



SUBMISSION TO FORREST REVIEW

26 SEPTEMBER 2014

About NAAJA

The North Australian Aboriginal Justice Agency

The North Australian Aboriginal Justice Agency was formed in 2006. It brought together three existing Aboriginal Legal Services across the Top End to ensure the provision of quality legal services for Aboriginal Australians. NAAJA has grown to employ over 100 staff across the Northern Territory, with offices in Darwin, Katherine and Nhulunbuy and is the largest law firm in the Northern Territory.

NAAJA provides high quality, culturally inclusive criminal, civil (including family law, child protection, tenancy and social security law) advice and assistance, community legal education, throughcare and prison support services. NAAJA attends community courts and holds regular advice clinics in remote communities across the Top End, from Groote Eylandt to Wadeye.

NAAJA advocates for the legal rights of Aboriginal Australians at a national level. In 2010, NAAJA was awarded the prestigious Law Award from the Australian Human Rights Commission for its commitment to bringing about long-term change in the justice system through representation, law reform and education.

Executive Summary

NAAJA is grateful for the opportunity to respond to the Forrest Review which covers wide ranging recommendations to many areas in the hope of improving the lives of Aboriginal people across Australia. We caution against implementing such changes without thorough consultation with Aboriginal people and without consideration of whether those changes will deliver the intended outcomes.

In general we support actions oriented towards improving early childhood development and agree with the focus on children and young people for concentrated service delivery. We support measures aimed at empowering remote communities, strengthening community leadership and supporting the cultural authority of elders. NAAJA supports local community based initiatives and properly resourcing wrap around and co-operative service delivery, especially in remote communities.

NAAJA does not support actions which are oriented in misunderstandings about Aboriginal peoples' lives or motivations. Homeownership and employment schemes that are targeted at the individual, whilst well meaning, do not recognise Aboriginal people rights to live on or near to their traditional lands in order to maintain a connection to their culture. We do not support punitive approaches which focus on financial penalties to individuals and families. Such approaches fail to acknowledge the complex nature of Aboriginal disadvantage and unfairly target individuals rather than the structural barriers to development. For example the main contributing cause in overcrowding and homelessness is the lack of affordable housing. Living in crowded conditions has flow on effects for children and their schooling, sustaining employment, for peoples' emotional and physical health and for family cohesion. Punishing parents financially is not the answer and will only make a bad situation worse.

NAAJA supports approaches which are evidence based, demonstrated to be effective and can be independently evaluated. For example we commend the recommendations which support young mothers before and after the birth of their children. We do not support approaches which have already been shown to be ineffective for the purposes for which they were introduced such as compulsory income management and the School Enrolment and Attendance Measure.

NAAJA supports the goal of increased workforce participation and voluntary, meaningful vocational training for Aboriginal people to increase independence, choices and standards of living, NAAJA does not support approaches which will increase Aboriginal peoples disadvantage and restrict opportunities for autonomy – such as the Health Welfare card.

The balance of the submission is based on our experience as an Aboriginal governed organisation working with Aboriginal people across the Top End of the Northern Territory in urban and remote communities, providing a range of services which aim to address disadvantage and empower Aboriginal people.

Children and Young People

Recommendations 1, 2 & 9

Overview and Context

NAAJA supports the recommendations about children and young people that:

- support a case management approach;
- increase the available resources and culturally appropriate services in remote communities;

Newborn Supplement

The aim of the Newborn Supplement is to assist families to care for their newborn babies, given the increased family expenditure;¹ for the cost of nappies, baby clothes, pram, or a baby seat for example.

1.4: NAAJA supports the proposals in recommendation 1.4 but do not consider that service provision should be tied to the Newborn Supplement as:

- Some pregnancies do not progress to birth;
- It is important that families without means are supported to provide these essential goods for their newborns at the time of their birth or shortly after;
- It is unclear to what extent remote health clinics and community health centres have the resources to co-ordinate prenatal care and access to services community nurses; and
- We are unaware of the existence of community based mother-child support groups in remote communities and whether the Commonwealth will fund their establishment.

School Attendance

NAAJA agrees that school attendance is vital for children's core skills of literacy and numeracy, that education is one of the key factors that reduces disadvantage, and that many schools Aboriginal communities do not have good attendance records. However, attendance is not the sole answer to educational attainment; having children at schools that do not meet their needs does not improve outcomes.²

NAAJA is supportive of measures to practically assist families to increase school attendance and personalised assistance to address obstacles to attendance such as those contained in recommendations 1.1 and 1.2.

Policies and programs that improve attendance and retention rates are those that are developed in conjunction with Indigenous educators and in consultations with communities over many years; they specify parent and community involvement in implementation and continual monitoring; and involve interagency

¹ Department of Social Services, *Families and Children – Newborn Supplement* <http://www.dss.gov.au/our-responsibilities/families-and-children/benefits-payments/newborn-supplement-and-newborn-upfront-payment> (accessed at 25 September 2014)

²Eva Cox, 'Forrest Report ignores what works and why in indigenous policy', *The Conversation* (5 August 2014) <http://theconversation.com/forrest-report-ignores-what-works-and-why-in-indigenous-policy-30080> (accessed at 25 September 2014)

collaborations;³ and are based on reliable evidence and an understanding of the interplay between individual, environmental and social forces shaping the lives of Aboriginal young people.⁴

The Review does not recognise the complexity and contextual nature of the reasons behind poor school attendance and early school leaving, which include a combination of home, school and individual factors, including:

- The strong correlation between overcrowding in housing and school attendance. A recent study has shown that for each extra person per bedroom, there is a 20% reduction in the rate of school attendance.⁵ Researchers from the Menzies School of Health analysed eight community factors relevant to school attendance, including language, remoteness and income, and found that house overcrowding explained almost half of all variations in attendance;⁶
- the lack of relevance to Indigenous needs, culture, and experience;
- the failure to involve parents and communities in their children's education,
- inadequate number of teachers with appropriate cultural knowledge and skills, and lack of facilities available in remote areas.⁷
- Health problems -studies into the effect of health complaints associated with poverty and common in remote communities have a huge affect of attendance – a 2003 study found children with chronic suppurative otitis media or runny ears attended school 69% of the time;⁸
- Bullying; and
- Lack of transportation.⁹

There are no simple answers.¹⁰

The Review seems to focus overwhelmingly on the 'home' factors, without consideration of the stressors that are present in many homes in remote communities - factors such as substandard housing and

³ Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian students' (September 2010) <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> Pg. 11 (accessed at 25 September 2014)

⁴ S. Silburn, J. McKenzie, L. Li, S.Q. Li, 'Unpacking educational inequality in the Northern Territory', pg. 93 http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference (Accessed at 23 September 2014).

⁵ S. Silburn, J. McKenzie, L. Li, S.Q. Li, 'Unpacking educational inequality in the Northern Territory', http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference (Accessed at 23 September 2014).

⁶ S. Silburn, J. McKenzie, L. Li, S.Q. Li, 'Unpacking educational inequality in the Northern Territory', http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference (Accessed at 23 September 2014).

⁷ Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian students' (September 2010), <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> (accessed at 25 September 2014.)

⁸ Nation Aboriginal Community Controlled Health Organisations, *NACCHO Ear Trial and School Attendance Project*

⁹ ANAO Report p55, L Behrendt and R McCausland 'Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education' Jumbunna House of Learning, University of Technology Sydney, August 2008, p27

¹⁰ Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian students' (September 2010) <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> Pg. 18 (accessed at 25 September 2014)

overcrowding, poor health, domestic violence and geographic isolation also adversely affect school attendance and educational outcomes,¹¹ factors which parents have limited ability to control.

The Review's approach to vilify the parents of children with low school attendance as 'recalcitrant parents'¹², not 'responsible, caring parents'¹³ and deniers of their children human rights¹⁴ is simplistic and unhelpful. This narrow approach restricts the focus of bulk of the recommendations on to the parents and is unnecessarily punitive by seeking to coerce parents into compliance by threat of the withdrawal of essential family income

There is no evidence to suggest that the proposals will be effective in raising school attendance significantly over the long term, given the limited success of SEAM and Commonwealth funded truancy officers which is discussed below. International studies on the effectiveness of linking school attendance with welfare payments have also shown that case management approaches are a greater indicator of success and financial penalties are less successful.¹⁵

Rather, these proposals risk compounding the complex effects of poverty, which itself is perhaps a better explanation for low school attendance than parent recalcitrance.¹⁶

NAAJA objects to the use of financial penalties and suspension of social security payments due to the risk posed to families by reducing already incredibly low incomes, jeopardising parents' ability to provide food and clothing or pay for rent or utilities, ironically the very things that the Health Welfare Card is intended to safeguard. here are a number of references to the 'onus of proof', and avenues for appeal, should focus on the individual and move from an 'entitlement' model to one of 'opportunity' in the Review. This is a mischaracterisation of the law: in administrative decision making; the decision maker is required to assess the merits of the original claim, in order to come to the correct or preferable decision. Secondly, administrative review is a legal procedural right available to all Australians affected by a decision of a government agency and is an essential check on the accountability of government decision making; a right that is, in our experience, already under-utilised by Aboriginal people. To imply that Aboriginal people should have limited or different appeal rights is unsupportable and blatantly discriminatory.

