Australian Government's [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) provided an insight into child incarceration, and the Australian Law Reform Commission's '[Pathways to Justice](#)' report (released on 22 December 2017, just before the Christmas break) as an inquiry into incarceration rate of Aboriginal and Torres Strait Islander peoples.

Quality and Consistency of Evaluation:

The 'final evaluation' of the Intervention under the NTNER occurred in November 2011 with the publication of the [Northern Territory Emergency Response Evaluation Report](#). However, the Stronger Futures legislation did not come into effect until August 2012. This left eight months unaccounted for.

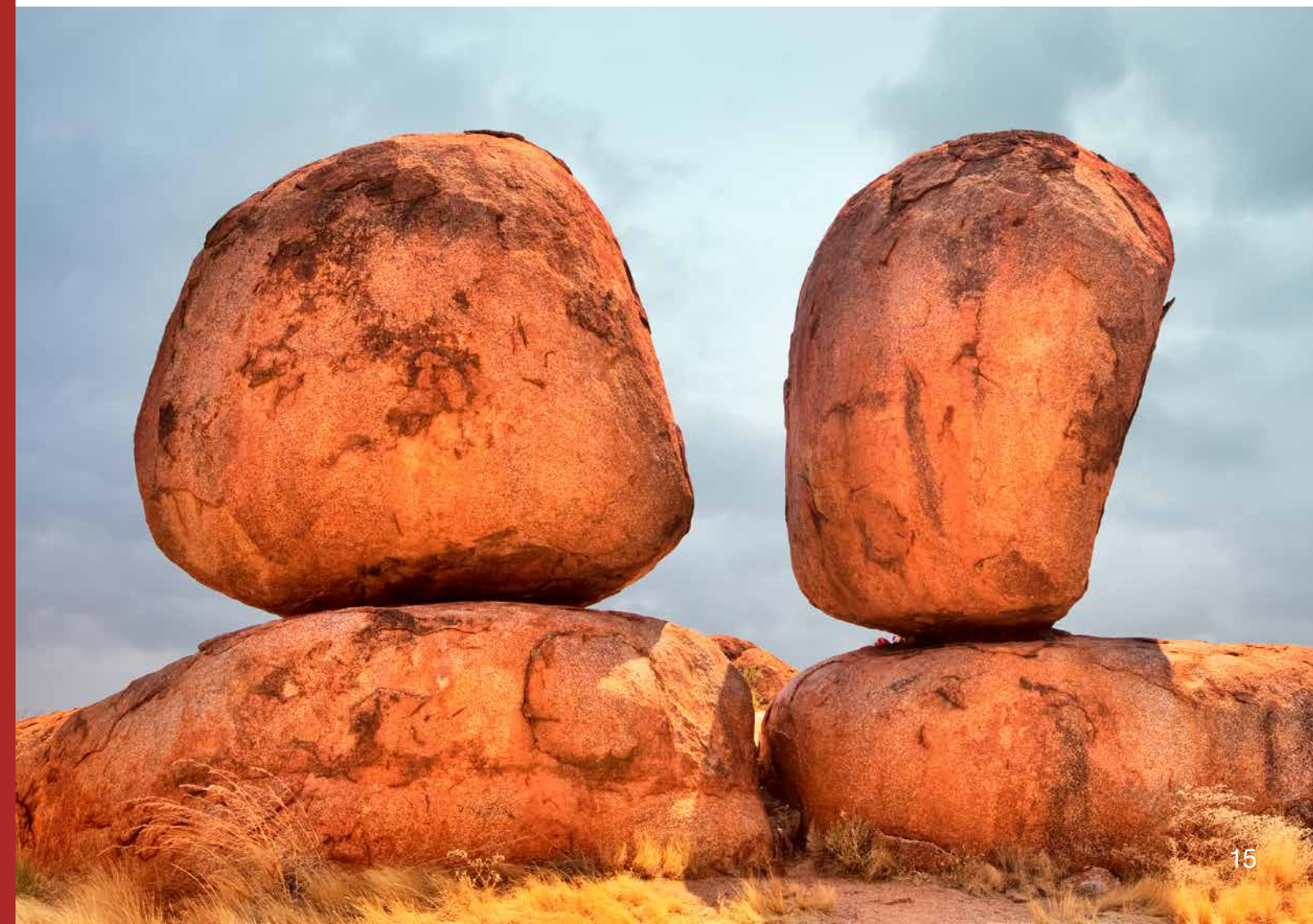
Closing the Gap in the Northern Territory Monitoring Reports are conducted every six months. A significant criticism is that they focus on bureaucratic 'outputs' rather than outcomes. Income management studies, for example, have reported on 'outputs' such as the number of recipients of the Basics Card or the total amount of income quarantined, rather than focusing on the card's effectiveness for health and child protection outcomes.

Much of the data collected has also relied on self-assessment in the form of surveys, such as asking individuals to rate their own health rather than collecting and analysing data on disease. Another issue is the ad hoc nature of some reports. For example, the review of the Alcohol Management Plan in Tennant Creek was only conducted once. This makes it difficult to make comparisons over the life of the policy and evaluate the effectiveness of particular measures.

Independent statistical data can be hard to find, since information compiled by the Australian Bureau of Statistics is national in scope and cannot be translated directly into the context of the individual Indigenous communities in the Northern Territory. Indigenous Australians also have a lower median age than other Australians, meaning data on employment rates or incarceration rates can be statistically skewed.

Benchmarks for Evaluation

ANU researchers [Jon Altman and Susie Russell](#) have [noted](#) that the "absence of an overarching evaluation strategy has resulted in a fragmented and confused approach". They found that the 2007 Intervention did not have any documentation articulating the basis of the policy, nor how it should be evaluated. The first document to address this was the unpublished 'Program Logic Options Report' which was developed in 2010; three years after the Intervention began. This means that there are no original benchmarks for evaluation, and that the decision to extend the program in 2012 was made without clear evidence as to its effectiveness. Furthermore, there is a limited connection between the benchmarks proposed in the 2010 Report and those used in later evaluations.



3. THE INTERVENTION AND CLOSING THE GAP CAMPAIGNS: HAVE THEY BEEN ACHIEVED?

3.1 EMPLOYMENT AND ECONOMIC PARTICIPATION (2/10)

While measurement is difficult, the data that is available suggests that little progress has been made on improving employment outcomes in the Northern Territory, and the gap is, in fact, widening.

Nationally, the original Closing the Gap target of 2008 was to halve the gap in employment by 2018. In 2018, the Federal Government admitted that this had not been achieved, and that in fact Indigenous employment had fallen slightly over the previous decade.

What about the Northern Territory?

After moving from a focus on the protection of children, the employment initiatives introduced under the Intervention were refined and extended. In 2008, the Council of Australian Governments (COAG) introduced the 'National Integrated Strategy for Closing the Gap' as part of a new "integrated approach to employment services". A number of employment services were brought together, including 'Job Services Australia' (JSA), 'Indigenous Employment Program' (IEP) and 'Community Development Employment Projects' (CDEP). However, this package of programs was **criticised** for being "fragmented", "inflexible" and "unresponsive to community needs".

A **specific employment package** for the Northern Territory worth \$75.4 million was also implemented through Community Employment Brokers, which included work-for-the-dole, job network services and structured training and employment projects. These reforms aimed to promote economic independence and participation in the economy, as well as skill acquisition and employer support. It was hoped that in the long term these reforms would engage people in the mainstream economy and improve employability and personal responsibility, with flow on effects to families and communities.

In July 2009, the CDEP program was discontinued in all non-remote communities and all CDEP participants were moved onto income support payments to encourage employment in the mainstream economy. Existing participants in remote communities would continue receiving wages until 2011 (later extended to 2017, then cut back to July 2015). Many of the community development projects that had been operating were assisting with intergenerational psychological trauma or providing essential services such as safe houses and community education and activities. In 2012, legislation was enacted to create 50 new jobs and 100 traineeships; however the CDEP program had previously employed 7,500 individuals.

The 'Remote Jobs and Communities Program' (RJCP) was created in 2013 to replace and streamline the existing programs. It focused on community ownership and skill training in activities that benefited the community. 'Mutual obligation' activities meant that recipients had to work 15-20 hours per week in accordance with Individual Participation Plans. From July 1 2015, the RJCP was renamed the '**Community Development Program**' (CDP) and extended to 25 hours of work per week. This had the effect of enabling Indigenous Australians to overcome the barriers which impeded their capacity to advance into the employment sector. Since 2015, this project has supported remote job seekers. According to a government media release from 2017, the program has provided Indigenous Australians with more than **15,700 jobs**. However, participants of the CDP must work three times the length of other job-seekers in order to receive welfare payments.

In the **2017-18 Budget**, the Government announced they were considering a new remote employment model “to break the cycle of welfare dependency in remote Australia”. The Government’s vision is to create a ‘wage based’ model for remote Australia which combines the best aspects of both the CDP and past models, such as the CDEP. To this end, formal consultations were invited on a new employment and participation model for remote communities. The **discussion paper** was released in December 2017 and outlined three potential reform options: an improved version of the current CDP model to provide more tailored support, a model based on the CDP Reform Bill introduced in 2015, and a new wage-based model, underpinned by three tiers of participation. The **report** indicated that the “CDP cannot and should not continue in its current form”, and recommended a move away from top-down administrative processes.

More recently, the Government announced a \$55.7 million ‘Closing the Gap Employment Services’ package in the 2017-18 Budget. This package comprises a boost to the jobactive program, which is the Australian Government’s employment service for urban and regional centres in Australia. The program is being expanded to deliver upfront intensive employment services to Indigenous job-seekers.

The Australian Bureau of Statistics has **stated** that it is difficult to obtain accurate statistics on Indigenous communities in the Northern Territory due to small numbers and wide dispersion, especially in remote areas across the territory. The Indigenous population also has a higher proportion of young people, which can skew employment figures when compared to non-Indigenous populations.

2018 has seen a sudden spike in discriminatory measures being exacted **in remote communities** within the Northern Territory in terms of the operation of the ‘Community Development Program’ (CDP). Unemployed individuals involved in the program are subject to a decrease of \$50 per day in which they fail to attend prescribed work-for-the-dole activities. **84% of CDP** participants nationwide are Indigenous, whilst over a quarter of the Indigenous people engage in CDP in the Northern Territory. Regions within the Northern Territory in which there are higher proportions of Indigenous inhabitants are issued with a greater rate of penalties due to the limitation on employment opportunities resulting in non-compliance with CDP requirements.

The numbers:

From 2008-10 there were **over 2000 jobs** created in the Northern Territory, which corresponded with a 9% increase in the number of Indigenous people employed in non-CDEP jobs. Despite the Government’s efforts to transition to a reliance on the mainstream economy for employment, only a third of the Indigenous population held non-CDEP jobs in 2011, compared to four-fifths of the non-Indigenous population. On top of this, **1357 Indigenous people** were employed in service industries directly reliant on the Intervention during 2012-13.

Since 2016, the gap between the Indigenous and non-Indigenous unemployment rates **nationally has widened** by 1.5% to 25.2%. In the Northern Territory alone, the Indigenous employment rate fell by 7.7% to 31.2% during the period between 2010-2016. This is partially attributed to the end of the mining-boom and the transition from CDEP to CDP. For example, if the Northern Territory Indigenous employment rate is disaggregated for CDEP status, the employment rate actually improves by 9.9% in the same time period. Thus, the decrease in the labour force participation rate of Indigenous Australians in the Northern Territory may be a result of CDEP programs ceasing because this **had inflated the pre-2009 ‘employed’ statistics**.

Nonetheless, female Indigenous employment rates continue to improve, up from 39% in 2006 (excluding CDEP) to 44.8% in 2016. However, these improvements are ultimately offset by Indigenous men increasingly ceasing to work in the labour market.

The **income gap** between Indigenous Northern Territorians and their non-Indigenous counterparts has also increased. The median household income of Indigenous households grew at a slower rate than non-Indigenous households. Likewise, the gap between personal income levels has also widened in the Northern Territory, despite narrowing in other states. This indicates that the Northern Territory-specific policies that have been implemented are actually having a negative impact on income levels. As such, the number of people on income support increased significantly from 2009-10 before decreasing slightly from 2011-12.

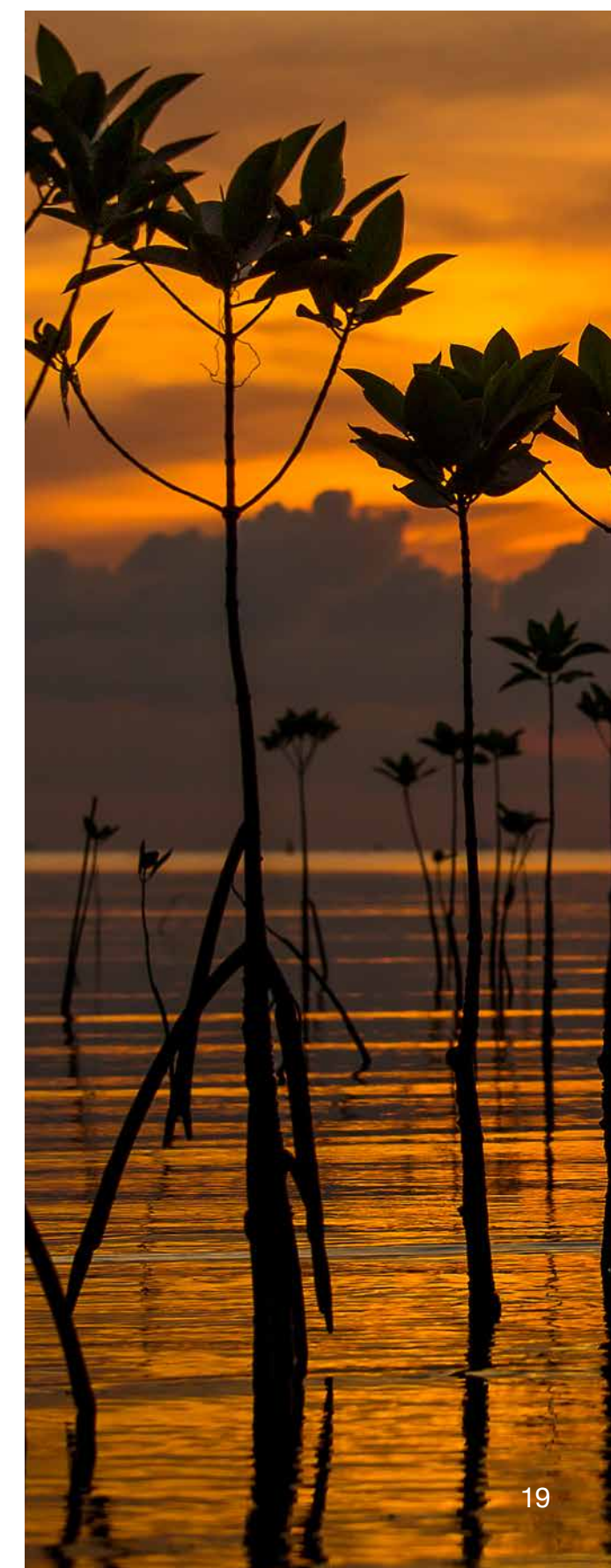
Evaluation:

Communities feel that the increase in employment is beneficial. However, the cancellation of the CDEP program and replacement with the RJCP has not been accompanied by additional job creation in the mainstream economy. The demand for employment in the relevant areas of the Northern Territory has outstripped the number of jobs available, and government efforts to provide jobs have been insufficient. This is especially the case **in remote communities** where there are limited employment opportunities. Where jobs have been created, the **Government has acknowledged** that they are dependent on ongoing funding and provide few avenues for career progression or mobility. Community feedback reflects similar concerns. In the 2011 **Community Safety and Wellbeing Research Survey**, most Indigenous respondents commented that more employment and training opportunities were needed.

The fly-in, fly-out model of the Community Employment Broker program has been criticised for leading to an array of new faces and limited understanding on the client base. The lack of consistent contact has meant that the establishment of a ‘participation culture’ **has been described** as challenging due to the difficulties in enforcing ‘mutual obligation requirements’ in remote communities

Reforms to the CDP program were announced as **part of the 2018-2019 Budget** to help remote job seekers transition from a reliance on the welfare system into the workforce. The reforms were to be implemented in early 2019 and include a reduction in reporting requirements for job seekers participating in the CDP, improvements to assessment processes, and reducing the minimum required participation in the program from 25 to 20 hours. It is too early to determine what impact may result from the initiatives.

Barriers to the effective implementation of employment packages remain. The lack of transport infrastructure, low education levels and investment uncertainty due to ongoing land tenure changes have all contributed to the failure to meet this target.



3.2 EDUCATION (6/10)

There have been some gains in certain education areas since the beginning of the 2007 Intervention and the 2008 Closing the Gap Campaign. However, overall secondary school attendance rates have seen a considerable decrease and NAPLAN results indicate little change in literacy and only incremental improvements in numeracy at both primary and secondary levels.

There are complex technical and practical barriers involved in the delivery of education services in the Northern Territory, particularly for remote Indigenous communities. These difficulties are often compounded by cultural barriers and historical inconsistencies in educative approaches. Past efforts at education have resulted in “uncoordinated projects, unrelated initiatives and an absence of coherence and consistency.”

Attendance rates for Indigenous students nationally have been relatively stable between 2014 and 2017 (around 83%). However, in the Northern Territory specifically, the Closing the Gap report indicates attendance has decreased from around 70% in 2014 to 66% in 2017. This can be further contrasted with the attendance rate of non-Indigenous students (around 93%). Essentially, the closing of the gap between Indigenous and non-Indigenous school attendance was not met nationally by 2018, and in the Northern Territory attendance rates went backwards. However, school attendance has been recognised as only one part of the story, with a broader focus now being taken on engagement, attendance and participation.

Target #1: Ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013.

The COAG target of ensuring access to early childhood education for all Indigenous four-year-olds in remote communities by 2013 was amended in 2015. The new target is to have “95 per cent of all Indigenous four-year-olds enrolled in early childhood education by 2025”. Ninety-five percent enrolment was selected because pre-school is not compulsory for four-year-olds in Australia.

Nationwide, this target is on track to be met. In 2016, approximately 14,700 Indigenous children (91%) were enrolled in early childhood programs.

However, it is the accomplishments of Victoria, Western Australia and South Australia in achieving universal enrolment which largely accounts for the status of ‘on track’. The Northern Territory is not individually on track, with Indigenous enrolment in early childhood education hovering at approximately 80%. As part of the Indigenous Advancement Strategy, the Australian Government has committed \$257 million to supporting early childhood academic development since 2014. Such funding is dedicated towards increasing children and parents participation in early childhood activities and equipping families with the necessary skills and resources regarding early learning. There is recognition that enrolment in preschool does not equate to attendance.

In this regard, the Northern Territory has the lowest rate of Indigenous attendance at preschool. During Term 1 of 2018, only 64.6% of Indigenous children enrolled in preschool attended as opposed to 89% attendance for non-Indigenous children. This is in stark contrast to the attendance rate of Indigenous children in other jurisdictions, where Indigenous attendance hovers at around 90%. In addition, there are regional variations in the attendance patterns of Indigenous children. The proportion of children attending early childhood education programs in communities classified as Remote and Very Remote is significantly lower than urban settings, and children in remote locations tend to be ‘critically vulnerable’.

Despite widespread support for achieving this target, there are concerns that access and enrolment in pre-school is not in itself a definitive solution to Indigenous disadvantage. However, the past 10 years has seen increased investment in holistic measures, such as integrating early childhood, maternal and child health, and family support services into schools in Indigenous communities experiencing disadvantage.

In 2016, 93% of Indigenous children enrolled in early childhood education had attended an early childhood education program each week. Early Childhood Programs such as the ‘Indigenous Early Learning Engagement Project’ have since been established to support the Government’s objective of ensuring that 95% of Indigenous children have access to early childhood education by 2025. The Project facilitated ‘Start Them Early Workshops’ throughout the nation, with 1,180 Indigenous children attending the 32 workshops. The workshops not only provided early learning for Indigenous four-year-olds, but provided students with the opportunity to participate in culturally-competent education in terms of being directly taught from Aboriginal and Torres Strait Islander people. Ultimately, the early childhood programs have had the effect of promoting engagement in consistent and quality education for both Indigenous families and children.

Pre-school enrolment actually peaked in 2011, with 91% of pre-school aged Indigenous children enrolled. However, the Government has claimed that the falling percentage is due to improvements in record-keeping through the removal of duplications. Actual numbers of enrolments are increasing, with an extra 421 Indigenous children enrolled over the period from 2009-13.

In spite of widespread support towards achieving this target, there are still concerns that access and enrolment in pre-school in itself is not a definitive solution to the disadvantages faced by Indigenous children. Programs such as the ‘Home Interaction Program for Parents’ and ‘Youngsters, and Families as First Teachers’ are seeking to address this through equipping parents and family groups to make their children school-ready.

The ‘Australian Early Development Index’ indicates that there is still a strong correlation between being an Indigenous child in the Northern Territory and high levels of disadvantage in early childhood learning. A key finding in 2012 was that Indigenous children and children in remote areas are more than twice as likely to be developmentally vulnerable than their non-Indigenous counterparts.

Target #2: Halve the gap in reading, writing and numeracy achievements for Indigenous Australian children by 2018

This target is measured using the outcomes of the annual ‘National Assessment Program– Literacy and Numeracy’ (NAPLAN). The gap is measured from the proportion of Indigenous students at or above the ‘National Minimum Standards’ (NMS) compared to non-Indigenous students of the same year level. While the gap between literacy and numeracy achievements of Indigenous and non-Indigenous students has narrowed, the target overall is not on track to be met.

The Closing the Gap report indicates that both nationally and within the Northern Territory, Year 9 numeracy is the only target on track to be met. The Northern Territory has the lowest proportion of Indigenous students at or above the NMS. Progress on this target has been disappointing so far, with the 2017 NAPLAN results indicating that the proportion of Northern Territory students achieving the NMS is consistently lower than other states and the Australian average. Across all year levels, the percentage of Indigenous students achieving the NMS across all year levels is between 27-42%, compared to Indigenous students nationally where the range is between 71-81%. Comparatively, non-Indigenous students in the Northern Territory have a significantly higher rate of achieving the NMS, with the lowest percentage being 92%.

None of the areas have shown a statistically significant improvement since 2008. The 2017 results also indicated that proportion of Indigenous students in Northern Territory remote schools achieving the NMS was on average 43%, and in very remote schools ranged between 5-34% of students achieving the NMS.

The result of NAPLAN data specific to the Northern Territory shows that the Indigenous cohort performs worse than equivalent cohorts across all geo-locations and year levels across Australia. This is even worse for very remote Indigenous students, who are already two years behind in their writing skills by Year 3 and up to five years behind by Year 9 in comparison to non-Indigenous students in similar locations.

However, national statistics from the 2017 NAPLAN test show that the proportion of students meeting the NMS has increased in all categories for Indigenous students between 2008-2017, and the gap between Indigenous and non-Indigenous students in every year level in both reading and numeracy has decreased in this period. Nevertheless, the reality is that very few students, especially in remote areas, attain their NTCET certificate at the end of their schooling.

Target #3: Halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020

Nationwide, the number of Indigenous Australians aged between 20-24 who have attained a year 12 completion or equivalent has increased from 47% in 2006 to 65% in 2016. Over recent years, the number of Indigenous students that are staying in school through to the completion of Year 12 is increasing. This has narrowed the gap to 23.8% in 2016 meaning that, at a national level, this target is on track to be met.

There is very little separate data relating to Northern Territory Indigenous students. In 2017, the number of students to attain their NTCET reached a new record of 1433 (Aboriginal and non-Aboriginal) students, compared to 1405 in 2016, and a significant increase from 1192 in 2012. In 2018, 1373 students completed the NTCET, with 197 of those identifying as Aboriginal. Further, the total number of Indigenous students obtaining equivalent results has increased since 2008 due to the inclusion of alternative pathways such as VET participation, work placements or school-based apprenticeships to achieve this target.

Nevertheless, Year 12 results for Aboriginal students in the NT are significantly lower than equivalent results for Aboriginal students elsewhere in Australia. For example, in 2017:

“NT Aboriginal students had significantly lower achievement than Aboriginal students nationally... The average difference in achievement rates across all year levels and assessment domains for NT Aboriginal students when compared with Aboriginal students nationally was 36 percentage points lower”.

While improvements in Year 12 or equivalent attainment are welcome, most of the gains have been accomplished in urban areas. Results vary sharply by remoteness area, with 50% fewer Indigenous people completing Year 12 in remote areas.

Target #4: Close the gap between Indigenous and non-Indigenous school attendance by 2018

A new target was introduced in 2014 to close the gap between Indigenous and non-Indigenous school attendance by 2018.

A survey by ANU researcher, Dr Nicholas Biddle, found that around 20% of the gap in school performance can be accounted for by poor attendance rates of Indigenous students. As a result, this target was added to the Closing the Gap goals in 2014 by COAG.

The Northern Territory has the widest gap in school attendance rates, and the gap increases as the students move into secondary school. Only one in ten schools in the Northern Territory meet the benchmark of having a rate of at least 90% attendance by Indigenous students. Additionally, less than a quarter of Indigenous students in very remote areas of the Northern Territory attend secondary school regularly.

The Commonwealth government introduced the Remote School Attendance Strategy (RSAS) in 2014 to ameliorate the poor school attendance rates of children in remote communities. At the core of this strategy is the introduction of ‘school attendance officers’ who collaborate with schools, local families and community organisations to facilitate school attendance. Through interviews with families residing in remote communities, RSAS staff identify and address the barriers contributing to poor school attendance.

Given the RSAS has only operated since 2014 and has undergone significant changes, it is difficult to reach firm conclusions about the long-term impacts of the RSAS on school attendance. However, the quantitative data available suggests the RSAS has had a positive impact on school attendance in the Northern Territory. The average number of students attending an RSAS school on any one day in term three of 2014 was 13 per cent higher than in term three of 2013. However, recent data suggests school attendance has now plateaued.

3.3 HEALTH AND LIFE EXPECTANCY (4/10)

At a national level, there have been some improvements to Indigenous child mortality. However, despite narrowing the gap in life expectancy, the rate of improvement is far too slow to close the gap. The situation is particularly bad for Indigenous people living in the Northern Territory, whose life expectancy is approximately 10 years shorter than non-Indigenous Australians (10.6 years for Indigenous males and 9.5 years for Indigenous females).

The National Aboriginal and Torres Strait Islander Health Plan is a framework designed to guide future investment in Indigenous health care until 2023. An Implementation Plan is currently being developed. As well as increased access to healthcare and specialist services, a heightened degree of consideration has been placed on social and social determinants of health.

On 1 July 2014, the government established the Indigenous Advancement Strategy, which combined over 150 programs into 5 streams, one of which is Safety and Wellbeing. Alongside this, the Indigenous Australians Health Program consolidated 4 previous funding streams to reduce costs and provide better flexibility of services. This program now encompasses primary health care, maternal and child health care, the Stronger Futures Health stream and a chronic disease fund. The government also dedicated \$11.9 million to increasing access to essential primary health care for Indigenous people living in remote areas of the Northern Territory.

The Care for Kids’ Ears program has achieved a 4% decrease in the number of Indigenous children with hearing conditions through raising awareness and promoting check-ups, but the rate remains double that of the non-Indigenous population.

Target #1: halve the gap in mortality rates for Indigenous children under 5 by 2018

Volatility in Indigenous child mortality rates since 2008 has contributed to uncertainty about achieving this target. Throughout the period between 1998 and 2016, the Indigenous child mortality rate declined significantly, narrowing the gap by approximately 32%. Despite

slowed progression in recent years, the government reported in 2018 that the target was on track.

This reduction of Indigenous child mortality by 32% means, in practical terms, that seventy-one more Indigenous children per thousand are now surviving past their fifth birthday compared to 1998. Despite these concrete gains, Indigenous children are still twice as likely to die under the age of five relative to non-Indigenous children.

Indigenous infant (<1yr) mortality accounts for the vast majority of Indigenous child deaths. Between 2012 and 2016, around 82% of Indigenous child deaths were infant deaths. Indigenous infants are twice as likely to die compared to their non-Indigenous counterparts. Despite this harrowing gap, there have been concrete gains in Indigenous infant mortality, with a 66.7% decline in Indigenous infant deaths between 1998 to 2016. The leading cause of Indigenous child mortality in infants (<1yr) is ‘perinatal’ conditions (such as, birth trauma, foetal growth disorders, complications of pregnancy and respiratory and cardiovascular disorders). This amounts to 53% of Indigenous infant deaths. The leading causes for child mortality in Indigenous children between 1-4 include Sudden Infant Death Syndrome, congenital malformation and injury and poisoning.