Following a failed model

The Review proposes that obligations be attached to 'family payments' where children are at risk and to make parents send their children to school.'

Parents on income support in selected Northern Territory communities are already subject to the 'School Enrolment Attendance Measure' (SEAM), which allows the Department of Human Services to suspend parents' income support payments if they have not enrolled their school aged children or failed to comply with a school attendance plan.¹⁷

¹¹ Australian Human Rights Commission, 'Rural and Remote Education Inquiry Briefing Paper', (2 December 2001), <https://www.humanrights.gov.au/publications/rural-and-remote-education-inquiry-briefing-paper-28> (accessed at 23 September 2014).

¹² A. Forrest, *The Forrest Review* p90.

¹³ Ibid.

¹⁴ Ibid p87.

¹⁵ David Campbell and Joan Wright, 'Rethinking Welfare School-Attendance Policies' *Social Service Review*, March 2005, Vol 79, [1].

¹⁶ See SR Zubrick et. Al. The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People, Curtin University of Technology 2006

¹⁷ Department of Human Services website, 'School Enrolment and Attendance Measure – Northern Territory', <http://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian%20Administrative%20Law%20Policy%20Guide.pdf> (accessed at 24 September 2014). REFER LEGISLATION

There is limited evidence to suggest that SEAM is having a significant impact on attendance and therefore extending it to the 200 sites without addressing its deficiencies is futile.

The Australian National Audit Office *The Improving School Enrolment and Attendance through Welfare Reform Measure* of June 2014¹⁸ (ANAO Report) is the most current and comprehensive evaluation of SEAM. The ANAO found the effectiveness of SEAM ‘was not readily identifiable’ due to monitoring issues¹⁹. It also found that effectively communicating and working with parents is difficult and resource intensive,²⁰ limited resources prevented effectively working with the whole target group²¹, and significantly:

‘the ‘barriers’ to regular attendance reported by staff working on SEAM are varied, often complex and at times deeply entrenched’²²

The ANAO Report found 21% of people considered to be not compliant with notices were granted special circumstance (determinations²³, highlighting the need for personal discretion; the ANAO examined a number of special circumstances determinations and found they were applied in accordance with the law.²⁴

The Department of Education Employment and Workplace Relations (DEEWR) 2010 review of the SEAM trial found that attendance increases in SEAM schools differed from year to year and school to school, but over four years of the trial showed an attendance increase of around 1% compared with non SEAM schools.²⁵ Issuing attendance notices and the threat of suspension had most impact on attendance, but these impacts were short term only.²⁶ These findings are consistent with the ANAO Report²⁷.

The deficiencies of the SEAM rollout and model were highlighted by the 2010 review and remained when the ANAO reviewed SEAM, described in the following terms:

‘The continuing presence of these issues indicates that the opportunities to learn from the trial, and not make improvements, were not fully realised’.²⁸

To expand SEAM in these circumstances and without addressing these issues is folly; to proceed would require significant changes and more funding.

NAAJA has assisted families who have experienced deep hardship as a result of the suspension of social security payments. For example, a single mother with 5 children, had been feeding her children damper (flour and water) for 5 days as she could not afford anything else. Her parenting payment had been suspended under SEAM for 2 weeks, as her son in grade 6 refused to go to school.

¹⁸ Australian National Audit Office *The Improving School Enrolment and Attendance through Welfare Reform Measure* June 2014,

¹⁹ ANAO Report, p19. Special circumstances determinations are provided for by section 124NE(2) of the *Social Security (Admin) Act 1999* (Cth). Special circumstance should only be determined to apply where there has been a clear material impact on the ability of the parent to comply with a compliance notice, such that the failure to comply is justified. The circumstance may be unfortunate, but unless it directly impacts on the ability of the parent to meet the requirements of the compliance notice, it should not be considered a special circumstance.

<http://guides.dss.gov.au/guide-social-security-law/3/1/10/36> .

²⁰ For example ANAO found that 476 compliance notices were issued but there were 404 failed attempts to deliver these notices. ANAO report p18.

²¹ ANAO Report, Recommendation 1.

²² Ibid, p61 (emphasis added)

²³ Ibid p 58.

²⁴ Ibid, p61

²⁵ DEEWR *Improving School Enrolment and Attendance through Welfare Reform Measure* 2010, 2012 p34

²⁶ Ibid p44.

²⁷ ANAO Report pp51 and Appendix 2.

²⁸ Ibid p17

Truancy officers already operate in many remote communities.²⁹ While this strategy created an initial spike in school attendance, analysis suggests that little lasting improvement can be made without addressing underlying issues.³⁰

Practical Considerations

NAAJA has previously raised concerns about the need for exemptions and special circumstances provisions. At a practical level this discretion is needed to avoid unjust outcomes with terrible consequences for families.

NAAJA has raised a number of concerns with the implementation of SEAM with the responsible departments, namely the DHS's communications with parents. We have assisted a number of 'in scope' parents who did not understand their obligations under SEAM or the potential ramifications of SEAM. NAAJA has sought:

- changes to communication materials to ensure that letters are expressed in plain English;
- parents have access to interpreters when meeting with DHS or NT DET;
- parents are properly informed that they are 'in scope' and understand their obligations; and
- parents are aware of their appeal rights and the ability to get assistance from a legal service.

This work is ongoing.

System of concurrent penalties will debilitate families

At present, SEAM exposes a parent's income support pension to the risk of suspension, but leaves the FTB payment untouched so the family has some form of income to support children; the proposals suggest that this be extended to FTB, which would leave families without income at all. This will act to reduce a families' ability to get their kids to school, not increase it.

The impact of suspending FTB is significant, particularly for single parents with several children, who are some of the most vulnerable people in the community but rely on this payment for basic survival. Putting this in jeopardy to coerce attendance is unduly harsh. The Review proposes concurrent measures, including four forms of financial penalties which have conflicting objectives:

SEAM suspends income support payment for up to 13 weeks

FTB failure to qualify for FTB if child does not meet monthly attendance rates

FTB penalties if child does not attend school for 90% of the school year

Participation penalties – suspends income support payments for up to 8 weeks

Truancy fines from the Northern Territory Government under Every Child Every Day policy

Healthy Welfare Card – 'stabilises' family incomes by ensuring rent is paid and food is on the table

No consideration has been given to the interaction of these measures on the welfare of families. Given the limited proven success of SEAM, there is no evidence that the much wider ranging reform to FTB

²⁹ Minister for Indigenous Affairs, *Media Release* (4 April 2014) <http://minister.indigenous.gov.au/media/2014-04-04/remote-school-attendance-strategy-rolled-out-additional-30-schools> (accessed at 23 September 2014).

See also, Patricia Karvelas, *The Australian* (1 February 2014) <http://www.theaustralian.com.au/national-affairs/indigenous/curfews-for-kids-to-battle-truancy/story-fn9hm1pm-1226815395242> (accessed at 23 September 2014).

³⁰ Sven Silburn (Co-director, Menzies Centre for Child Development and Education at Menzies School of Health Research), *The Conversation* (16 September 2014) <http://theconversation.com/how-crowded-homes-can-lead-to-empty-schools-in-the-bush-30971> (Accessed at 23 September 2014).

(recommendation 2.2) would be successful in doing anything but cause harm to vulnerable people and cost the government a lot of money.

NAAJA is already deeply concerned about the existing levels of Centrelink debts owed by Aboriginal people in the NT and particularly in remote communities. Poor communication of obligations and difficulty in complying due to remoteness, low literacy and numeracy are key reasons for the disproportionately high debt levels among indigenous people. Despite this there is currently no DHS Indigenous Debt Prevention Strategy which would include educational strategies. Imposing further penalties by way of fines or stopping payments will exacerbate the existing debt problem. On a practical level the proposal under recommendation 2.2.2 to change FTB reconciliation to occur monthly not annually will multiply government resources to perform this task by a factor of 12. It is unclear whether the Review has considered this enormous burden.

Recommendations

Recommendation 1: Early Childhood

1.4: NAAJA supports the proposals in recommendation 1.4 but do not consider that it should be tied to the Newborn Supplement.

1.6: NAAJA opposes the continuation and expansion of SEAM.