While all Australian jurisdictions have witnessed improvements in Indigenous child mortality rates, health outcomes vary substantially across jurisdictions. The Northern Territory continues to have both the highest child mortality rate and the largest gap between Indigenous and non-Indigenous child mortality at 332 deaths per 100,000 children.

It is true that health interventions take an extended period of time to produce measurable health outcomes. As such, the implementation timeframe for many Commonwealth programs, such as the 'Indigenous Child Development National Partnership Agreement', provides for a 10-year period before outcomes are expected. Given the proliferation of Indigenous child-health initiatives in the past 5 years, the full effect of health interventions is simply unknown. However, several intermediate measures demonstrate improvement in Indigenous child health outcomes, resulting in the potential for further reductions in child mortality rates. For example, there has been an increase in Indigenous **women engaging with antenatal care programs**, child immunisation (**97.05% Indigenous children are currently vaccinated** as of 2019) and a **statistically significant decrease** in low birth-weight babies from 2005-2015. These improvements in child health risk factors are expected to result in further reductions in child mortality **rates**.

Child mortality rates are significantly influenced by factors such as the mother's smoking habits, diet, exercise, socio-economic status and education level. Therefore, further reductions to child mortality rates will require an integrated approach. The 'Better Start to Life' program has been expanded to improve access to child and maternal health programs. The program has greatly contributed to a decrease in the degree of women who smoked during their pregnancy (50% in 2009 to 45% in 2015).

Target #2: close the life expectancy gap within a generation (by 2031)

The national gap between Indigenous and non-Indigenous death rates has **declined significantly by 14%** since 1998. However little progress has been made since 2006. To meet the target of closing the life expectancy gap by 2031, Indigenous life expectancy must increase by 0.6-0.8 years annually. At the rate the gap is currently narrowing, it will take 495 years to 'close the gap'. Therefore, more action needs to be taken. **As the 2018 Closing the Gap report admitted**, this target is not on track to be met.

The most recent life expectancy statistics **published in 2018** indicate that there is still a substantial gap in life expectancy between Indigenous and non-Indigenous

men and women. At birth, Indigenous males have a life expectancy of 71.6 (8.6 years lower than non-Indigenous males), whilst Indigenous females have an estimated life expectancy of 75.6 (7.8 years less than non-Indigenous females). This demonstrates that there has only been a **small reduction** in the life expectancy gap since 2014 (2.5 years for Indigenous males and 1.9 years for Indigenous females). It should however be noted that Indigenous life expectancy rates lower with increased remoteness, while non-Indigenous life expectancy remains relatively consistent across urban, regional and rural areas.

The leading cause of Indigenous mortality **in 2019** is chronic disease, including heart disease (which accounts for 12.1% of deaths), circulatory disease, diabetes and respiratory disease. There have been significant improvements in early detection and management of chronic disease and a reduction in the prevalence of smoking. For example, between 1998 and 2016, the decline in Indigenous mortality rates was the **strongest for circulatory disease**, with a reduction of about 45%. Similarly, the number of Indigenous people smoking has declined by 10% since 1994, meaning **45% of Indigenous people smoked in 2014-2015**. Despite this, **cancer mortality rates are on the rise**, with an increase of 23% in cancer mortality for Indigenous individuals (compared to only 14% for their non-Indigenous counterparts) between 1998 and 2016. **Intentional self-harm** has also increased in Indigenous communities, rising from 17.7 per 100,000 persons in 2008, to 25.5 per 100,000 persons in 2017.

The **2015 Close the Gap Report** noted that such a small improvement may actually be statistically insignificant as it is within the margin of error and could in fact mean that the small improvement in life expectancy is non-existent.

There is widespread recognition that Indigenous health outcomes in the Northern Territory are significantly worse than outcomes nationally. This translates to life expectancy also. In the '**Indigenous Reform 2012-13: Five Years of Performance**' report, the COAG Reform Council expressed particular concern for Indigenous people living in the Northern Territory, especially women. Male life expectancy was only 63 years, while female life expectancy actually fallen 0.7 years since 2005 to 68.7 years.

More recently in the Northern Territory, Aboriginal male life expectancy rose slightly to 66 in 2019 (see **Closing The Gap report 2019** p. 126). The Northern Territory has the largest gap between Indigenous and non-Indigenous life expectancy. Therefore, Indigenous Australians living in the Northern Territory are expected to live 6 years shorter than Indigenous people in other parts of Australia. Additionally, the Northern Territory has the largest gap between Indigenous and non-Indigenous life expectancy, with Indigenous men and women both expected to live 14.4 fewer years (compared to approximately 10 years nationally).

The Northern Territory had the highest Indigenous mortality rate (1,478 per 100,000 population) as well as the largest gap with non-Indigenous Australians. Behavioural risk factors (i.e. smoking, diet and physical activity), as well as social determinants (i.e. income, education and employment) also contribute to disparities in health outcomes between Indigenous and non-Indigenous Australians and consequently, to the life expectancy gap. There is a complex relationship between Indigenous people and health service access, social disadvantage and health behaviours and these underlying factors must be comprehensively addressed in order to drive down the life expectancy gap.

Other 'gaps': chronic disease and mental health

Despite improvements in Indigenous health in recent years, Indigenous Australians have higher rates of chronic and preventable illnesses, and poorer self-reported health than non-Indigenous Australians. In several areas which are not specified as Closing the Gap targets, Indigenous health is in fact deteriorating. For example, cancer mortality rates have risen by 23% for Indigenous Australians, contributing to a widening of the gap between Indigenous and non-Indigenous Australians cancer mortality rates. Similarly, Indigenous Australians are twice as likely as non-Indigenous Australians to have a severe or profound form of disability.

There are many dimensions to the poorer health status of Indigenous Australians compared with other Australians, one of which is greater difficulty in accessing affordable and culturally appropriate health services that are in close geographical proximity. A poor health outcome which attests to the difficulties faced by Indigenous

Australians in accessing appropriate healthcare is the number of potentially avoidable deaths of Indigenous people. 'Potentially avoidable deaths' refer to deaths from conditions that could have been avoided given timely and effective health care. In the 5-year period of 2009 to 2013, approximately 61% of all death of Indigenous Australians aged 0-74 were classified as potentially avoidable deaths. After adjustment for age, the mortality rate of Indigenous people who died from potentially avoidable causes was more than 3 times the rate for their non-Indigenous counterparts.

Indigenous Australians are **3 times more likely** to have diabetes and twice as likely to have chronic kidney disease as the non-Indigenous population. This likelihood increases 2.5 times for people living in remote areas. Additionally, Indigenous Australians tend to develop these chronic diseases at an earlier age. These chronic diseases account for **81% of the health gap** that currently exists.

Co-morbidity is also an issue since these conditions often intersect. **70%** of Australia's Indigenous population are overweight or obese, which further increases the risk of chronic disease. Smoking also increases the risk of respiratory disease, although Indigenous smoking rates **declined 10%** in the decade from 2002-12.

The gap between Indigenous and non-Indigenous mental health is also declining. **Poor mental health** can also be a risk factor for chronic disease. In 2014-2015, just under a third of the Indigenous population reported experiencing high levels of psychological distress. The experience of psychological distress corresponds to Indigenous rates of suicide and hospitalisation. Indeed, the rate of deaths from suicide was twice the rate of non-Indigenous Australians, and Indigenous people are 1.8 times more likely to be hospitalised for psychological distress. The disproportionately high rates of suicide are worse in the Northern Territory, particularly in remote communities.

There have been some successes, such as a **40% decrease in circulatory disease** since 1998. However, overall chronic disease rates have increased 2% from 2009-13. In 2015, the Healthy for Life program was granted \$36.2 million to expand its work on the management of chronic disease in Indigenous communities.

3.4 SAFER COMMUNITIES (4/10)

‘Safer Communities’ is one of seven building blocks introduced under the National Indigenous Reform Agreement as part of the Closing the Gap Campaign. This aims to make Indigenous communities safer through a focus on the prevention and reduction of crime rates, substance abuse, family violence and child abuse. It takes a ‘tough stance’ on crime but couples this with community protection and education efforts.

Although aiming for ‘safer communities’ is not an actual target of the Closing the Gap campaign, the goal of reducing child abuse was the impetus behind the first phase of the Intervention in 2007. Actual measurements of improvements in this area are difficult to quantify. For example, it is difficult to tell whether an increase in reported assaults is a result of more assaults occurring, or of improved policing. Conversely, a decline in assaults may be the result of decreased willingness on the part of victims to report to police.

Child Abuse and Family Violence

Child Abuse: The Little Children Are Sacred report prompted the establishment of the Intervention in 2007 to address the perceived ‘national emergency’ of Indigenous child abuse rates. Data from 2013 shows that Indigenous children are “substantially over-represented in every area of the child protection system” and are up to eight times more likely to be the subject to substantiated reports of harm. However, it should be noted that while the report focused on child abuse, over 85% of reported cases are actually related to child neglect.

Between 2007-12, the total number of people convicted for child sexual assaults in Intervention communities was 45. In the four years prior to the Intervention, 25 people had been convicted.

As of 30 June 2017, Aboriginal and Torres Strait Islander children were almost 10 times more likely to be in out-of-home care (OOHC) than non-Indigenous children. In all jurisdictions, the rate of Indigenous children in out-of-home care was much higher than that for non-Indigenous children. Aboriginal and Torres Strait Islander children were 8 times as likely as non-Indigenous

children to have received child protection services (163.8 per 1,000 children compared with 19.7 respectively).

As of 2017 in the Northern Territory, Aboriginal children are 11.6 times more likely to be in OOHC than non-Aboriginal children. While this is not the highest rate in Australia, this statistic should be interpreted with caution given widespread evidence that child protection matters are significantly under-reported in the Northern Territory. Of the Indigenous children in OOHC, emotional abuse and neglect were the most common types of substantiated abuse.

Family Violence: Family violence refers to violence perpetrated by any family member (including extended relations) against any other family member, whereas domestic violence more commonly refers to violence against an intimate partner, whether it occurs in a public or private setting.

Indigenous women are significantly more likely than the wider Australian community to be hospitalised as a result of family violence. In 2014-2015, Indigenous women were 32 times as likely as non-Indigenous women to be hospitalised for family-violence related assaults. Indigenous men are similarly over-represented in hospital for family violence, with a rate 23 times that of non-Indigenous males.

Measures taken

In 2006, prior to the start of the Intervention, the ‘National Indigenous Violence and Child Abuse Intelligence Task Force’ (NIITF) was established under the Australian Crime Commission. Its role was to collect and analyse data about violence and child abuse, using coercive powers to gather such information if necessary.

In 2008, a fly-in ‘Mobile Outreach Service Plus’ project was launched to provide counselling and support services for child abuse-related trauma in remote Northern Territory communities. In 2013, this project began operations from regional service centres to provide more consistent assistance.

In 2009, fourteen government funded Women’s Safe Houses were opened throughout remote communities of the Northern Territory. They are intended to provide a safe environment for women and children who are escaping domestic and family violence. The ‘Remote Aboriginal Family and Community Worker Programme’ is staffed by Indigenous locals in 21 remote communities to promote early intervention in child protection and family support. Education has been provided for remote health and community workers through workplace training and development programs to increase their capacity to respond to child abuse and other related trauma.

In 2012, the ‘Alice Springs Family Safety Framework’ commenced an integrated service response for people at high risk of family or domestic violence under the ‘National Plan to Reduce Violence against Women and their Children 2010-2022’. It received 114 referrals within its first 20 months of operation. The 2013 ‘Child, Youth, Family and Community Wellbeing Implementation Plan’ was implemented to streamline frontline services offered to families. A ‘Cross Border Domestic Violence Information Sharing’ project was introduced alongside this to protect victims of domestic violence across the Northern Territory, South Australian and Western Australian borders.

In October 2016, then Prime Minister, Malcolm Turnbull, released the ‘Third Action Plan of the National Plan to Reduce Violence Against Women and their Children’. This included a \$25 million investment in frontline Indigenous organisations and Family Violence Prevention Legal Services to address family violence experienced by Indigenous women and children. The package sought to deliver practical outcomes which prevent and reduce violence against Indigenous women and children. Amongst these outcomes, the Third Action Plan delivered a sexual assault specialist service which operates out of the Alice Springs Women’s Shelter, and extends to four remote Indigenous communities and 19 town camps.

In addition, the Commonwealth government has introduced the ‘Building Better Lives for Ourselves’ (BBLFO) program which aims to empower and equip Indigenous women to address and halt the effects of trauma and family violence in their communities. Since April 2015 this project has delivered a series of trauma-informed consultations, “think tanks” and workshops to a network of Indigenous women. BBLFO’s stated aims are to tackle the factors underlying and ongoing violence and abuse of women and children using three approaches: community-driven development to build community ownership; use of a trauma-based approach to leadership training; and building confidence, responsibility and personal empowerment to develop women’s leadership.

Various Northern Territory laws have been enacted since the start of the Intervention to make reporting child abuse mandatory. These include section 124A of the



Results

Child Abuse: There have been mixed results regarding the protection of children from child abuse in Indigenous communities.

On the one hand, Indigenous children have experienced increased access to Indigenous child protection services. Such access increased by 2.5 times in the Northern Territory between 2006-11. The largest increases occurred in remote areas, and the increase outstripped all other states. While the total number of reported child abuse incidents increased between 2007-10, most likely due to the introduction of mandatory reporting legislation, the numbers have steadily declined from 2010-12.

On the other hand, there has been a 69% increase in Indigenous children being placed in out-of-home care due to no longer being able to live with their parents. This makes them 4 times more likely to not be living with their parents than non-Indigenous children. The Child Placement principle states that children should be housed with Indigenous family members or foster carers if removed from their immediate family, yet in 2016-2017, the percentage of children being placed according to this principle decreased from 74% (2007-2008) to 67.6%. Additionally, reported attempts of suicide or self-harm by Indigenous children are also up by almost 500%.

Family Violence: There has been a **dramatic increase** in the number of family violence cases, which is likely an effect of both extra policing and mandatory reporting. The rate of increase seems to have slowed according to figures from 2013-14, which report only a 3.2% increase. The 2014-2015 data indicates that hospitalisation rates for family-violence related assault for Indigenous females is 32 times the rate for non-Indigenous females. Between **2016-2017**, 531 women, and 438 children sought shelter at the Alice Springs Women's Shelter alone, and 96% of those who sought shelter were Aboriginal or Torres Strait Islander. This provides a dramatic increase from 2012-2013 where 312 women and 394 children sought accommodation from the Women's Safe Houses, showing the importance of such shelters, and the need to address the causes of disproportionate violence against Indigenous women and children.

Crime

The Indigenous community experiences a **higher rate of contact** with the criminal justice system than the non-Indigenous. Indigenous people are **5 times more likely** to be the victim of homicide than non-Indigenous people, but in nearly all cases the perpetrator is known to the victim. **As of 2017-2018**, the principal offence for Indigenous offenders was 'acts intended to cause injury', which accounted 52% of offences in the Northern Territory. A significant number of these offences were **alcohol related**, and involved **family violence**.

Measures taken

In 2008-9, the **Australian Federal Police** deployed 66 police to the Northern Territory to maintain law and order in 18 priority remote communities. \$18.5 million of Commonwealth funding was allocated to support the exercise. Five new police stations were built throughout the Northern Territory during 2011-12. Community Engagement Officers were trained to improve relationships between police and local Indigenous people.

The **Community Safety and Justice Implementation Plan** was signed in 2013 to support ongoing improvements in community safety in remote Northern Territory communities. A **Safe Streets Audit** was commissioned in 2014 to help inform effective strategies to reduce crime rates in the Northern Territory. The Government has committed to funding for 4 new police stations to be built in remote Northern Territory communities by 2019.

The NT Government has also increased the operation of Community Night patrols in 81 communities in the Northern Territory in 2018. This service provides transport to a safe place, refers people to additional services and intervenes to limit 'antisocial behaviour'. Through the Indigenous Advancement Strategy the **Commonwealth Government** provides \$28.5 million which funds 20 service providers. The night patrol in 2017 assisted with over 245,000 incidents and this helps to reduce crimes and make the community safer. The Australian Government has also continued to support the Northern Territory with remote policing presence, and providing funding to address substance, domestic and child abuse. Community Engagement Officers operate within the Northern Territory to promote crime prevention and community engagement.

Results

The 2012 Closing the Gap report found that remote communities in the Northern Territory have reported that **neighbourhood conflict levels** have nearly halved. Despite this, the 'Northern Territory Safe Streets **Audit**' found that overall, citizens of the Northern Territory feel more unsafe compared to the rest of Australia. Further, there have been suggestions that the Government's approach to crime management has not been culturally sensitive. For example, it has failed to include proper consultations with Indigenous communities. In a 2009 report by the **Jumbunna Indigenous House of Learning**, an Indigenous elder was quoted as saying that "we feel that the intervention offers us absolutely nothing, except to compound the feeling of being second class citizens. The only thing that we have gained out of the intervention is the police."

The latest **Northern Territory Police statistics** indicate that there has been a 13.12% decrease in crime overall between 2018-2019, including reductions in assault, alcohol related and domestic violence related crimes. These rates have however fluctuated in the past, with Northern Territory Police reporting an overall increase in crime between 2017-2018.

Nationally **rates** of reoffending also remain high, with 76% of Indigenous prisoners having previously served a sentence, compared to 49% of non-Indigenous prisoners. National crime overall had reduced in 2016-2017, from 2,005 to 1,949 offenders per 100,000 persons.

Alcohol and Drugs

Alcohol remains a significant issue in Indigenous communities across the Northern Territory. It has been cited as the "biggest cause of crime" in the Territory and also contributes to ongoing Indigenous disadvantage through reduced life expectancy, poor health, reduced education and employment outcomes and decreased community safety.

The **2016 National Drug Strategy Household Survey** indicated that of Indigenous Australians who drink alcohol, 35% are likely to drink at risky levels. These rates are higher compared to non-Indigenous Australians, where 25% of those who drink alcohol are likely to drink at risky levels. However, the report

suggested the overall the percentage of the population consuming alcohol daily had declined between 2013 (6.5%) and 2016 (5.9%). The alcohol induced **death rate** is five times higher for Indigenous people and they are 12 times more likely to be hospitalised for acute alcohol intoxication. Alcohol consumption during pregnancy also contributes to a higher prevalence of 'Fetal Alcohol Spectrum Disorder' amongst Indigenous communities. Although there was an **increase** in people abstaining from alcohol overall, the percentage of people exceeding the lifetime and single occasion risk guidelines was still higher than any other state.

Drugs remain a prevalent issue in Indigenous communities. The Northern Territory has the highest proportion of people using illicit drugs. **22% of people** reported personal use of illicit substances in 2016. It was also found that daily smoking continues to be the **highest** in the Northern Territory compared to all other states. The Northern Territory also had up to 13% more smokers compared to other states. Remote Indigenous communities are more likely to engage in risky alcohol consumption and smoking, but less likely to use illicit drugs.

Measures taken

Under the Intervention, all Aboriginal land in the Northern Territory was designated as a 'prescribed area'. Alcohol was banned in all these areas and police were empowered to randomly search and seize alcohol. The '**Income Management** Scheme' through the BasicsCard also restricted the use of income payments to purchase alcohol or drugs.

\$2.6 million was allocated in 2011-12 to reduce impact of alcohol and drugs on the local community. This included increased capacity and staff for drug and alcohol treatment and rehabilitation services, as well as workforce education. A further **\$67.4 million** was provided nationally to fund culturally appropriate prevention, intervention, treatment and rehabilitation programs for remote and regional areas.

In 2011, the Federal Government allocated \$91.5 million nationally to expand the 'Petrol Sniffing Strategy', which has been in place nationally since 2005. Under this scheme, low-aromatic Opal fuel was introduced in 39 selected Northern Territory communities. Low-aromatic fuel was first made available in 2005 and is now available in more than 175 fuel outlets across the Northern Territory, Western Australia and South Australia. A report monitoring the trends on this demonstrates its effectiveness, that the rates of people engaging in sniffing reduced by 30% between 2011-2014, and by 88% since 2015. However, a 2018 article indicates that there has been a recent resurgence in Indigenous youth engaging in sniffing, which can be attributed to gaps in funding, and failure to address the causes behind this behaviour. The 'Breaking the Cycle' program has granted \$20 million funding nationally from 2011-14 and was implemented to address alcohol and substance abuse issues through community led responses and 'Alcohol Management Plans'. This program has since been brought under the 2013 'Tackling Alcohol Abuse Implementation Plan' and will be in place until June 2022, with 19 communities now having alcohol management plans in place. The 'National Aboriginal Torres Strait Islander Peoples Drug Strategy 2014-2019' is also in place in attempt to build safe and healthy communities, and minimise the social and economic harm caused by substance related issues.

At a national level, the Australian Governments funds more than 80 organisations as part of the 'Indigenous Advancement Strategy'. The Government has also recognised the need for specific support to address substance abuse in the Northern Territory, and invested \$91.5 million over seven years (from 2015-16) to address alcohol misuse through the 'NPA'. This focuses mainly on community-developed initiatives to tackle alcohol misuse.

The Northern Territory Government has also established the Alcohol Harm Minimisation Action Plan 2018-2019 which establishes their intended approach with respect

to alcohol and drug related community issues. The strategy is threefold: to reduce demand, supply, and harm through a variety of approaches, including the reintroduction of a banned drinkers' register, and the setting of floor prices for alcohol. In the 2018 Budget the Northern Territory Government has also reintroduced the Liquor Commission, established a Community Impact Test for liquor licensing decisions, and extended the moratorium on any new takeaway liquor licences in an attempt to reduce the impact of alcohol on the Indigenous community. The Northern Territory Government has also made efforts to make 'prohibited material' signs more respectful, with new signs being designed and worded by communities.

Results

Despite the per capita levels of alcohol consumption falling steadily since 2005, the Northern Territory is still 30% above the national average. Alcohol restrictions have caused the annual supply of alcohol to drop 2.5% per year, but the bans have been circumvented in Indigenous communities through home brewing, illicit alcohol trafficking and leaving prescribed areas to drink.

The issue of alcohol and drug related violence is still present and problematic within the Northern Territory. The Northern Territory Government has highlighted that alcohol increases the incidents of road incidents, assaults, injuries, illnesses and deaths in the NT, and affects communities through alcohol-related domestic violence and child neglect. For example, between 2017-2018 there were just over 4000 alcohol related assaults in the NT. Further, in 2017, alcohol was involved in 65% of cases of domestic violence reported to Northern Territory Police.

Although overall from 2008-2015, there has been a 4% decrease in Northern Territory per-capita consumption, the Northern Territory still has the highest per-capita consumption compared to any other State or Territory.

3.5 LOWERED INCARCERATION RATES – (0/10)

Since both the Intervention in 2007 and the Close the Gap campaign in 2008, not only has there been no improvement in relation to incarceration rates for Indigenous Australians, the rate of Indigenous Australians being incarcerated has continually risen. There is currently no target concerning Indigenous incarceration rates. Failure to make incarceration rates a Closing the Gap target has been controversial. In 2015, the Closing the Gap Steering Committee proposed that lowering imprisonment rates should be a Closing the Gap target. The Castan Centre supports this view.

Significant reports were released in 2017-2018 with respect to issues of Indigenous incarceration. Notable amongst these were the report on the Royal Commission into the Protection and Detention of Children (RCPDC) tabled in November 2017, and the 2018 report 'Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander people'.

Indigenous imprisonment is been at its highest point for a decade and there is an increasing and inordinate number of Indigenous Australians being incarcerated. This has been recognised as the most significant social justice and public policy issue for the Australian criminal justice systems.

Federal overview

As of 30 June 2019, an average daily number of 12,232 prisoners identified as being Indigenous, constituting 28% of the total adult prison. This represents a 4% increase in incarcerated Indigenous males, and a decrease of 5% for Indigenous females since 2018. This is in spite of Indigenous people only making up 3.3% of the total population in Australia. By 2020, the Aboriginal and Torres Strait Islanders prison population is expected to increase to 50%. The rate for Indigenous imprisonment is also 13 times the rate for non-Indigenous Australians and this has increased by

39% since 2007. Incarceration rates for youth are even higher, with Indigenous Australians making up 53% of all youth in detention.

Northern Territory overview

In the Northern Territory, Indigenous Australians make up 84% (ABS) of the prisoner population, which is the highest proportion of any state or territory. Further, the RCPDC's 2017 report found that Indigenous youth make up to 94% of the juvenile detention population. Even prior to the Intervention, the Northern Territory had the highest incarceration rate in Australia. During the first five years of the Intervention however, there was a 41% increase in incarceration rates– this figure includes both Indigenous and non-Indigenous prisoners.

In June 2018, the juvenile detainee population in the Northern Territory was 100% Aboriginal. According to the AIHW (2017), Juvenile Indigenous Australian offenders aged between 10-17 years are 24 times more likely to be in youth detention than non-Indigenous offenders of the same age, which is a significant increase from 2015, and highlights the disproportionate impact our justice system has on Australian youth.

Measures taken

In the first stages of the Intervention in 2007, 18 new police stations were built in the identified Intervention communities (remote Indigenous communities). The Australian Crime Commission (ACC) was granted greater powers for investigations into child abuse in Indigenous communities, removing the right of silence for respondents and the right to freely disclose proceedings. In those early stages, the increase in incarceration was largely the result of greater police presence and powers.

The issue of incarceration rates initially gained traction with the ‘**Royal Commission into Aboriginal Deaths in Custody**’ (RCIADIC) that began in 1987 with the final reports submitted in 1991, and has gained momentum more recently with the 2017 **RCDPC**.

In October 2018, the Federal Government released an **independent report** carried out by Deloitte looking into the implementation of recommendations from the RCIADIC. The review found that 78% of recommendations have been implemented, 16% were partially implemented and 6% were not implemented. **However**, the report only looked at what actions were taken to respond to the recommendations, not their effectiveness or appropriateness.

The Universal Periodic Review (UPR) also echoed many of the RCIADIC recommendations. Poor relations with police, alcohol and substance abuse, deficient education, unemployment, inadequate housing and entrenched poverty are factors that are currently identified as contributing to the severely disproportionate incarceration rates of Indigenous Australians by the Royal Commission in their final report. Despite this, the most recent RCPDC, as well as the 2018 ALRC report into incarceration rates, highlight that the Northern Territory and Australia as a whole still have a long way to go in addressing this issue.

Significantly, in 2017, the Northern Territory Government tabled the final report from the **RCPDC**, which looked into treatment of children in detention, and the effectiveness of the welfare system. The findings of this report indicated that several Youth Justice Centres, including the controversial Don Dale youth detention centre, were not fit for purpose and should be closed. The Commission found evidence of verbal and physical abuse, deprivation of basic human needs, and the use of bribery and humiliation to control children, were common within the detention centres. The Commission also reported that children were being isolated in contravention of the Youth Justice Act (NT) and found that the impacts of this included long-lasting

psychological damage. The report also found that the second most frequent sentencing option used in the Northern Territory was incarceration, despite the Royal Commission’s recommendation that sentencing be used as a last resort.

Recommendation 10.2 from the Report urged that Don Dale detention centre be closed by February 2018. At time of writing this has not eventuated. However, the Northern Territory Government has committed to replacing the Don Dale and Alice Springs Youth Detention Centre. They have also invested \$10.48 million for ‘**fix and make safe**’ works which have been completed at the Don Dale and Alice Springs Youth Detention Centres. The Northern Territory Government reported in the ‘Territory Families Yearly Report’ that an “**extensive reform of youth detention**” has been implemented in response to the Commission. The reform includes improve training for Youth Justice Officers, the introduction of a Trauma Informed and Strength Based approach, and Restorative Practice Training with the aim to achieve a “better quality of care and outcomes for young people in detention.”

Despite progress made in implementing recommended reforms, in 2017-18, there was an increase in the daily average percentage of Indigenous youth in detention. Whilst there was a reduction in the average number of young people in detention overall, Indigenous youth are still disproportionately involved in the Youth Justice system. In November 2018, more than one year after the release of the Commission report there were **reports** of riots, fires and violent incidents in Don Dale, demonstrating that incarceration remains a massive issue in the Northern Territory.