1.1, 1.2 and 1.6. The research shows that for these types of measures to have any effect, strong social work support is necessary.

Recommendation 2: School Attendance

2.1: NAAJA opposes the strict enforcement of truancy laws as this does not address the underlying reasons for school absences and will cause further hardship.

2.2: NAAJA opposes the recommended changes to FTB

Recommendation 4: Stopping Distractions to Education

4: NAAJA opposes the Review's view that cultural activities are a distraction to education which should be rescheduled to not interfere with attendance. Currently attendance at cultural activities, such as festivals are not recorded as 'unauthorised absences' for the purposes of SEAM. This should be maintained.

The Report dismisses oral cultures and languages, and other learning that cannot be directly applied in job seeking. A focus on 'fixing the individual' ignores the importance of community.³¹

Recommendation 9: Young People

9.1 NAAJA does not support the involvement of school principals in decisions regarding eligibility for social security payments.

Students living away from home at boarding school, or living with families in communities, are often solely dependent on their ABSTUDY or Youth Allowance payments. Eligibility should be based on clear legislative criteria and objective assessments of needs not on the personal views of school principals. This would

³¹ Eva Cox, 'Forrest Report ignores what works and why in indigenous policy', *The Conversation* (5 August 2014) <http://theconversation.com/forrest-report-ignores-what-works-and-why-in-indigenous-policy-30080> (accessed at 25 September 2014); see generally for the social and economic benefits of cultural activity J. Quiggin and R. Quiggin, *Intellectual Property and Indigenous Culture* 2007 http://www.uq.edu.au/rsmg/WP/Australian_Public_Policy/WPP07_1.pdf

have the effect of taking the decision outside the protections and processes required by law, would deny applicants any right of review, and would have severe consequences on the young person if withdrawn.³²

There would be severe consequences if this important decision regarding finances was dependent on the recommendation of one person.

9.2: The Australian Institute of Health and Welfare (AIHW) has compiled a detailed analysis of programs that have proven successful in school attendance and retention of Aboriginal students.³³ NAAJA recommends that AIHW evidence must be considered and that funding be directed towards programs that have proven success.

The Review recommends funding ‘paid on results’ in keeping young people in school. This ignores the complexity of the issue

- Funding on a ‘value for money basis’, with funding ‘paid on results’ is inappropriate and untenable. For Aboriginal education outcomes to be improved, policy and programs must investigate and understand non-school factors.
- For example the age of childbearing and mother’s level of education are factors that impact on school attendance of young mothers and their children. It is imperative that programs that might not immediately appear, ‘results based’, such as the NT Families as First Teachers program,³⁴ and the Central Australian Aboriginal Congress Preschool Readiness Program³⁵ continue to be supported and others like it developed.³⁶
- A common feature of successful attendance and retention programs is creative collaboration which goes beyond the educational arena and engages parents and community based-organisations.³⁷ This means consideration must be given to early childhood development, health, housing and parental education.
- The situation is more complex than simply paying programs for ‘results’.

9.3: NAAJA support recommendation 9.3, that the Commonwealth government guarantees that young people who do not wish to continue study have immediate access to employment services. Effective, culturally appropriate employment services must be offered in remote communities.

Beyond entrenched barriers to job participation, such as low levels of literacy and numeracy, substance abuse, family breakdown, limited phone coverage and internet access etc., the fact remains that in the vast

³² See eg. the Attorney General’s Department, ‘The Australian Administrative Law Policy Guide’ (2011) for more information about Administrative law process and procedure, <http://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian%20Administrative%20Law%20Policy%20Guide.pdf> (accessed at 24 September 2014), pg. 5.

³³ Australian Institute of Health and Welfare, ‘School attendance and retention of Indigenous Australian students’ (September 2010) <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> (accessed at 25 September 2014)

³⁴ NT Government Department of Education website, ‘Families as First Teachers – Indigenous Parenting Support Services Program’ <http://www.education.nt.gov.au/parents-community/early-childhood-services/families-as-first-teachers-program> (accessed at 23 September 2014).

³⁵ Central Australian Aboriginal Congress website, ‘Children and Families: Preschool Readiness Program’, <http://www.caac.org.au/how-we-help/mother-child/pre-school-readiness/> (accessed at 23 September 2014).

³⁶ See e.g. Australian Institute of Health and Welfare, Australian Institute of Family Studies, Closing the gap clearing house: ‘What works to overcome indigenous disadvantage’ (2011-2012), <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/15161.pdf> pg. 2 (accessed at 25 September 2014).

³⁷ Australian Institute of Health and Welfare, ‘School attendance and retention of Indigenous Australian students’ (September 2010) <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> Pg. 20 (accessed at 25 September 2014)

majority of remote Aboriginal communities there is a severe shortage of jobs compared to working-age population. As well as providing employment services, Government should invest in innovative job creation projects that are supported by the community.

9.4: We endorse recommendation 9.4 that the Commonwealth government work with state and territory governments so that principals and teachers may identify vulnerable young people and provide mentoring and support services that keep them connected to study or work, but also consider that resources be made available to employ more Aboriginal Assistant Teachers, social workers in schools and school counsellors trained in trauma informed service provision.

‘Healthy’ Welfare Card

Recommendations 1 and 5

Overview and Context

NAAJA does not support ‘cashless welfare’. The idea that quarantining the income support payments of individuals can address the root causes of what is most commonly inter-generational disadvantage, in a context of significant structural barriers to economic development is simplistic and naïve. Addressing entrenched social disadvantage requires sustained investment into community driven initiatives that promote self-determination and autonomy rather than control and punishment.

The Review suggests that the Healthy Welfare Card (HWC) will help people manage a budget and therefore create stable households that allow people to better attend training or get a job. This assumes that hardship experienced by welfare recipients can be addressed through better financial management whereas it may in fact be due to the inadequacy of payment rates, high costs of living remotely and well recognised barriers to employment and economic development, and a whole raft of other social or health related issues.

There are currently low cost alternatives to both income management and the HWC to pay bills and address financial exploitation – for example, Centrepay³⁸ and daily/ weekly payments³⁹, which could be greatly expanded.

Following a failed model # 2

Compulsory income management has not benefited the vast majority of people subjected to it in the Northern Territory. The independent evaluation report commissioned by the Department of Social Services states:

There is little evidence to date that income management is resulting in widespread behaviour change, either with respect to building an ability to effectively manage money or in building ‘socially responsible behaviour’ beyond the direct impact of limiting the amount that can be spent on some items. As such, the early indications are that income management operates more as a control or protective mechanism than as an intervention which increases capabilities.⁴⁰

³⁸Department of Human Services, *Centrelink – Centrepay*
<http://www.humanservices.gov.au/customer/services/centrelink/centrepay> (accessed 25 September).

³⁹Department of Human Services, *Centrelink – Weekly payment option*
<http://www.humanservices.gov.au/customer/enablers/weekly-payment-option> (accessed 25 September).

⁴⁰J Rob Bray, et al p xix

Paying people through the HWC will not create employment or education opportunities or address barriers to employment. Aboriginal people in the NT have fewer employment opportunities⁴¹ and have significant barriers to employment, such as lack of literacy and budgeting skills, discrimination in the labour market, and deficits in skills/training matched to job demand in many remote communities.⁴²

Problems of drug use, alcohol dependence and domestic violence in remote communities are not limited to welfare payment recipients. Further, there are no residential rehabilitation facilities for people with alcohol and other drug problems in any remote communities across the Northern Territory and alcohol and other drug services are severely inadequate; there are no services for young people at all. There are no support services for gambling addiction in remote communities in the Northern Territory; people can only use a phone service. ‘Temporary’⁴³ availability of support services will not be adequate to address the serious social and medical problems that manifest from addiction and dependence.

The Review states, ‘Income management provides helpful support for vulnerable welfare recipients to budget their income’, however a comprehensive evaluation of income management, commissioned by FaHCSIA in May 2010 found that, ‘there are few, if any, strong and consistent impacts of [income management].’⁴⁴ People subject to IM reported that ‘it makes little practical difference to their lives’; that they felt ‘a strong sense of having been treated unfairly and being disempowered’, that it is ‘restrictive and frustrating, making their lives more difficult and complicated’. The research found that there is ‘little evidence to suggest that income management is resulting in widespread behaviour change, either with respect to building an ability to effectively manage money or in building ‘socially responsible behaviour’.⁴⁵

There is no guarantee that a person deprived of cash will use their HWC ‘responsibly’ – the person will be free to spend their income support payment on soft drinks, DVDs, tobacco and whatever else that can be obtained through the EFTPOS system. Consumption and spending patterns do not change based on income source – they are connected to availability of fresh food, access to alternatives and education levels.

The myth of stable homes

The Review makes a number of references to HWC’s purported role in keeping ‘a roof overhead’. The reality is that one in four Aboriginal people in the NT are homeless and experience overcrowding⁴⁶ at a higher rate than the rest of Australia. This is due to a shortage of affordable housing,⁴⁷ particularly in remote communities.⁴⁸

⁴¹ See APO NT Submission to the Senate Standing Committee On Community Affairs Social Services and Other Legislation Amendment (2014 Budget Measures No.1) Bill 2014 Social Services and Other Legislation Amendment (2014 Budget Measures No.2) Bill 2014, 2014, p 22.

⁴² Senate Standing Committee on Education, Employment and Workplace Relations, *Questions on Notice, Additional Budget Estimates, 2011-12, DEEWR Question No. EW1045_12.*

⁴³ Page 104

⁴⁴ Rob Bray, Matthew Gray, Kelly Hand, Bruce Bradbury, Christine Eastman and Ilan Katz (Social Policy Research Centre, Australian National University, University of NSW, , ‘Evaluating New Income Management in the Northern Territory: First Evaluation Report’ (July 2012), pg. xviii

⁴⁵ Evaluating New Income Management in the Northern Territory: First Evaluation Report, pg. xviii

⁴⁶ AIHW *Homelessness among Indigenous Australians Report 2014*, table 2.1.

⁴⁷ Anglicare Australia *Rental Affordability Snapshot April 2014*, p 37.

⁴⁸ It was estimated in 2007 that the Northern Territory needed a further 4000 dwellings to adequately house its population in 2007; 400 houses will be needed each year for 20 years to keep pace with the demand.

http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, p 195

The HWC will have minimal impact on evictions - the majority of people on income support payments in remote communities in the Northern Territory pay their rent via income management, Centrepay or the rental deduction scheme. Tenants fall into rental arrears when there is an interruption to their income, such as the imposition of participation penalties, which will not be resolved by the HWC. In urban public housing, tenants generally fall into rent arrears due to issues with rent rebates – people not completing forms within the correct period or the Department of Housing refusing to exercise the discretion to backdate rebate forms.

The myth of the cashless society

Whilst electronic methods of payment are increasingly common, society is not ‘cashless’. Withdrawing the ability to use cash would shut income support recipients and their children out of legitimate activities crucial to daily life and make finding employment, getting the kids to school and social participation more difficult. There are a number of goods and services that can only be obtained using cash:

- The bus network in Darwin;⁴⁹
- Parking fees;⁵⁰
- Private landlords often are not linked up to the EFTPOS system and require direct bank payments or cash; group households often pay rent in cash;
- Vendors at local food markets only accept cash, where people can access low cost fruit and vegetables;
- Food at school tuck shops;
- Food and drinks in vending machines at schools and hospitals;
- Some informal service providers only accept payments in cash, like mechanics;
- Second hand goods, via sites such as Gumtree, classified advertisements and opportunity shops will unable to be purchased by the very people who need access to low cost goods.
- A significant number of restaurants and food outlets impose a \$20 minimum in order to use the EFTPOS system.

Many retailers and service providers impose a charge on payments made via EFTPOS, imposing costs on to the holders of HWC that cannot be avoided. For example, in the absence of public transport networks, taxis are often used for long distance travel. A 10% surcharge on the cost of the fare charge is imposed by taxi companies across the Northern Territory.⁵¹

It is unclear whether the ATM system will be available for people to check the balance of their HWC, which has caused significant problems with the BasicsCard and led to the introduction of a 1800 number for income managed recipients to get the balance of their card before they shopped.

Maintaining and worsening the status quo

The HWC will stigmatise income support recipients in a similar way to the racial stigmatisation felt by people on the BasicsCard. People with medical conditions which compel them to drink alcohol, consume drugs or gamble, who are deprived of cash may turn to crime and/or transactional sex.⁵²

The relationship dynamics that perpetuate financial exploitation of vulnerable will not be disrupted by the HWC; in the same way that a person can be manipulated or harassed into handing over their cash, keycard, cars, or BasicsCard, they will be harassed into handing over a HWC.

⁴⁹ <http://www.transport.nt.gov.au/public/ticket-fares-concessions-and-free-travel>

⁵⁰ <http://www.transport.nt.gov.au/public/ticket-fares-concessions-and-free-travel>

⁵¹ <http://www.abc.net.au/news/video/2010/04/09/2869089.htm?site=darwin>

⁵² Dr Catherine Holmes, Dr Eva McRae-Williams '*Captains*' and '*Selly-welly*': Indigenous Women and the Role of Transactional Sex in Homelessness of Indigenous Tertiary Education Research, Teaching and Learning Division, Charles Darwin University, December, 2012

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0Main+Features20Nov+2013#DIFFERENCESBETWEENMENANDWOMEN>

It will not achieve its many and varied aims and will impose costs and restrictions onto income support payments without any benefit as

- It may increase the barriers to employment and education by restricting access to public transport, parking, and obtaining second hand goods, such as laptops.
- It does not address the cause of the medical and pathological problems that drive people to spend money on alcohol and tobacco;
- It will not increase financial literacy, without specific investment into services which address it.
- It does not address the substantial barriers to development that exist in the Northern Territory as highlighted by the *Pivot North* report.⁵³
- Retailers generally sell a mix of goods, including alcohol, tobacco and gambling products; and there is no existing technology to impose the restrictions that the HWC seeks on a product level without significant cost.
- the sharing practices of many Aboriginal people, mean that attempts at control on expenditure on certain items can be easily circumvented.

It will be costly to develop and implement. For example, there have been around 350 000 BasicsCard issued by the Department of Human Services in the Northern Territory. BasicsCards are not sent in the post because of security concerns; they are distributed by Centrelink offices and remote services teams. Major banks do not have a presence in remote communities. If replacement is not very quick, people will be left without any source of income. It is unacceptable to levy the cost of replacement cards and balance enquiries through the ATM system onto recipients of social security.

People in receipt of income support and family support payments already have access to the mainstream financial system as those payments are paid into bank accounts. NAAJA is concerned that the introduction of the HWC may lead to anti-competitive outcomes which undermine Aboriginal businesses. Many Aboriginal people in the Northern Territory do not bank with the major bank; they do not have presence in remote communities – and instead bank with credit unions such as Traditional Credit Union and People's Choice Credit Union. TCU is Australia's only Aboriginal owned and operated credit union and has offices in 12 remote communities and 3 regional centres. It would be anti-competitive to require income support recipients to move to the major banks.

The HWC will disproportionately affect women, as generally women are the carers of children and unable to work because of their caring responsibilities. NAAJA is concerned that the introduction of the HWC could lead to an increase in domestic and family violence..

Recommendations

5: NAAJA opposes cashless welfare and the effective 100% income management of social security benefits

NAAJA recommends that the Federal Government:

- End compulsory income management in the Northern Territory, except for voluntary, child protection and income management that is recommended by DHS social worker for vulnerable people.

⁵³ Pivot North, *Inquiry into the Development of Northern Australia: Final Report* Sept 2014

<http://www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/244%20Joint%20Committees/JSCNA/Final%20Report/Final.pdf> (accessed 25 September 2014)

- Expand the range of voluntary mechanisms available to people to control the flow of their social security payments. For example, allowing a wider range of recipients to access daily and weekly payments, detaching the BasicsCard from income management and allowing any Centrelink recipient voluntary access to a BasicsCard. These mechanisms would allow individuals the opportunity to make empowered decisions, manage their own funds and identify their own priority needs.⁵⁴
- Use the resources from divesting from income management:
 - increase the stock of public and affordable housing
 - increase education and employment opportunities; and
 - address structural disincentives to work and barriers to economic development.

Employment and Training

Recommendations 10, 11, 13, 16 & 22

Context and Overview

The Review's recommendations regarding improving employment outcomes for Aboriginal people focus on:

- Removing discretionary exemptions from welfare-related activity requirements;
- The imposition of uniform obligations and payment systems for Aboriginal people;
- The implementation of a demand-driven compulsory training and education program for Aboriginal people;
- Removing structural disincentives to work and training; and
- Shifting responsibility for the implementation and enforcement of the above from government to independent employment service providers.

NAAJA supports the goals of the Review to encourage increased education and workforce participation rates for Aboriginal people. However, it ignores crucial realities:

- Mutual obligations already exist for Aboriginal people on social welfare;
- There is no indication from available statistics that activity test exemptions are used as excuse not to work; they appear to be seldom used.
- The absence of employment and education opportunities in remote communities; and
- The significant disadvantage experienced by many Aboriginal people in remote communities in the Top End and the resultant barriers to obtaining and sustaining employment.

Welcome proposals

NAAJA supports investment in wraparound case management support to assist Aboriginal people to find stable income and employment; however, this must be accompanied by associated social services infrastructure. For example, there are limited support services for Aboriginal people experiencing drug, alcohol and gambling dependency issues in the Northern Territory, particularly in remote communities.