Criminal Justice as a Closing the Gap target

Closing the Gap between incarceration rates of Indigenous and non-Indigenous Australians is not one of the specific targets for the Closing the Gap agreement. Recommendation 1.8 of the ‘**Social Justice Report**’ in 2012 strongly urged that the COAG Closing the Gap agreement include incarceration rates under criminal justice targets to ensure renewed commitment to implementation of the RCIADIC recommendations and an overall coordinated and holistic response to the issue. The **2018 ALRC Report** noted that although there has been bipartisan support to make criminal justice a Closing the Gap target, no change had been made as of 2018.

The Close the Gap campaign Steering Committee also proposes that urgent, coordinated action from government to address overrepresentation in incarceration rates be included as one of the nationally agreed targets. This is particularly pressing given the prevalence of mental health conditions, substance abuse problems and general health-related impacts in prisons. Incarceration can then severely undermine employment prospects leading to financial and emotional stress on the person as well as their families. The Government has **argued** that this may draw attention away from original targets set, and that incarceration is primarily an issue for States and Territories, making it less relevant for the Commonwealth to include in their targets.

In December 2014, a new section 133B was introduced to the Northern Territory Police Administration Act providing for ‘paperless arrest’. This provision significantly broadened the police power of arrest. There was no requirement to bring the person before a court as soon as practicable, or that the period of detention be reasonable for questioning the person in relation to a relevant offence. These provisions have attracted widespread criticism for their likely disproportionate impact on Indigenous people, and were **subject to a High Court challenge in 2015**.

In February 2015, the chair of the Indigenous Advisory Council, Warren Mundine, stated that he did not believe reducing levels of Indigenous incarceration should become a formal Close the Gap target. Labor promised the new target during the election campaign and the Coalition offered bipartisan support but has since been silent on the issue. Then Indigenous Affairs Minister Nigel Scullion had previously rejected the idea of a criminal justice target, nevertheless, Prime Minister at the time, Malcolm Turnbull, conceded that it would be considered in a current review of the Closing the Gap targets.

The Campaign Steering Committee proposes that a target to reduce incarceration rates would encompass mental health and drug and alcohol services and other reinvestment into services that address underlying causes of crime as measures for implementation.

Incarceration rates are mentioned towards the end of the 2019 CTG Report. At p. 162, a draft COAG target is noted as being to reduce the rate of Aboriginal and Torres Strait Islander people in detention by 11-19%, and adults held in incarceration by at least 5% by

2028. This is said to be ‘State-led’ (ie not an area of Commonwealth responsibility). The COAG targets are the result of a ‘Special Gathering Statement’ to COAG in February 2018, recommending the priority areas for the next phase of Close the Gap (CTG Report 2019, p. 157).

The Change the Record Coalition’s ‘Blueprint for Change’ recommended that future targets for Closing the Gap should include closing the gap in rates of imprisonment by 2040; and cutting the disproportionate rates of violence against Aboriginal and Torres Strait Islander peoples to at least close the gap by 2040. The Castan Centre supports this view.

Results

As the RCIPDC and the ALRC 2018 reports are relatively recent, the impact of their recommendations are largely yet to be seen. However, the Northern Territory Government has established the ‘**Safe Thriving and Connected: Generational Change for Children and Families Plan**’ in April 2018, which was in response to the Royal Commission’s aim to create safer communities within the Northern Territory. In November 2018, the Government released the ‘**First Progress report**’ on the Safe, Thriving, and Connected Plan, which outlines what progress has been made since the initial report. The report highlighted that of 227 recommendations made in the Royal Commission, 33 are completed, 169 are under way and 16 are yet to be implemented. However, one year on from the Royal Commission, the Human Rights Law Centre **criticised** the ‘broken’ youth justice system in the Northern Territory, and urged the Northern Territory to take more action. They argued that ‘punishment and confinement will not achieve the change we want’, suggesting that there is still a long way to go to repair our damaged incarceration system.

Another significant issue facing the Northern Territory Government is the high rate of recidivism. This was discussed in the **ALRC report** into Indigenous Incarceration, which was released in December 2017. The ALRC reported that 76% of prisoners have been in prison before, and recommended the redirection of resources into the local communities. The **Department of Territory Families** indicated that \$4.95 million in funding is being provided to 11 agencies in the Northern Territory to improve diversion services in attempt to reduce recidivism. However, no clear data has been obtained to assess the effectiveness of the strategy at this time.

4. THE INTERVENTION AND HUMAN RIGHTS

4.1 GENERAL COMPLIANCE (4/10)

In 2007, the Howard Government stated that the Intervention was enacted to address “the national emergency confronting the welfare of Aboriginal children”, adding that “all action at the national level is designed to ensure the protection of Aboriginal children”. The Government argued that the legislative measures were in fact in accordance with Australia’s human rights obligations, in particular to protect children from abuse and exploitation in accordance with the Convention on the Rights of the Child (CRC).

Despite the government’s insistence that the Intervention was upholding CRC, the 2007 Intervention legislation was widely regarded as incompatible with international human rights law standards and practices. For example, *The Law Council of Australia* argued that the suspension of the RDA in relation to the NTER was “utterly unacceptable”. *Amnesty International* has argued that many of the intervention policies did not protect children, or were not related to achieving this goal and chided the policies as “paternalism” by trying to get Indigenous Australians to assimilate and conform to mainstream Australian lifestyle and values.

It was also noted that many of the policies offered, such as anti-violence programs, could have been provided without breaching human rights. In 2009, Amnesty International Secretary General Irene Khan visited communities of the Northern Territory, saying: “that Indigenous peoples experience human rights violations on a continent of such privilege is not merely disheartening, it is morally outrageous”.

The Intervention involved measures that contravened several of the most fundamental human rights standards, including the right to self-determination. In order to implement most of the measures of the Intervention, the former Howard Government and all successive governments suspended or did not meet the requirements of the Racial Discrimination

Act, the legislation that would ordinarily protect racial minorities from policies that negatively discriminate and disadvantage them.

The Stronger Futures legislation has been criticized on many of the same grounds.

In 2012, the Australian Human Rights Commission (AHRC) identified a number of human rights issues raised by the Stronger Futures legislation. These included the right to equality before the law, the right to freedom from racial discrimination, the scope of ‘special measures’ under racial discrimination legislation, the right to self-determination, and the right to be consulted in decisions. It was argued that the intervention measures undermine the rule of law and do not guarantee Aboriginal citizens equal treatment to other Australians. It criticised the limited consultation and the lack of provision for independent review. The government justified the removal of such democratic safeguards as they may “slow the ability to introduce the (intervention) measures”. In 2010, the Special Rapporteur to the Human Rights Council criticised the intervention for breaches of human rights, racially discriminatory policies, and a failure to respect the right to self determination.

In 2013, the Joint Committee on Human Rights’ eleventh report examined the compatibility of the Stronger Futures legislative package with human rights. The committee argued that UNDRIP, while not incorporated into domestic law, was part of customary international law and was therefore relevant in considering human rights implications posed by the Stronger Futures legislation. The committee also considered other rights enshrined in treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on Civil and Political Rights (ICCPR).

In September 2017, the Special Rapporteur to the Human Rights Council **reported** on the rights of Indigenous peoples as a result of her visit to Australia. The report found that the policies of the Government do not respect the right to self determination and participation, contribute to the failure to improve targets in health, education and employment, and exacerbate the incarceration and child removal rates of Aboriginal and Torres Strait Islanders. The Special Rapporteur called for a complete revision of those policies as a national priority for Australia.

The **report** also criticised the Indigenous Advancement Strategy, which was introduced in 2014, for the centralisation of various programmes to the Department of the Prime Minister and Cabinet, and saw a \$534 million cut to spending. According to the Special Rapporteur, the strategy has had a “devastating impact” on Indigenous organisations.

The 2017-2018 **annual report** from the Australian Human Rights Commission noted the significance of the ‘Wiyi Yani U Thangani (Women’s Voices) Project’ in terms of its commencement of a series of national consultations with Aboriginal and Torres Strait Islander females regarding their rights and freedoms. Facilitated by the Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar, and having provided the first platform for such discussions in 30 years, the project has begun to reaffirm the importance of the role of women in both Indigenous communities and the wider Australian society.

4.2 SPECIAL MEASURES (3/10)

In the language of international human rights, a special measure is a form of affirmative action which enables particular groups to enjoy human rights. They act as a mechanism through which the substantial inequality faced by a disadvantaged groups can be rectified. ‘Special measures’ must involve the consent of the affected group of people, be temporary and limited in scope, and be to the benefit of the individuals affected, as opposed to their detriment.

The AHRC **Social Justice Report 2007** noted that it was not appropriate to seek to justify discriminatory measures on the basis they are undertaken in furtherance of another right (i.e protection of children from sexual abuse) even if they are special measures. The measures implemented under the intervention cannot be characterised as ‘special measures’ under international human rights law because they do not positively advance the human rights of Indigenous Australians by creating more favourable conditions or conferring benefits. Instead the Intervention measures restrict the rights of many Indigenous Australians with the explanation of protecting others (i.e children and women).

In relation to international law standards, Amnesty International **reiterated concerns** that the suspension of the RDA was not permitted as a special measure and therefore violated Australia’s international human rights obligations. Amnesty did **emphasise that** the RDA had been reintroduced to the operation in June 2010, however they also noted that discriminatory measures continued despite this.

Measures that violate the human rights of the intended beneficiaries are more likely to operate in ways that undermine the overall well-being of these communities in both the short and long term. In relation to the operation of the Intervention, the AHRC has stated that it is clearly established in international law that the principle of non-discrimination on the basis of race cannot be overridden by other considerations. The Convention on the Rights

of the Child, one of the international human rights instruments that the Government argues it is upholding, is clear that measures to protect children must also be non-discriminatory. The ICCPR states that governments cannot justify restricting certain rights by claiming that they are acting in furtherance of another right.

The Parliamentary Joint Committee’s **eleventh Report of 2013 and 2016 Review** of the Stronger Futures measures were both highly critical of the continued justification of these restrictive policies as special measures under international human rights law. The Committee noted that ‘there was little detailed analysis of the applicable criteria for a measure to qualify as a special measure, and of whether some or all of these measures satisfied the criteria. It noted the scepticism of Professor Anaya, UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people.

The Special Rapporteur wrote:

“As already stressed, special measures in some form are indeed required to address the disadvantages faced by Indigenous peoples in Australia and to address the challenges that are particular to Indigenous women and children. But it would be quite extraordinary to find consistent with the objectives of the Convention, that special measures may consist of differential treatment that limits or infringes the rights of a disadvantaged group in order to assist the group or certain of its members. Ordinarily, special measures are accomplished through preferential treatment of disadvantaged groups, as suggested by the language of the Convention, and not by the impairment of the enjoyment of their human rights.”

4.3 RACIAL DISCRIMINATION (2/10)

Suspension of the Racial Discrimination Act (RDA)

It was further argued by the Parliamentary Joint Committee in its **eleventh Report** that the Stronger Futures measures could not apply as special measures because they were not implemented with the consultation and consent of the affected group that the measures under the Stronger Futures legislation would affect. The Committee recognised the importance of consultation in safeguarding human rights, in particular the right to self-determination (Article 1 International Covenants on Human Rights and Article 3 of UN Declaration on the Rights of Indigenous People). **Measures taken without consultation or consent cannot be said to be for the 'advancement' of a particular group.** Arguably, the Government has not satisfactorily justified that the Stronger Futures legislative package as special measures as defined under international human rights law. Essentially, a primary element regarding the permissibility of the limitation of a right revolves around whether such a limitation is proportionate to the objective sought to be achieved. In terms of ascertaining justification, the relevant decision maker must establish the effective safeguards that are in place to regulate the measure i.e. monitoring and review strategies.

Rather than advancing equality, the legislative measures infringe on the rights to equality and non-discrimination, the right to private life and the right to self-determination. Limitations on these rights may be permissible, but it must be demonstrated that there is a rational and legitimate objective to do so. The Parliamentary Joint Committee's 2016 Review of the Stronger Futures Legislation analysed the measures using the analytical legal framework, to determine their compatibility with human rights. The Committee considered whether there was a legitimate objective to the measures, and

whether it was rationally connected and proportionate to achieving the objectives. The Committee found that reducing alcohol-related harm in Aboriginal Communities in the Northern Territory was a legitimate objective. However, due to a lack of available data in the most recent 2015 review, the Committee had difficulty in assessing whether the measures had the capacity to be effective and this raised doubt as to whether the policy was proportionate.

The Review discussed the unintended consequences that the measures have had and how overall they have largely failed to achieve their intended objectives. This has resulted in an increased engagement in dangerous behaviour to circumvent the alcohol restrictions. Such conduct includes trafficking to restricted areas, unmanaged drinking in unsafe places, displacement of community members to locations where they can access alcohol, and substitution of alcohol with other drugs. The current process for establishing and managing Alcohol Management Plans (AMPs) was also criticised for being overly bureaucratic, and continuing to enforce a 'top down' approach. These impacts indicate that the current legislative processes have resulted in the Committee taking the view that the Government has not taken measures that are likely to be effective or proportionate in their aim.

Recommendations from this finding were that an evidence-based review be undertaken to determine the effectiveness of the restrictions, that the bureaucratic processes of AMPs be streamlined, and that all blanket alcohol restrictions be reviewed and amended as necessary. No adoption of these recommendations has

Indigenous Australians and other individuals in the community expressed concerns that the measures involved breaches of human rights. In particular, they criticised the incompatibility of the Intervention with the RDA and the broad exemptions of the Intervention from the RDA. As noted by the Australian Human Rights Commission ('AHRC'), a successful claim of discrimination under section 10 of the RDA can only be brought in relation to a statutory provision. By suspending the operation of section 10 of the RDA in relation to the Intervention, the government effectively denied protection to Indigenous Australian communities affected by the legislation.

S 132 of the NTNER legislation suspended the Racial Discrimination Act and deemed the aspects of the intervention that targeted Indigenous Australians to be 'special measures' in accordance with section 8 of the RDA. These two acts seemed to contradict one another, as 'special measures' exist as part of the RDA in order to advance equality for a particular race (Article 1(4) of ICERD). Intervention measures directly discriminate against Indigenous Australians on the basis of race, and necessitated the suspension of the Racial Discrimination Act. This was done so that the measures would not be classed as discriminatory and could not be challenged. However, concerns were expressed that the various measures of the intervention negatively impacted and discriminated against Indigenous Australians and would not help to improve instances of child sexual abuse for which they were intended.