There are no residential rehabilitation facilities for people with alcohol dependency. There are no support services for gambling addiction in remote communities in the Northern Territory; people can use a phone

⁵⁴ NATSILS *Income Management Position Statement* 2012

<http://www.natsils.org.au/portals/natsils/NATSILS%20Income%20Management%20Position%20Statement%2017-10-12.pdf>

service.⁵⁵ There are no AOD services for young people at all in remote areas. The only youth-specific drug and alcohol service is the DAISY program run by CatholicCare, which services the Darwin-Palmerston region only.⁵⁶ These support services must be implemented either before or in conjunction with other employment reforms.

NAAJA supports the mobility package for those who choose to move to areas with stronger labour markets.

Lack of available jobs

NAAJA urges the Federal Government to ensure that there are adequate employment and educational opportunities available in remote and regional communities for Aboriginal people.

There are very few available jobs in remote communities in the Northern Territory. APO NT collated information on job opportunities in remote communities for its submission to the Social Services Bills from Australian Job Search website⁵⁷ and 2011 Census population data.⁵⁸ This is an extract of that table:

| Community/Region | Population | Available Jobs | Type of Job |
|----------------------------|------------|----------------|--|
| Umbakumba (Groote Eylandt) | 581 | 6 | Housing Maintenance Officer, Store Person, Shop Assistant |
| Nhulunbuy | 4072 | 5 | Project Manager, Nurse, Team Supervisor |
| Yirrkala | 843 | 2 | School Attendance Officer |
| Gapuwiyak | 874 | 13 | School Attendance Officer |
| Maningrida | 2293 | 65 | Sales Assistant, Labourers, Tenancy Management Officers, Checkout operator |
| Milingimbi | 1081 | 0 | None |
| Ramingining | 833 | 2 | Art Worker |
| Wurrumiyanga (Tiwi) | 1528 | 7 | Forestry worker, Assistant Teacher |
| Milikapiti (Tiwi) | 447 | 0 | None |
| Pirlangimpi (Tiwi) | 371 | 0 | None |
| Peppimenarti | 189 | 0 | None |
| Gunbalanya | 1171 | 0 | None |
| Jabiru | 1129 | 0 | None |

⁵⁵ Amity Community Services, Inc., ‘What help is available?’ <<http://www.amity.org.au/gambling/what-help-available.shtml>>, (accessed 25 September 2014).

⁵⁶ CatholicCare, ‘Alcohol and Other Drugs – Youth (DAISY)’, <<http://www.catholicparent.org.au/services/dsp-services.cfm?loadref=2&id=C64B0BC2-CF66-6FBB-A06A9BBA23032730>>, (accessed 25 September 2014).

⁵⁷ Australian Job Search, <http://jobsearch.gov.au/> (Accessed 1 Aug 2014)

⁵⁸ The data is total population, not the working age population. It includes some rural towns.

The Commonwealth Government must invest in long-term job creation strategies in remote communities.

Mutual obligation already exists

Each payment made to working-age people in Australia is linked to job-seeking or other activity requirements (e.g. caring for others).⁵⁹ Aboriginal people in remote communities have higher obligations than those in urban Australia –RJCP participants with full-time activity test requirements would generally be expected to participate in activities for approximately 40 hours per fortnight, whereas jobseekers in urban areas are required to do 15 hours a week once they have been unemployed for over 12 months.⁶⁰

NAAJA notes that participation in RJCP programs is already compulsory for residents of remote communities.⁶¹

No abuses of exemptions

There is no evidence that exemptions to activity requirements for working-age payments, including Youth Allowance, Newstart and Family and Parenting Payments are abused. NAAJA refers to the National Welfare Rights Network' analysis of the exemption data, detailed in its submission to this Review.

The Australian Governments' *Guide to Social Security Law* describes exemptions as a measure of last-resort to assist those who are experiencing

"circumstances that are UNFORESEEN or UNAVOIDABLE and cause major disruption, so that the PP recipient is unable to meet participation requirement obligations and it would be unreasonable to expect them to do so. (emphasis in original)"⁶²

Exemptions exist to ensure that members of the Australian community are not left without support when experiencing major personal crises or disruptions, natural disasters and/or caring for and educating dependant children.

Aboriginal people are far more likely to suffer from trauma, domestic violence, family breakdown, incarceration or other personal crisis, all which impact on a person's ability to meet their participation requirements. Withdrawing assistance from people in crisis in no way assists people to overcome barriers to employment.

Despite this, Aboriginal people have a far lower rate of access to exemptions than non-Indigenous people. For example, as at 28 March 2014 there were 12,020 people on Newstart Allowance in the Northern Territory;⁶³ 79 percent of this number were Aboriginal.⁶⁴ To give an indication of the scale of domestic violence versus the use of the exemption criteria: in 2012 there were 3932 domestic violence-related

⁵⁹ See Department of Human Services, 'Activity Test – Participation Requirements' <http://www.humanservices.gov.au/customer/forms/su450> (accessed 26 September 2014).

⁶⁰ See Guide to Social Security Law 3.2.8.10; 3.2.8.50; and 3.2.9.10, at <http://guides.dss.gov.au/guide-social-security-law> (accessed 26 September 2014).

⁶¹ Department of Human Services, 'Remote Activity Conditions' <https://docs.employment.gov.au/node/32439>, and 'Remote Employment Participation' <https://docs.employment.gov.au/node/31945>, accessed 26 September 2014.

⁶² Department of Human Services, "3.5.1.250 Participation Requirements Exemption - Special Circumstances (PP) Summary", <http://guides.dss.gov.au/guide-social-security-law/3/5/1/250>, accessed 23 September 2014.

⁶³ Department of Human Services, 'Electorate Data, March 2014', <<http://www.humanservices.gov.au/spw/corporate/statistical-information-and-data/electorate-data/resources/2014/2014-03-dss.pdf>>, (accessed 25 September 2014).

⁶⁴ 9,521 of the total 12,020 receiving NSA in the NT were Aboriginal, see 'Payment recipients by payment type by state and territory by Indigenous indicator, March 2014', www.data.gov.au (accessed 26 September 2014).

assaults in the Northern Territory;⁶⁵ only 28 participation exemptions granted across Australia for domestic violence or relationship breakdown in 2011.⁶⁶

Case Study: Domestic Violence Activity-Test Exemption

Ms A's former partner made threats against her life. Ms A and her two children were forced from their home and sought to the women's safe house in a remote community. Ms A flew out of the community the next day for her own safety; she left behind her job and home and applied for Newstart in order to access a crisis payment. Ms A was forced to move constantly over the following 12 months between Katherine, Darwin and her home community - to escape her violent former partner. She was unable to return to her or let anyone know where she was for fear of her former partner finding her.

She was granted an activity exemption on the basis of domestic violence.

If people in similar situations of personal crisis are not able to access exemptions on legitimate grounds, homelessness, poverty and hardship will worsen in the Northern Territory.

Structural Disincentives to Work

NAAJA supports the removal of structural disincentives to work and study, which are significant, and encourages the Commonwealth to work collaboratively with the Northern Territory Government in doing so.

Case Study: Structural Disincentives to Work

Martina lives in remote Aboriginal community in North East Arnhem Land. Martina has worked as a carer at the Aged Care centre in her community for the past 10 years and receives a regular weekly wage. Martina supports her adult son, her husband, and her two young children.

Her son and her husband cannot find jobs their community. They are too ashamed to claim Centrelink payments. Martina's husband and son seek work as a ranger, mechanic, or doing manual work outside, rather than receive a Centrelink payment. The only available positions in their community are as shop assistants and childcare workers; jobs which do not match their skills. As their community is on an island, they cannot travel easily to another community to work.

Territory Housing calculates the rent Martina pays on the basis of her income and the income that her husband and son are deemed to receive, but do not actually receive. Martina is considering stopping working and applying for a Centrelink payment rather than continue to work and support her entire family.

Adequacy of payment rates

The Review recommends simpler architecture and a uniform payment for all working-age people. In addition to the severe lack of employment opportunities outlined above, Aboriginal people in remote communities have a higher cost of living, and a deficiency of essential services not experienced by those in urban locations. In our response to the Interim Report on Welfare Reform released in July 2014 ('McClure Review'), NAAJA highlighted these concerns (extracted below). NAAJA strongly recommends that any simplification in the architecture of the social security system should carefully consider the particular circumstances of Aboriginal people in the Northern Territory.

⁶⁵ NT Department of Attorney-General and Justice, <http://www.pfes.nt.gov.au/~/media/Files/Police/Crime-statistics/2014/NT-crime-statistics-May-2014-pdf.ashx>, accessed at 26 September 2014.

⁶⁶ Senate Standing Committee on Education, Employment and Workplace Relations, Questions on Notice, Budget Estimates, 2013-2014, DEEWR Question No. EW0147_14.

Aboriginal People on Social Welfare in Top End Remote Communities: Statistics

- For Aboriginal people on social welfare in remote areas, the importance of considering their circumstances and capabilities in their remote context is crucial. The existing inadequacy of Newstart is one example. In remote areas, the costs of living are high and job opportunities are minimal. The cost of fresh food is 150% to 180% higher than in capital cities (Havnen, 2012) and the cost of fuel in remote communities can double the national average (NT News, 2014).
- People in remote areas are reliant on private vehicles for transport due to the absence of public transport; the NT is the only jurisdiction where households spend more money on transport than on food (ACOSS, 2014)
- Compounding this, between 2012 and 2013, average household expenditure on utilities increased by \$800 per year per household in the Northern Territory (ACOSS, 2014). The high cost of living in remote communities is not adequately ameliorated by the Remote Area Allowance; singles receives \$18.20 per week, couples \$15.60 each and \$7.30 for each dependent child (ACOSS, 2013).
- A lower rate of payment cannot be an ‘incentive’ to work if there are no job opportunities to pursue. The lack of affordable housing in the Northern Territory further restricts labour mobility (Anglicare, 2014).

-North Australian Aboriginal Justice Agency, *Submission to Interim Report on Welfare Reform (2014)*

Maintaining public sector accountability and rights of review

NAAJA does not support the devolution of decision making powers to employment service providers. Decisions of such significance need to be made on the basis of objective legislative criteria. These powers need to remain with the Department of Human Services in order to uphold public sector accountability laws and to maintain the appeal rights of social security recipients.⁶⁷

Recommendations

Recommendation 10: Job Seeker Obligations

10.3: NAAJA opposes this recommendation in its entirety. Publishing data on activity test exemptions, which are provided to people who are experiencing a particular vulnerability or unforeseen circumstance that prevents them from temporarily participating in preparation for or re-entry into the workforce, further marginalises those who are already experiencing difficult circumstances. In the alternative, if the Federal Government insists on publishing such data, this data must include non-Indigenous participation and exemption rates to ensure universal accountability, and information on available jobs in remote communities.

Recommendation 11: Breaking the Welfare Cycle

11.4: NAAJA rejects the renaming of Youth Allowance and Newstart Allowance. NAAJA urges the Federal Government to consider the associated costs and time needed rebranding two of Australia’s largest social welfare payments.

Recommendations 13 & 22: Employment services & Remote Job Centres

NAAJA endorses the comments made by the National Welfare Rights Network in relation to Employment Services and Remote Job Centres.

Recommendations 13 & 22: Transfer from RJCP to NSA

NAAJA opposes the proposal of transferring recipients of Community Development and Employment Projects and Remote Jobs and Communities Program to Newstart Allowance. This will have a profoundly

⁶⁷ These processes include: Compensation for Detriment caused by Defective Administrative (CDDA Scheme); internal merits review of a Centrelink decision by an Authorised Review Officer (ARO); and external review of these decisions by the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT).

negative impact on Aboriginal communities, where RJCP provides employment for a large number of people and delivers important community services.

We refer the Review to the APO NT proposal for a new employment program in regional and remote Aboriginal Australia, Community Employment and Enterprise Development Scheme (CEEDS), that would provide continued support for a range of productive activities in remote areas that meet agreed criteria and performance measures.⁶⁸ Potential activities for CEEDS are:

- Funding for a suite of community services for the young and old people that are generally provided by a combination of levels of government and the private sector in non-remote areas—after school care, care for children at risk, care for the aged, and part time ancillary jobs in the primary health care sector;
- Continued support for the visual arts sector (which generates national and international benefits for Australia) both at the organisational and individual artist income support levels (to acceptable levels);
- Support for Caring for Country/Working on Country activities that are enhancing Australia's National Reserve System and will underpin the ambitious targets set out in the Government's National Biodiversity Strategy to enhance Indigenous engagement. There is an urgent need for more Indigenous labour to supplement Working on Country positions given the threats posed by climate change and invasive species to the high biodiversity values Indigenous estate;
- Funding for enterprises that are socially productive but not commercially viable without ongoing support, ranging from community stores to mud brick factories to community mechanical and contracting services to housing support services;
- Small to medium scale horticulture as generator of fresh food to outstations/communities/regions; and
- Funding for new enterprises including in aquaculture, in cultural tourism, in wildlife harvesting that all require up front 'infant industry' support.⁶⁹

Training in incarceration

Recommendation 16: Training in incarceration

The Review does not take account of the overrepresentation of Aboriginal people within the criminal justice system. NAAJA endorses the adoption of sensible, considered proposals that could reduce the over-incarceration rates in the Northern Territory, without being 'soft on crime'.⁷⁰

NAAJA has long held concerns regarding the cost effectiveness of incarceration, given that it costs around \$100 000 per year to imprison someone. The opportunity cost of a lost worker need also be considered:

⁶⁸ APONT, 'Funding the Jobs Gap: A proposal for a new Community Employment and Enterprise Development Scheme (CEEDS) for regional and remote Indigenous Australia', (December 2010), <http://apont.org.au/attachments/article/47/101001-APO%20NT-CEEDS%20Paper.pdf>, See also, APONT, 'Creating and Supporting Sustainable Livelihoods: A Proposal for a New Remote Participation, Employment and Enterprise Development Scheme' (October 2011), <http://apont.org.au/attachments/article/47/111017%20APONT%20Submission%20to%20the%20Review%20of%20Remote%20Participation%20and%20Employment%20Services-%20FINAL.pdf>, (Accessed 26 September 2014).

⁶⁹ Ibid.

⁷⁰ See e.g. Anthony Pyne, 'Ten proposals to reduce indigenous over-representation in Northern Territory Prisons', (2012) 16(2) AIR available at <http://www.naaja.org.au/wp-content/uploads/2014/07/Ten-proposals-to-reduce-indigenous-over-representation-in-Northern-Territory-prisons.pdf> (accessed 26 September 2014).

*"So every time you send someone to jail for a year and they don't need to be there, that's a nurse you don't employ, it's a teacher you don't employ, it's a bit of road that doesn't get fixed."*⁷¹

Recent research conducted by Dr Don Zoellner shows the costs of the NT justice system has increased threefold from the early 2000's to close to \$650 million, while the costs of Vocational, Education and Training during this time has stagnated at around \$100 million.⁷²

The number of VET students and apprentice and traineeship commencements has reduced from its peak of 2010 – 2011,⁷³ despite the NT economy experiencing a boom following investment in the oil and gas industries in recent years. The current situation is concerning given the goal of increasing Aboriginal employment in the context of incarceration.

The Review refers to the 'explicit instruction' teaching method in a number of recommendations. NAAJA is not aware of evidence-based research or demonstrated outcomes regarding use of this teaching method in Correctional Centres, or its applicability for Aboriginal inmates in the Northern Territory.

NAAJA recommends that a trial be conducted of a select cohort of Aboriginal inmates using this teaching method and an independent evaluation be conducted to measure its effectiveness, before committing to a wide scale, expensive rollout.

Data on the literacy and numeracy levels of inmates in NT Correctional Centres is not available. NAAJA has a number of programs and employees who work closely with Aboriginal inmates with matters before the court, who are sentenced, or are due to be released and require support. A high proportion of our clients speak multiple Aboriginal languages, where English is a second or third language. We have observed that interpreters are not generally used by Correctional Centre staff in the Northern Territory to communicate with inmates; reliance is often placed on other inmates who speak the same language. Programs are often held in group session formats and organisers try to group inmates who speak the same languages together; the efficacy of such communication is unclear given some inmates may have limited understanding of the content due to their limited English language skills.

The proposals to compulsory require inmates to participate in specific courses and to learn to read and write need to take into consideration that many Aboriginal inmates within Correctional Centres have poor eyesight due to health and other factors. Those inmates will often not have reading glasses when they enter the Correctional Centre. Whilst medical assessments are conducted for inmates, we understand that many inmates do not have access to reading glasses during the time they are incarcerated.

Education, training and driving licence courses have been available within Correctional Centres in the Northern Territory for some time, however these programs are not available to prisoners on remand.⁷⁴

A substantial number of inmates are in Correctional Centres under terms of imprisonment due to traffic and motor vehicle offences.⁷⁵ Recently, the Department of Correctional Services has implemented legislative changes so that the costs of courses such as driving license courses and other educational courses are no

⁷¹ Sean Rubinsztein-Dunlop, 'Australia's prison system overcrowded to bursting point with more than 33,000 people in jail', ABC News online (3 July 2014) <http://www.abc.net.au/news/2014-07-02/australian-prison-overcrowding-female-populations-growing/5567610> (accessed 26 September 2014).