The Intervention was amended in June 2010 to reinstate the operation of the RDA in relation to Intervention measures. However, restrictions were placed on the use of the RDA to challenge Intervention measures as racially discriminatory. In particular, the classification of the Intervention as a 'special measure' denies individuals or groups this possibility.

In 2013, the Parliamentary Joint Committee considered whether the Stronger Futures package of legislation was consistent with human rights. It noted that various aspects of the legislation, including its alcohol and income protection measures, involved a differential treatment based on race. It considered that the government had failed to provide justification for its argument that the measures involved were 'special measures'. It had simply asserted that they were without reference to the prevailing interpretation of the notion of special measures in international law.

As was noted above (see employment and economic participation), 2018 has seen a sudden spike in discriminatory measures being exacted in remote communities within the Northern Territory in terms of the operation of the Community Development Program (CDP). Unemployed individuals involved in the program are subject to a decrease of \$50 per day in which they fail to attend prescribed work-for-the-dole activities. **84%** of CDP participants nationwide are Indigenous, whilst over a quarter of the Indigenous people engage in CDP in the Northern Territory. Regions within the Northern Territory in which there are higher proportions of Indigenous inhabitants are issued with a greater rate of penalties due to the limitation on employment opportunities resulting in non-compliance with CDP requirements.

The 2017-2018 **Annual Report** from the Northern Territory Anti-Discrimination Commission contended that 62% of complaints regarding racial discrimination derived from Aboriginal and Torres Strait Islander people. In 2017, an Australian Indigenous Doctors' Association survey reported that 60% of Indigenous doctors and medical students had experienced racism or bullying through their education. It was proposed in 2016 by a National health and Medical Research Council that a community-controlled education sector be established to address inherent issues of race prevalent in the school system, yet no real change has been made in this area since that recommendation.

In 2017, the Australian Government proposed amendments to section 18C of the RDA. The prospective changes would give rise to the words "insult", "offend" and "humiliate" being replaced with "harass". The modifications would also establish that acts would be judged through the utilisation of a standard relating to a "reasonable member of the Australian community", as opposed to members of the affected community. However, the amendments were not adopted. In response to the proposed amendments, the **Special Rapporteur on the rights of Indigenous peoples** expressly contended that the changes would have imposed unreasonable restrictions in terms of the balance between protection against racial discrimination and freedom of speech. The Special Rapporteur explored the damaging nature in which the proposed changes would have on Indigenous communities in terms of the confidence entrusted in the Australian government. It also highlighted that such modifications would be inherently counterproductive towards the attainment of reconciliation.

4.4 RIGHT TO SELF-DETERMINATION (1/10)

According to Indigenous leader Mick Dodson: ‘self-determination means recognising Indigenous leadership and supporting Indigenous-led solutions. For governments, it involves abandoning any return to policies of assimilation and paternalism’.

Upon Australia’s approval of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) in 2009, the Government emphasised its intention to re-establish mutual trust in order for Aboriginal and Torres Strait Islander communities to be directly and intrinsically involved in the affairs of their communities. The right to self-determination is protected by Article 1 of the ICCPR and Article 1 of the ICESCR and encompasses the capacity for individuals to have autonomy and control over their future without the unreasonable influence of external factors. The right to self-determination is also recognised in International human rights law. **Article 3 and 4 of UNDRIP** expressly state that Indigenous people have the right to self-determination including internal, local and financial affairs. The Parliamentary Joint Committee’s eleventh Report of 2013 notes that although UNDRIP has not been incorporated into domestic law, **UNDRIP is considered to represent customary international law, many aspects of it are considered to represent customary international law, binding Australia.**

The International Convention on the Elimination of Racial Discrimination (ICERD) has also been interpreted as requiring governments to obtain informed consent from Indigenous communities before interfering with aspects of their public and private life. Effective participation is crucial to the right to development under International human rights law, which means that Indigenous people need to be given the opportunity to have meaningful participation in determining the objectives of their development and how to realise cultural, social and economic goals. Essentially, the failure to embrace the self-determination of Indigenous people has a direct link to the ‘unsatisfactory status’ of the high proportion of targets outlined in the Closing the Gap report (i.e. health, education and employment), as well as the damaging status of Indigenous incarceration.

Disempowerment of Indigenous communities

The measures of the Intervention have acted to disempower Indigenous communities. Governance has shifted from the responsibility of the community to centralised government agencies. The National Congress of Australia’s First Peoples have stated that “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.” This is contrary to Articles 3 and 4 of UNDRIP. It is evident that the measures are incompatible with the right to determine one’s political status freely, advance in the economic, social and cultural spheres without restriction, as well as exercise the right to autonomy or self-government of local affairs. Moreover, Article 18 denotes that Indigenous people possess the freedom to freely engage in decision-making in matters that affect their rights. This right, however, is not being upheld.

Currently, a **significantly higher proportion** of Aboriginal and Torres Strait Islander compared to others people are not enrolled to vote. This is largely due to the widespread failure to meet Australian Electoral Commission enrollment criteria, including requirements relating to a permanent address and not serving a term of imprisonment of more than three years. However, given that a heightened degree of Indigenous people inhabiting remote areas with no fixed address and their disproportionate representation in the nation’s prison population, Aboriginal and Torres Strait Islanders are subjected to profound disempowerment in terms of their capacity to participate in Australia’s voting system.

Removing financial autonomy through the Income Management Scheme

As noted above, under Article 4 of the UNDRIP, Indigenous Australians have the right to autonomy and self-government in relation to financial matters. Yet, under the 2007 Intervention, Aboriginal people who received government payments such as Newstart had 50 percent of their income controlled by government. This policy was applied to entire Indigenous communities, regardless of whether they could manage their own income. Indigenous people were simply told that they could not manage their income on the basis of their status as an Indigenous Australian. The income management programs have not been successful in changing behaviours regarding conduct such as gambling, smoking and excessive alcohol consumption. This further fuels the criticism that the measures of the Intervention were a **top-down, blanket imposition** that were not suited to individual communities and were therefore less effective.e.

The Parliamentary Joint Committee’s **eleventh Report** of 2013 was also sceptical about the compatibility of the Income Management Scheme with human rights. The report expressed concerns of the scheme’s incompatibility with the right to be free from discrimination based on race, ethnicity and gender, the right to equal protection under the law, the right to social security and adequate standards of living, and the right to privacy. Although the committee accepted the goals pursued by the Income Management Scheme as “important and legitimate” it considered the scheme

and its payment enforcement methods, such as the BasicsCard System a “significant intrusion into the freedom and autonomy of individuals to organise their private and family lives”. The report noted that despite the Income Management Scheme in the Stronger Futures legislative package removing direct references to race and ethnicity that were present in the NTNER, it still disproportionately impacted on Indigenous Australians in the Northern Territory. The Income Management Scheme still discriminates against Indigenous Australians with racially based treatment within the meaning of Article 2 (1)(a) of ICERD.

The 2010 amendment by the Labor Government expanded the Income Management Scheme to **‘disengaged youth’, ‘long-term’ or ‘vulnerable’ welfare recipients, and in circumstances where there is a child protection issue**. Although the scheme no longer directly references Indigenous Australians it still has a **‘disproportionate effect’** on the Indigenous population, 94.2% of which is under income management in the NT. Welfare payments are made contingent on children’s school attendance and if this was deemed unsatisfactory, payments can be cut off. Indigenous Australians are denied the right that other Australians have to an independent review process for decisions made regarding their payments. These measures and limitations were called discriminatory and **contravened principles** of the ICCPR (Article 17) and the ICESCR (Article 9).

See below (under ‘right to social security’) for further discussion of issues surrounding the introduction of the ‘Healthy Welfare Card’ (now called Cashless Debit Card).



Removal of customary law in sentencing and bail decisions

Under section 91 of the NTNER Act (2007) a court was prohibited from considering customary law or practices of Indigenous people in relation to sentencing and bail decisions. These measures substantially continue under the **current Intervention legislation**, which has introduced amendments to the Crimes Act to prohibit consideration of culture and customary law in sentencing and bail decision. This means that Indigenous Australians in the Northern Territory are the **only group in Australia** that cannot have their customary laws or culture considered in relation to an offence. This violates sections 9 and 10 of the RDA, which protect the right to equality before the law and prohibit racial discrimination.

The unintended effect of the removal of considerations of customary law was seen in the application of section 91 in *Aboriginal Areas Protection Authority v S & R Building & Construction Pty Ltd* [2011] NTSC 3. This case involved a company which damaged a sacred Indigenous site in the course of carrying out construction works. In sentencing the company, it was conceded that section 91 of the NTER meant that customary law or cultural practices (i.e. the cultural harm

caused by the construction company when it degraded the sacred site) was not a relevant sentencing factor.

The unintended application of section 91 was amended by Schedule 4 of the Consequential Amendments Bill which extended ss 15AB and section 16A of the Crimes Act 1914 (Cth) to allow the consideration of customary law or cultural background in relation to heritage protection and land rights law.

Nevertheless, there is still restriction on Indigenous customary law as a sentencing factor. The Law Council of Australia submitted that the judicial restrictions imposed by section 90 and section 91 are discriminatory, unnecessary and cultural background should always be considered a relevant factor **in determining bail or an appropriate sentence**. This criticism may still be made of the post-2012 Crimes Act provisions, which still restrict courts from considering customary law in bail and sentencing. The application of these provisions in sentencing and determining bail may also mean that Indigenous Australians receive harsher sentences or are incarcerated for longer periods of time, which only compounds the current problems surrounding the overrepresentation of Indigenous Australians in the prison population.

4.5 SOCIAL AND CULTURAL RIGHTS (3/10)

Social and cultural rights are enshrined in ICESCR, to which Australia is a signatory. These include the 'right to enjoyment of the highest attainable standard of physical and mental health', the 'right to education' and the 'right to participate in cultural life'. Similar rights can also be found in the ICCPR Art 27 and ICERD Art 5(e).

Property Rights

The right to property is protected under Article 5(d)(v) of ICERD which states that everyone has the right to "equality before the law, notably in the enjoyment of the following rights:... (v) the right to own property alone as well as in association with others". The Article 17 of the Universal Declaration of Human Rights also sets out the same right, adding that "no one shall be arbitrarily deprived of his property". More specifically to Indigenous people, UNDRIP states in Article 32(1) that Indigenous people "have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources".

Amendments to the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) and the Native Title Act 1993, upon the implementation of the Intervention in 2007, meant that the Government could compulsorily acquire Aboriginal land. The fact that Indigenous owners were stripped of control over their property meant that 65 Aboriginal communities were acquired. This allowed the Government to lease the land through 5-year leases without any consultation or guarantee of compensation. The Indigenous owners **lacked the rights of lessors**, with no right to terminate the lease.

A **similar scheme** caused Indigenous communities to sign away their property rights for up to 40 years in return for the provision of services and maintenance. Additionally, **changes to the permit system** weakened the control that Indigenous people had over their land. Previously, the landowners had the right to restrict access to their land through a permit system, but under the Intervention, the Government removed this system from all town camps and community living areas. The justification was that the permit system protected sexual abusers by restricting Government access and led to social isolation.

Restrictions continue surrounding 'Community Living Areas' (CLA) and impede on the property rights of Indigenous Australians. **CLA's** are portions of land

granted out of a pastoral lease as conditional freehold to an Aboriginal community, where the community has been excluded from obtaining land rights under the ALRA. Nonetheless, the independent KMPG **review** of Stronger Futures legislation found that reforms easing leasing restriction and broadening the categories of permissible land use were compatible with human rights, including the right to self-determination. The reforms removed restrictions that prevented commercial leasing, and created the opportunity for economic development.

Whilst the reforms have been considered compatible with human rights, it has been suggested that further reform is still required to address the vulnerability of CLA titles and bring them into line with the ALRA. This would effectively improve the property rights of all affected Indigenous peoples.

Section 60 and 134 of the NTNER legislation specified that the Northern Territory (Self Government) Act which guarantees compensation on 'just terms' for the compulsory acquisition of property does not apply to the Intervention. section 134(2) states that a "reasonable amount of compensation" must be paid, but there is no indication of what this entails. There is a lack of clarity regarding whether the Commonwealth is required to pay compensation or not.

Right to Family and Private Life

Article 17 of the ICCPR guarantees that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home..." The **Joint Committee on Human Rights** has identified that this right encompasses "freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy".

The imposition of income management on Indigenous communities through the BasicsCard restricted the ways in which money could be spent. Therefore, the scheme is both a restriction on the right to social security and a violation of the right to family and private life. The conditions imposed on the payments constitute an 'arbitrary interference' to the extent that it also affects family members who may have nothing to do with school attendance. This restriction is especially arbitrary since **no evidence** has been shown regarding the effectiveness of linking school attendance requirements to welfare payments.

The denial of payments may also constitute a violation of the right to an adequate standard of living under Article 11 of ICESCR.

The Healthy Welfare card (now called the Cashless Debit Card) resembles the BasicsCard in that it also restricts how people can use their money. The Social Security Amendment (Debit Card) Bill 2015 (Cth) authorised the trialing of the Healthy Welfare card. Its provisions raise some similar concerns to those raised by the BasicsCard. One concern is the impact the system has on the right to privacy. In his report, the Aboriginal and Torres Strait Islander Social Justice Commissioner highlighted the somewhat broad authority conferred by the Debit Card Bill to disclose information about the trial's participants to the Secretary. These disclosure provisions may breach the right to privacy in Article 17 of the ICCPR.

Whilst the impacts of the Stolen Generations are becoming more recognised and understood, the ongoing impact of removing children from their families

into out-of-home care continues to have a **devastating impact** on the right to family for Indigenous peoples. Current child protection policies remove children from their families at 10 times the rate of non-Indigenous children. The concept of family is central to Indigenous culture, and fundamental to the healing process from the intergenerational trauma of the Stolen Generation. The Government tends to focus on the nuclear unit Western-style of families, and underestimates the importance and strong support network that exists in Indigenous families and communities. The 2018 'Family Matters Report' urges the Government to invest more in support services for children and their families, to prevent the situations that lead to child removal. The report also recognises the ongoing mental health impacts from the Stolen Generations, that means this generation and direct descendants are 30% more likely to have poorer mental health. The Parliamentary Joint Committee's 2016 Review on Stronger Futures measures described the scheme of child removal as robbing individuals of their 'private and family life'.

4.6 RIGHT TO BE CONSULTED (2/10)

The United Nations Declaration on the Rights of Indigenous People declares in Article 19 that: “States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

Despite this Declaration being aspirational and non-binding, it has been adopted by Australia, which obliges the Government to act in accordance with the object and purpose of the Declaration.

The Committee on the Elimination of Racial Discrimination (General Recommendation 12) has also commented that governments should ensure that “no decisions directly relating to their rights and interests are taken without their informed consent.” The lack of consultation also affects Australia's obligations under the ICCPR and ICESCR regarding the right to self-determination (discussed above). Additionally, the measures taken under the Intervention could only be legitimately considered 'special measures' under ICERD if proper consultation was carried out.

Every stage of the Intervention since its inception in 2007 has had issues surrounding the level of consultation that was undertaken. This is despite the recommendations in the Little Children are Sacred Report, which prompted the response that “it is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities”.

The rushed nature of the initial legislation did not allow time for proper consultation to occur. Any Indigenous programs and services that were already being offered at the community level were totally disregarded by the sweeping changes that were brought in. The changes made under the 2012 Stronger Futures legislation were discussed with Indigenous communities during a **six-week consultation period**, however the Government conducted **consultations** on decisions that had already

been made. Furthermore, these processes failed to engage communities on the issues most relevant to them, such as income management.

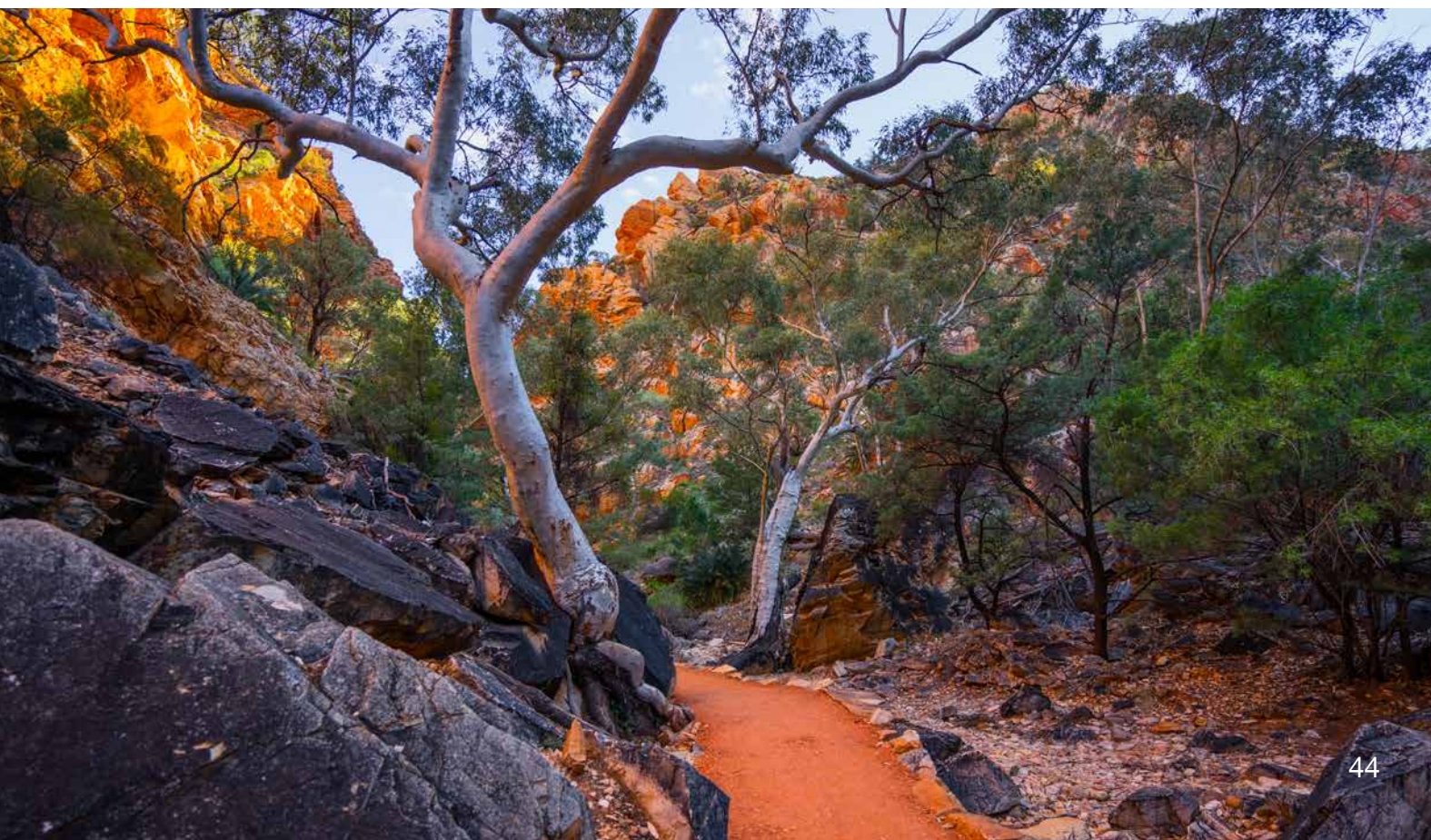
All stages of the Intervention have adopted a top-down, one-size-fits-all approach that has failed to properly consult with Indigenous communities.

The **Australian Human Rights Commission's** observations regarding the right to be consulted concluded that the lengthy time-frames for some of the measures make it especially critical that consultation is carried out.

The 'Listening but not Hearing' Report, carried out by the Jumbunna Indigenous House of Learning Research Unit, outlined the requirements under the duty to consult. Criteria include prior consultation of Indigenous peoples rather than discussions based on pre-determined conclusions as well as active participation of affected communities and free, prior and informed consent.

The Report found that the Stronger Futures consultation process excluded Indigenous people from the design process, failed to provide information on specific measures and did not provide any mechanisms for reaching a mutually agreeable settlement.

The Parliamentary Joint Committee's eleventh Report of 2013 also criticised the Stronger Futures package of legislation for its failure to include a requirement of consultation.



The duty to consult is part of international law and a requirement for any 'special measures' to be valid. Thus, regimes such as the Healthy Welfare card should only be implemented with the consent of and in consultation with the affected community or individual. This has also been a criticism of the *Special Rapporteur* with regard to the 'Indigenous Advancement Strategy', as representatives of peak Aboriginal bodies were excluded from key policies and legislative proposals.

This was a theme consistent throughout the *Special Rapporteur's* report, that in order to improve the human rights for Indigenous peoples, more extensive consultation with the Indigenous community, and community-led initiatives are essential. Recommendations include a revision of the Indigenous Advancement Strategy and Closing the Gap targets in consultation with the Aboriginal community. The report also called for funding to be reinstated for the National Consult, which has been defunded since 2014.

Two *parliamentary submissions* in response to the Northern Land Council's decision to implement regulations assisting Aboriginal people in the acquisition and management of their traditional land stated that only 15 of the 100 Northern Territory communities affected were consulted by the government.

The consultation process embedded within the 2017 *Uluru Statement of the Heart* has called for the establishment of a "First Nations voice" to be entrenched within the Commonwealth Constitution, as well as a 'makarrata commission' to oversee a process of truth-telling regarding the history of Aboriginal and Torres Strait Islander people. However, a First Nations representative body is yet to be enshrined within the governmental framework of Australia. As a result of this, there currently does not exist a procedure through which Indigenous persons can formally advise Parliament on policy affecting Aboriginal or Torres Strait Islander people. In October of 2018, Prime Minister Malcolm Turnbull publicly expressed that the proposal to create an Indigenous representative institution was neither "desirable nor capable of winning acceptance at referendum, was inconsistent with democratic principles because only Indigenous Australians would be able to be or elect members of the representative body, and would inevitably become seen as a third Chamber of Parliament". Instead, the Government has since established a Joint Parliamentary Committee to take the Uluru statement into account during any other subsequent proposals for constitutional reform.

4.6 RIGHT TO SOCIAL SECURITY (1/10)

The right to social security is protected under Article 9 of the ICCPR, to which Australia is a signatory. This right has been interpreted as obliging governments to “guarantee that the right... is enjoyed without discrimination, and equally between men and women” in accordance with Articles 2 and 3 of the Convention. It is also required that the benefit is “not provided in a form that is onerous or undignified”.

Income Management

The Income Management Scheme was introduced in 2007 as part of the Northern Territory Intervention, then known as the Emergency Response. Even at the time, the link between sexual abuse and income management was somewhat tenuous, resting on an assertion from 'some people' who gave evidence to the inquiry that if welfare was quarantined it might impact positively on alcohol consumption, and hence, presumably, on sexual abuse. The inquiry's tentative suggestion that income management was 'worth investigating' was taken up in spades by the Howard government, which introduced its management scheme to the vast majority of Indigenous people in the Territory on income support.

In its original form, income management applied to 73 prescribed communities, and 10 town camp regions in the NT. It quarantined 50% of a welfare recipient's income, which could only be spent using a government-issued card (known as a BasicsCard) with a personal identification number. Income-managed funds could only be spent in certain stores, and could not be used to purchase excluded items such as alcohol, tobacco or pornography, or be used for gambling.

The practice of quarantining a percentage of welfare payments through the Intervention's Income Management Scheme was applied as a *blanket rule*. No case-by-case consideration was given for Indigenous people living in 'prescribed communities', regardless of how they were managing their payments prior to the Intervention. Essentially, the Income Management Scheme had the effect of ensuring that controlled income was not expended on proscribed items, such

as alcohol, gambling products and tobacco. The introduction of the BasicsCard meant that the Indigenous cardholders could only utilise funds at specified outlets, often had to pay higher prices within stores and were subject to purchase limits and surcharges.

In 2010 the Rudd Labor Government reinstated the Racial Discrimination Act in its application to the Northern Territory Emergency Response. It passed legislation to extend income management to all welfare recipients in the NT, provided they met certain criteria (Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act 2010; Parliamentary Joint Committee on Human Rights, 2016, p. 37). The regime was modified again by the Stronger Futures package of legislation in 2012, enabling a range of state and territory authorities to refer locations outside the Northern Territory for income management. Thus in 2016, it applied to 15 locations outside the Northern Territory (Parliamentary Joint Committee on Human Rights, 2016, p. 38).

By 2013, a person in the Northern Territory could be subjected to compulsory income management if they were classed as a 'long-term welfare payment recipient' (aged over 25, and in receipt of unemployment benefits, youth allowance or parenting payments for 12 of the last 24 months); disengaged youth (aged 15 to 24, and receiving youth allowance, unemployment benefits or parenting payments for three of the last six months); or 'vulnerable income management referrals' (on most welfare benefits, and referred for income management by a Centrelink social worker, a child protection worker, or by the Territory's Alcohol Mandatory Treatment Tribunal) (Parliamentary Joint Committee on Human Rights, 2016, p. 38). There is also a category of 'voluntary' income.



management. Income-managed funds might be subject to automatic deductions to meet a range of ‘priority needs’ such as food and rent, with the remainder still only accessible using the BasicsCard (Parliamentary Joint Committee on Human Rights, 2016, p. 39).

Despite these changes, the IMR still disproportionately affected Indigenous people, who comprised over 90% of people in the scheme. The Government has stated that the scheme does not affect eligibility or payment amount, but only places conditions on the payment. However, the Parliamentary **Joint Committee on Human Rights** considers the conditions “sufficient to constitute a limitation on the enjoyment of the right to social security.” In 2016, the Joint Committee on Human Rights also stated that compulsory income management was “an intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person’s private and family life”.

A blanket approach also breaches the non-discrimination provisions found in various international human rights treaties. This is because it is a policy that has been applied to whole areas, where the population is overwhelmingly Indigenous. In 2017, **Pat Turner**, the chief executive of the national peak body on Aboriginal health, stated that the utilisation of the BasicsCard not only “reminds Aboriginal people every day that they are treated as second- and third-class citizens in their own land”, but that its prevalence in Indigenous communities was inherently “unfair” and “a form of control”.

There is also **no evidence** that making the payment of welfare conditional on school attendance is effective at increasing attendance rates (within the initial 5 months following the introduction of income management, school attendance rates decreased by **2.7%**). Rather, it breaches the right to social security and potentially deprives families of much needed financial support, especially if there are underlying factors as to why the child is not attending school. The 2014 **Final Evaluation Report on Income Management in the Northern Territory** concluded that there was no tangible correlation between income management and improved food intake, financial management skills and child health and welfare outcomes (e.g. there was no improvement to infant birth weight as a result of income management). Moreover, the scheme was actually counterproductive

to the rectification of the cycle of welfare dependency experienced by Indigenous people. The report also found that the implementation of income management was not successful in altering behaviour regarding spending patterns.

The ‘Health Impact Assessment’ of the NTER purported that the implementation of income management strategies had a detrimental effect on the psychological health and spiritual and cultural integrity of Aboriginal and Torres Strait Islander people. Specifically, the way in which the scheme overstepped Indigenous leadership, governance and control was damaging to communities. The assessment recommended that partnership between Indigenous communities and the Government be struck and that income management adopt an opt-in approach or be reserved for those who have displayed an explicit sense of non-compliance, abuse or neglect, as opposed to being a blanket policy. Such recommendations were not adopted by the government.

A study by the University of Sydney and Menzies School of Health Research found that the Income Management under the Northern Territory Intervention ‘has definitely had no positive impact on children’s wellbeing’, and argued that ‘if anything it had negative impacts on school attendance, particularly in boys.’ The same study also found that babies born shortly after the roll-out of the Intervention were smaller at birth by roughly 100 grams. This could have been the result of additional stress, or changes to nutrition as a result of the policies, however this link is not explicit.

Currently, systems of ‘**Voluntary Income Management**’ are in place in some Indigenous communities. Differentiating itself from its compulsory counterpart in the Northern Territory, Voluntary Income Management affords Aboriginal and Torres Strait Island people with the choice to actively participate in the Income Management Scheme. The Special Rapporteur on the rights of the Indigenous people detailed that **Indigenous women** were generally in support of this form of income management due to beneficial effects it has had on food security and the general safety and wellbeing of women and children.

Consistent with this, in March 2016, the Parliamentary Joint Committee on Human Rights made two significant recommendations in relation to the NT’s IMR. Firstly, it recommended that community-led income management only occur ‘where there has been a formal request for income management in a particular community following effective consultation on the particular modalities of its operation, including whether it should be a voluntary program’ (Parliamentary Joint Committee on Human Rights, 2016, p. 62). In other words, income management in a community must be driven by that community. Secondly, it recommended that income management only be imposed on a person “when that person has been individually assessed as not able to appropriately manage their income support payments. Information concerning rights and processes of appeal should be provided to the person immediately and in a language that they understand” (Parliamentary Joint Committee on Human Rights, 2016, p. 62).