⁷² Erwin Chlanda, 'Blackfellas buggering around whitefellers, where's the off button?' Alice Springs News Online (undated) <http://www.alicespringsnews.com.au/2014/09/25/blackfellers-buggering-around-whitefellers-where-is-the-off-button/> (accessed at 26 September 2014)

⁷³ Ibid.

⁷⁴ See e.g. Anthony Pyne, 'Ten proposals to reduce indigenous over-representation in Northern Territory Prisons', (2012) 16(2) AIRL available at <http://www.naaaja.org.au/wp-content/uploads/2014/07/Ten-proposals-to-reduce-indigenous-over-representation-in-Northern-Territory-prisons.pdf> (accessed 26 September 2014).

⁷⁵ Ibid, pg. 3.

longer met by the Department,⁷⁶ with costs to be borne by the inmates themselves. NAAJA have detailed our concerns with these changes.⁷⁷

Across Correctional Centres in the Northern Territory there is a renewed emphasis on inmates working, either in the Sentenced to a Job program or in Corrections-run industry or in voluntary employment. The expectation is that some inmates will earn money in order to pay for courses such as driving licence courses. NAAJA has sought an explanation as to how inmates who do not earn money can participate in these courses if the costs of the courses are no longer met by the Department. We are concerned that ‘user pay’ models will create additional barriers to inmates accessing driving licence and other related courses, when access to these courses ought to be expanded to reduce the recidivism rate.

NAAJA welcomes innovative ways to reduce the barriers for inmates to access driving licences, and endorses the recommendation that ‘simulation machines’ be used so that offenders can accumulate the requisite minimum number of hours of driving experience in order to obtain a licence. We also note the recommendation to issue driver licences so that they are ‘locked’ to certain employers and for employment only. Whilst innovative measures should be explored and evaluated, we are concerned that there will also need to be an appropriately resourced and managed educational campaign to minimise the risks of this arrangement, so that conditions of drivers licences are understood by the driver and the wider community.

Sentenced to a Job

NAAJA’s direct observations of participants engaged in the Sentenced to a Job program are that inmates value the program as a means to secure employment and income during their incarceration and the post-incarceration period. We are also aware of inmates who have delayed applications for parole due to an interest in the program, and in cases have instructed for a resentence so they can spend longer times in prison to access this program.

For Aboriginal inmates, who comprise between 85% - 90% of the NT prison population,⁷⁸ the Sentenced to a Job program provides employment only in the major centres of Darwin or Alice Springs (where the Correctional Centres are located).

When many inmates leave the Correctional Centre they are unable to maintain employment because they are unable to secure accommodation in these major centres. Our programs have direct experience of Aboriginal inmates who have left the Sentenced to a Job program upon exiting a prison in order to return to their home community because of a lack of accommodation in urban areas.

Further to housing shortages detailed below, former inmates are likely to face compounded difficulties accessing the private rental market or public housing; very few have private rental history, and generally do not have the income to secure loans to purchase homes.

The Sentenced to a Job program assumes that there will be greater reintegration of the prisoner if they can develop and demonstrate a strong work ethic and stable employment. The environmental factors of Correctional Centres – stable housing and accommodation, three meals a day, no access to alcohol and other drugs – enable greater participation of some inmates in this program. By providing employment programs for inmates who are incarcerated without addressing environmental factors, and barriers to employment in the broader community, programs like this diminish and remove the idea of prison as a ‘punishment’ and a ‘disincentive’. There are cheaper, more effective and humane ways to provide employment services outside of prison.

⁷⁶ Section 161, *Correctional Services Act 2014* (NT).

⁷⁷ NAAJA and CAALAS Joint Media Release, ‘Corrections Bill needs to include rehabilitation’ (26 August 2014) <http://www.naaja.org.au/2014/08/27/corrections-bill-needs-to-include-rehabilitation/> (accessed at 26 September 2014).

⁷⁸ Australian Bureau of Statistics, ‘Prisoners in Australia, 2012 – Northern Territory’

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features100002013>, (accessed 26 September 2014).

The Review states the ‘Northern Territory Government reports that the Sentenced to a Job programme has contributed to a drop in recidivism rates from 40% to 13%’⁷⁹ NAAJA has been requesting statistics to verify this information including a break-down of the indigenous and non-indigenous participation and recidivist rate for ‘Sentenced to a Job’ participants; to date there is no publicly available data on this.

Statistics quoted in brief form without explanation can also be misleading, as certain criteria must be met in order for inmates to participate in the program. NAAJA considers that the entry criteria are geared towards inmates who, because of other attributes, already have a low rate of recidivism. It is possible that the statistics used to compare Sentenced to a Job participants with the broader prison population, or prison population and recidivist rates prior to the start of the Sentenced to a Job program, do not take into account these attributes.

The Sentenced to a Job program has been highly politicised; it is regularly referred to by the Northern Territory Government and media. An independent and transparent review will allow for a robust evaluation including recommendations and directions to improve the current policy and arrangements.

Housing

Recommendations 17, 24, 25 & 26

Overview and Context

The Review has made a series of recommendations on Aboriginal and Remote Housing that fall into 3 broad categories:

- Recommendation 17: Housing
- Recommendation 25: Remote housing
- Recommendation 26: Enabling leasing

These recommendations are predicated on false assumptions about Aboriginal housing and do not take account of the following crucial realities:

- There is a critical shortage of housing in remote communities and a lack of affordable housing in the Northern Territory generally;
- Home ownership and employment schemes will not end homelessness, overcrowding or disparity in the NT without significant investment in social housing stock and health and social services;
- Remote housing is not free; and
- Those in social housing do not get it easy.

The need for investment in social housing stock and health and social services

The Review assumes that Aboriginal people live comfortably with security of tenure in public housing. In reality Aboriginal people in remote communities are on periodic leases, the most fragile form of tenure, and are at risk of eviction at 42 days notice.⁸⁰

The Review fails to account for the thousands of Aboriginal people who are homeless⁸¹ and for whom greater investment in public housing is needed. The Northern Territory has the highest rate of

⁷⁹ The Forrest Review, pg. 157.

⁸⁰ Residential Tenancies Act (NT), s 89; Department of Housing, *Operational Policy 2009 – Remote Public Housing Policy*, cl. 13.

⁸¹ ABS definition of homelessness is: “when a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement: is in a dwelling that is inadequate; or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations.” See ABS, 4922.0 - *Information Paper - A Statistical Definition of Homelessness*, 2012. The ABS has acknowledged that there are likely to be additional aspects to

homelessness in Australia and 90% of all homeless people in the NT are Indigenous.⁸² Many of those who are homeless, experience poor physical or mental health, disability or substance abuse issues, however there are not enough culturally-competent health and social services available, particularly in remote communities.⁸³

The Review focuses its attention on home ownership and employment schemes as the way to end homelessness, however for many urban and remote Aboriginal people in the NT, just having a house that they can afford to rent is out of reach.⁸⁴ Home ownership may be an aspiration for some, but it is not for all and it certainly isn't a reality for many economically disadvantaged Australians, whether they be Indigenous or non-Indigenous.⁸⁵

Home ownership schemes might see a small number of people in remote and urban public housing transition to owning a home and employment incentive schemes may facilitate movement into the private rental market. However, home ownership will only have an impact on overcrowding if public housing stock is replaced or increased, especially where tenants purchase the public housing dwelling that they previously rented. It is not clear from media whether this will occur.⁸⁶

These schemes will do little to reduce the urban and remote housing waitlists,⁸⁷ especially while the disproportionately high cost of living in the Northern Territory increases without a corresponding increase in social security payments.⁸⁸ Those in public housing and on wait list meet strict eligibility criteria⁸⁹ and will not therefore be able to afford private market rent, let alone take on the risk of a home loan.

The priority of Governments should be to:

1. invest in building adequate and appropriate⁹⁰ social housing stock in both urban and remote communities; ad
 2. sustainably fund health and social services, such as drug and alcohol rehabilitation services and homelessness services, as it is the wraparound casework support services that are best placed to address the underlying causes of homelessness and barriers to social inclusion facing each person; and
 3. develop an affordable housing market.
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homelessness from an Indigenous perspective that the definition does not currently adequately capture". See ABS, *Factsheet: Aboriginal and Torres Strait Islander Homelessness*, 2011.

⁸² Australian Institute of Health and Welfare (AIHW), *Homelessness among Indigenous Australians Report 2014*, table 2.1.