In 2019, the Federal Government **announced** that in January 2020 it would move all people in the Northern Territory from the Basics Card to the Cashless Debit Card. If this occurs, it will be a significant change (and for an explanation of the difference between the two cards, refer to the **Australian Government’s page**)

The Cashless Debit Card (originally the Healthy Welfare Card) was a key recommendation of Australian mining magnate Andrew Forrest’s review of Indigenous jobs and training, Creating Parity – the Forrest Review, commissioned by the Federal Government in 2014. Still officially on ‘trial’, the card is designed to test the concept of cashless welfare arrangements by disbursing particular welfare payments to a restricted bank account, accessed by a debit card which does not allow cash withdrawals. A default amount of 80% of a trial participant’s welfare payments is placed into such an account.

The card is intended to work as similarly as possible to any other bank card, and to work at all existing terminals and shops, except those exclusively selling restricted products such as alcohol and gambling products or cash withdrawals. While the Forrest Review recommended that all of a recipient’s welfare payment go into such an account (Forrest, 2014, p. 104), the trial has accepted that “people need cash for minor expenses such as children’s lunch money or bus fares.” Consequently it allowed the remaining 20% of welfare payments to be available in cash.

Research results on the impact and effects of the Cashless Debit Card have been conflicting and controversial. Evaluations by ORIMA and the University of Adelaide have been used to **justify** expansion of the trial. However, these reports have been criticised for **methodological flaws**, and for alleged inconsistencies with the testimony of people ‘on the ground’. There are other conflicting studies; for example, a **2019 study** found that the card was strongly resented by many of its participants in Ceduna.

The 2016 observations of the Parliamentary Joint Committee on Human Rights are as true of the Cashless Debit Card as of income management. In fact, it may be said that they are more true, since the Cashless Debit Card is more interventionist and draconian in several ways — in particular, because it removes a greater percentage of income than does income management, and because it applies compulsorily to a greater range of ‘trigger payments’ than income management, including, for example, the disability support pension. In any case, the experience of income management, as well as many decades of government control of Indigenous people’s income during the pre-Whitlam years, suggests overwhelmingly that such measures only have a chance of success if driven by, and not imposed upon, Aboriginal people.

Restricted Access to Independent Review

Amendments to the Social Security (Administration) Act 1999 (Cth) have prevented those on the Income Management Scheme from appealing to the **Social Security Appeals Tribunal**. This means that they have no access to independent review. The **Government’s justification** was that review would “take too long” and would “undermine the timing of the emergency response”.

Abolition of CDEP

The **abolition of the Community Development Employment Program** and the resulting lack of jobs in remote Indigenous communities also contributed to violations of this right to social security. Indigenous people were forced to shift from employment that allowed a level of financial independence, to move onto welfare payments with compulsory quarantining.

4.6 RIGHTS OF CHILDREN (1/10)

The Intervention was initially justified on the basis that Australia was fulfilling its obligations under CRoC by preventing sexual abuse of Indigenous children. The Intervention was instigated to tackle the disproportionately high levels of child sexual abuse in the NT, but the shift away from this focus has been the source of most criticisms.

The focus of the Intervention has, according to reports from the Children's Commissioner of the NT, shifted away from the protection of children from sexual abuse to focusing on economic and infrastructure development. Intervention policies such as increased funding to safe houses and child protection workers were designed to combat situational causes of Indigenous child abuse and maltreatment. However, intervention policies which ostensibly have the aim of improving Indigenous children's lives did not address underlying and structural causes of Indigenous child maltreatment and abuse. This is not consistent with Art 19 (2) of UNCRC which requires preventative strategies to be employed to ensure a child's right to protection.

Protection of Children no longer the paramount objective of the Intervention

The Intervention legislative package and policies do not adequately address the needs of Indigenous children. The Explanatory Memorandum for the initial Bill stated that the measures would “**protect children and implement Australia's obligations under human rights treaties**”. Despite this, the NTER **ignored all but 3** of 97 recommendations for addressing child sexual abuse that were given in the Little Children are Sacred report. The initial legislation did not once mention child sexual abuse or the words child or children. The Intervention instead focused on periphery measures such as land leases, alcohol restrictions and welfare reform. Author of the Little Children are Sacred report, Patricia Anderson, has been outspoken against the Intervention since its inception. She now claims that it has **worsened the disadvantage** of Indigenous Australians in the NT, though she has supported the prohibitive measures for alcohol and pornography. A Children's Commissioner Report in 2012, 5 years into the Intervention, highlighted that progress of the protection of children was being

measured by self-reports from government bodies rather than independent analysis or sources. The Intervention has diminished the rights of the child and of the family, by not considering the rights of the family and/or caregivers are linked inextricably to the rights of children.

The Intervention measures are aimed at punishing those who commit offences relating to child abuse, rather than addressing the underlying cause of the abuse. These could be better addressed by implementing educational and community support programs. Programs do not address the root of many of the problems of abuse within Indigenous communities, which is the intergenerational trauma experienced by those who have lived through the Stolen Generations. The mandatory forensic health checks of Indigenous children were called invasive, ineffective, expensive and “possibly unlawful”. The checks “did not meet best practice or World Health Organisation guidelines” and had little effect on the children they were intended to help.

SEAM and the impact on Indigenous Children

The School Enrolment and Attendance through Welfare Reform Measures ('SEAM') was introduced in 2008 with the aim of increasing school attendance rates and substantially affected Indigenous children and families. The Government argued that SEAM fulfilled the state's obligation to take measures to encourage regular attendance at schools and reduce dropout rates. The specific rights identified by the government in implementing SEAM were Article 28(1)(e) of CRoC and Article 13 of ICESCR. However, the AHRC notes that the measures must be appropriate and not unduly diminish other rights such as the right of a child to benefit from social security under Article 26 of CRoC.

Controversially, SEAM linked welfare payments with children's school attendance. Making welfare payments dependent on children's school attendance violates the right to social security under Article 9 and 10 of ICESCR and the obligation of the state to act in the best interest of the child under CRoC. The decision to make welfare payments contingent on school attendance may

violate a child's right to development as it can leave children and families without essential items such as food and clothing.

The AHRC has also noted that according to the NTER Evaluation Report, there has been no observable improvement in school attendance generally between 2006 and 2010, and there was a decline after 2010. The Stronger Futures evaluation by the “Parliamentary Joint Committee on Human Rights in 2016 considered the effectiveness of the SEAM program and recognised that there was little evidence the program had been effective in improving enrolment and attendance, not only in the Northern Territory, but across the country.

The SEAM initiative ceased on the 31 December 2017 and was labelled a total failure, badly designed and woefully implemented by Indigenous Affairs Minister Nigel Scullion. The program was found to have no statistical improvement for children attending Northern Territory Government schools. The Australian and Northern Territory Governments say that they will continue to operate the Remote School Attendance Strategies and continue to monitor attendance in select communities. The Remote School Attendance Strategy was implemented in 2014 and operates across 77 schools in 74 communities. The strategy attempts to tailor the approach to local context and needs, with input from the local community.

The RCDPC has been discussed under the Incarceration section of this report, but is important in the context of Australia's human rights obligations with respect to children. The Commission confirmed that the treatment of children was a clear breach of Australia's international human rights obligations. However, the ABC criticised the Royal Commission's report for not going far enough to protect children.

For example, the report recommended the age of criminal responsibility be raised from 10 to 12 years. Whilst an improvement, the UNCRC Committee urges states to set the age for criminal responsibility at 14 or higher.

The Castan Centre supports raising the age of criminal responsibility to 14 or higher. We are not alone in this view. Calls to raise the age of criminal responsibility to the age of 14 or higher have come from Amnesty International, amongst others. Significant support for raising the age has come from the Child Rights Taskforce, the NGO coalition involved in advocacy and reporting to the Committee on the Rights of the Child regarding Australia's compliance with the treaty and their obligations. The report of the taskforce, the Children's Report recommended:

“That the Australian Government: prevent the criminalisation of children between ten and 13 years of age by:

1. raising the minimum age of criminal responsibility in all Australian jurisdictions to at least 14 years;
2. ensuring the availability of age appropriate, therapeutic, family strengthening and evidence based programs to prevent and address identifiable risk factors and anti-social behaviour for children between ten and 13 years of age; with priority for funding given to community controlled programs and services for Aboriginal and Torres Strait Islander children.”

Reasons for raising the age of criminal responsibility were given at length in the Royal Commission's **report**. They include the findings of recent neuroscience, findings about neurodevelopmental disability, concern about the harm caused by early contact with the criminal justice system, the need to combat Indigenous over-representation, and Australia's international obligations.

Furthermore, as the ABC pointed out, the report failed to recommend the instances of torture of children in centres such as Don Dale be investigated and charged. The report explore breaches of the Northern Territory legislation by all levels of staff, yet no subsequent charges have been laid for such breaches in order to provide justice to victims of this abuse.



The Commonwealth's response to the Commission expressed their commitment to the protection of children, and pledged to implement 28 of the recommendations from the report, whilst the remainder of recommendation fall under the legislative power of the Northern Territory Government. Nonetheless, there have been further reports of violence within the Don Dale Detention Centre, indicating that much remains to be done. The Northern Territory Government **asserts** that there has been extensive reform so far, including enhanced and specialised training of staff, hiring of 23 new recruits, and the introduction of a Trauma Informed and Strength based approach, and Restorative Practice training.

Children's report - UNICEF

In November 2018, '**The Children's Report**' was released by UNICEF, and shows that more than 30 years after signing the UNCRC, Australia is still failing to protect vulnerable groups of children. The report criticised Australia that improvements in children's rights have only been "**incremental and isolated**". The report outlined that Aboriginal and Torres Strait Islander children suffer more chronic disadvantage and poorer outcomes across every area of the UNCRC compared to non-Indigenous children. UNICEF criticised the Closing the Gap strategy in its failure to protect children and achieve 'necessary

outcomes'. In 2017, one in five Aboriginal and Torres Strait Islanders consulted for the report, (who were between the ages of 15-19 years of age) considered discrimination a concern.

The principle to act in the best interests of the child as outlined in Article 3 of the UNCRC is an example of a right being breached within Australia. By increasing out-of-home care for Indigenous children and removing them from their families, a child's right to life, survival and development (Article 6), is also disproportionately affecting Aboriginal children, as they are subject to higher infant mortality rates, higher prevalence of fetal alcohol disorders, and limited access to healthcare.

The report recommended the establishment of a Children's Commissioner and independent inspectorates and complaint mechanisms with a specific focus on addressing the disadvantage of Aboriginal children and specific measures to address intergenerational disadvantage. Recommendations also included a review of youth justice legislation to ensure consistency with the UNCRC, and that solitary confinement, restraints, and routine strip searches of children be prohibited unless absolutely necessary and all other measures have been exhausted.

4.7 GENOCIDE (0/10)

Genocide is defined in Article 6 of the Rome Statute of the International Criminal Court, particularly the intention to destroy a racial group by "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part".

The 'Bringing Them Home Report' of 1997 likened the removal of children during the Stolen Generations to genocide, stating that the entire community loses "its chance to perpetuate itself in that child". Then Prime Minister John Howard **rejected these claims**.

Regarding the current Intervention in the Northern Territory, concerns were first reported by the **ABC** while the 2007 NTNER legislation was still in draft form that the denial of Aboriginal culture was "in some ways genocide". The main basis for genocide claim is the **high levels** of Indigenous children that are being removed from their homes and placed into care due to child protection programs. In 1997, Aboriginal and Torres Strait Islander children constituted **20% of children** in out-of-home care in Australia, however by 2016 the figure has **increased to 36%**. This effectively means that Indigenous children are ten times more likely to be removed from their family home than non-Indigenous children.

The 1983 Aboriginal and Torres Strait Islander Child Placement Principle endeavoured to enhance and preserve the sense of identity and community experienced by Indigenous children. This was to be achieved by the decreased use of out-of-home care and the reuniting of children with their families. The promotion of Indigenous participation and autonomy surrounding child protection interventions and decision-making and enabling children to be placed in culturally-competent environments where out-of-home care was necessary, proved to be the main objectives of the principle. However, the recent and significant increase (16%) in the out-of-home care of Indigenous children can be interpreted to mean that the strategy is failing. **In 2016, a mere 66%** of Indigenous children within the child protection system were placed in homes belonging to members of the child's family or community. The remaining 34% were subject to living conditions that did not adequately uphold the capacity for children to engage in cultural experiences. The proportion of

'Aboriginal and Torres Strait Islander children' removed from their family home is **predicted to triple** by 2036. Some have likened this policy of removal to a "**new stolen generation**". Damien Short's article '**Australia: a continuing genocide?**' contended that current Government policies regarding Indigenous people constitute a "sinister attack on Indigenous land rights, autonomy and cultural integrity that has led some Indigenous peoples to describe their present day lived experiences as tantamount to genocide."

In 2017, the Special Rapporteur on the rights of Indigenous peoples acknowledged that the intergenerational trauma surrounding the forcible removal of children, persisting cycle of poverty and systematic disempowerment has had a direct link to high rates of mental illness and substance abuse. Nationwide, these consequences continue to dilute Indigenous personhood and identity. The Special Rapporteur expressly supported the reparations paid to victims of the Stolen Generations in Tasmania, as well as the current reparations schemes in place in New South Wales and South Australia. They further noted the need for the establishment of a comprehensive national mechanism for reparations to account for the severing of cultural ties and the dilution of social arrangements. The report also explored the intergenerational cycle of disadvantage in terms of Indigenous parents who had previously been forcibly removed from their family home being more at risk of having their own children being put in out-of-home care.

The increasing calls to change the date of Australia Day have gained widespread attention. Support for this movement stems from the way in which the change of date would combat the cultural genocide and erasure of identity in which many believe the date of the public holiday represents. Currently celebrated on the 26th of January, Australia Day marks the day in which Captain Arthur Phillip seized possession of Australian soil despite the fact that its Indigenous population had been inhabiting the land 60,000 years prior to colonisation. Ultimately, calls to change the date of Australia Day have gained momentum due to the day marking the commencement of an era of loss, dispossession and exclusion for Aboriginal and Torres Strait Islander people.



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