⁸³ Vicki-Anne Ware, "Improving the accessibility of health services in urban and regional settings for Indigenous people", AIHW Resource sheet no. 27, December 2013, pp 6-8; Terry Dunbar et al, *NT Cultural Security in health and family service sector: Perspectives from Aboriginal people*, AMSANT and NTDHF funded consultancy (2009). .

⁸⁴ The Anglicare Australia *Rental Affordability Snapshot* of 2014 found that of the 794 private rental properties surveyed in the NT: "none were affordable and appropriate for people on Youth and NewStart Allowances, Parenting Payment and Disability Support Pension and only 6 were suitable for people on some benefits and minimum wages." Anglicare Australia *Rental Affordability Snapshot April 2014*, p 37.

⁸⁵ In 2011, the median personal income in the Northern Territory for Indigenous persons was \$269 per week. This is significantly less than the median income of non-Indigenous people in the Northern Territory of \$925 per week. The 2011 Census identified 9,682 Indigenous people who reported an income of less than \$200 per week, while 3,060 people recorded no income at all. Olga Havenan, *Office of the Northern Territory Coordinator-General for Remote Services Report Jun 2011 to August 2012*, p 21.

⁸⁶ The Australian, *Remote NT tenants get chance to buy homes* (13 May 2014), <http://www.theaustralian.com.au/national-affairs/state-politics/remote-nt-tenants-get-chance-to-buy-homes/story-e6frgczx-1226915095259>

⁸⁷ In the urban setting, wait times for public housing in Darwin are between 72 and 91 months and in Nhulunbuy it is between 127 and 146 months. See Department of Housing, 'Public Housing wait times' accessed 26 September 2014 at http://www.housing.nt.gov.au/public_housing/accessing_public_housing/wait_times. In the remote context, there is no 'waiting list' for public housing however there are simply not enough houses to keep up with demand.

⁸⁸ The 2012 Northern Territory Government's Market Basket Survey examined the cost of a standard food basket for a hypothetical family of 6 for a fortnight. On average, the food basket in remote stores was 49% more expensive than in the Darwin supermarket. The proportion of family income required to purchase the food basket was 23% in a Darwin supermarket and 35% in remote stores. Olga Havenan (2012), 88-89

⁸⁹ Department of Housing, 'Eligibility' accessed 26 September 2014:

http://www.territoryhousing.nt.gov.au/public_housing/accessing_public_housing/eligibility

⁹⁰ Paul Memmott et al, *Australian Indigenous House Crowding*, Australian Housing and Urban Research Institute (AHURI) Final Report No.194 (October 2012), 3-4.

Employment incentive and home ownership schemes are just two measures that may complement these much more pressing priorities and only in appropriate circumstances.

Shortage of housing is the cause of overcrowding

Severe overcrowding in remote communities continues to be both a cause and concealer of primary and secondary homelessness.⁹¹ It also negatively impacts on health and safety and participation in education and employment.⁹² As a result of a lack of adequate housing in remote communities, adults and children, including those with disabilities, are forced to sleep in kitchens and tents or other makeshift arrangements, often sharing mattresses in a small space.⁹³ Aboriginal people in the Northern Territory live in severely overcrowded conditions, at a rate 187 times higher than non-Aboriginal people.⁹⁴ In the context of such a housing shortage, it is important to recognise that overcrowded Aboriginal households, are actually rendering a service to homeless extended family members, often as a result of a strong sense of kinship obligation.⁹⁵

The Review appears to imagine home ownership as the panacea to overcrowding in remote communities stating: "*In reality, the only home not at risk of overcrowding is a home that is owned.*"⁹⁶

This ignores the actual cause of overcrowding in remote communities. Overcrowding is driven primarily by a severe shortage of housing in remote communities and secondarily, by strong kinship obligations, which see family members providing shelter for family without a home.⁹⁷

Overcrowding can also be exacerbated by movements relating to seasons and cultural obligations. New houses in remote communities become overcrowded because of the desperate shortage of houses in remote communities, not because they are rented. For example, in Maningrida, Territory Housing is in the process of allocating two houses. 100 families have applied for these houses. There are no plans to construct further houses in Maningrida.⁹⁸

The Review fails to acknowledge that the majority of remote communities in the NT did not receive additional houses through the National Partnership Agreement on Remote Indigenous Housing (NPARIH), for example Ramingining. The *Little Children are Sacred Report* estimated that 4000 houses were needed to adequately house the population in 2007.⁹⁹ Under NPARIH, 1465 houses have been built in 16 of 73 remote communities.¹⁰⁰

The Review suggests that:

"Increasing social housing stock in remote communities can act like a magnet, and as more houses are built families expand to fill them until overcrowding reoccurs. Unfortunately this is typically a poor government investment as these houses are not maintained, soon become overcrowded and are therefore not conducive to a healthy training and employment lifestyle of their occupants."¹⁰¹

⁹¹ Overcrowding can sometimes prevent primary homelessness (where existing tenants take in a homeless family). However, overcrowding can also force people into secondary or primary homelessness in situations where overcrowded living conditions become unbearable, and family tensions or household breakdown arise. See Christina Birdsall-Jones, et al, *Indigenous Homelessness*, AHURI Final Report No.143 (March 2010), 7-8.

⁹² John Fien et al, *Towards design for remote Indigenous housing*, AHURI Final Report No. 114 (2008)

⁹³ NAAJA solicitors assist many remote clients who are aged, disabled, suffering poor health or escaping violence who cannot access housing in remote communities because of the housing shortage.

⁹⁴ AIHW *Homelessness among Indigenous Australians Report*, 2014, table 2.1.

⁹⁵ Christina Birdsall-Jones et al, (March 2010), 9.

⁹⁶ Forrest Review, Creating Parity, Commonwealth of Australia (2014), pp 175 & 208.

⁹⁷ See both Birdsall-Jones et al (2010) and Memmott et all (2012).

⁹⁸ Personal communication between Territory Housing and Aboriginal Peak Organisations NT member

⁹⁹ *Ampe Akelyernemane Meke Mekarle – Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007.

¹⁰⁰ Communication between Territory Housing employee and NAAJA employee on 12 May 2014.

¹⁰¹ Forrest Review, Creating Parity, Commonwealth of Australia (2014), pp 170 & 208.

This statement firstly assumes that the amount of housing in remote communities is adequate, which it demonstrably is not. This is an illogical conclusion unless the Review is suggesting that building houses in remote communities prompts Aboriginal people have more children. It also relies on negative racial stereotypes about Aboriginal people.

There has been a failure to undertake regular repairs and maintenance of remote housing by successive governments. This, together with overcrowding, tenants not fully understanding responsibilities, and poor quality construction methods and materials, means that houses require frequent repair and maintenance works and fall into a state of disrepair far too quickly.¹⁰² Houses have generally had short life spans of around seven years compared to 30 years, which is normally expected of mainstream public housing.¹⁰³

Not only are far more houses needed in remote communities, but those houses need to be built in a manner appropriate for the culture and lifestyle of remote Aboriginal families.¹⁰⁴ For example, larger houses with more flexible internal spatial arrangements, multiple bathrooms, larger kitchens and outdoor living and sleeping space rather than the standard three bedroom houses typically built.¹⁰⁵ Materials should also be chosen that are appropriate for high volume use and tough tropical or desert climates.

Remote housing is not free housing

The Honorable Alan Tudge MP, Parliamentary Secretary to the Prime Minister and co-reviewer of the Forrest Review, has made a number of public statements about 'free' housing in remote communities which are untrue and inflammatory.¹⁰⁶

The NT Government manages the majority of the housing stock in remote communities. These houses are public housing. They are not free housing. Tenants in new or refurbished houses pay rent relative to their income, as occurs in the urban context. For example, maximum dwelling rent for a new three-bedroom remote house is \$230. Tenants only receive a rebate if eligible, otherwise maximum dwelling rate is applied. Further, remote tenants cannot access rent assistance.¹⁰⁷ Even those tenants living in houses deemed to not be at 'an acceptable standard under the *Residential Tenancies Act*', pay a 'housing maintenance levy'.¹⁰⁸

These tenants do not get the same service extended to public housing tenants in urban areas. There are been significant issues with the Department of Housing's management of remote housing as outlined in the Commonwealth Ombudsman's 2012 report *Remote Housing Reforms in the Northern Territory*, regarding communications with remote tenants, timely repairs and maintenance, and recording of rental payments. Many of the recommendations in that report have not been addressed adequately or at all. NAAJA continues to work constructively with the Department of Housing to identify issues of policy and practice in remote housing.

¹⁰² National Partnership on Remote Indigenous Housing – Progress Review (2008-2013), p 23

¹⁰³ National Partnership on Remote Indigenous Housing – Progress Review (2008-2013), p 23. This Review also states: "The condition of existing stock was found to be far worse than anticipated as a result of poor property management practices and patchy record keeping."

¹⁰⁴ Maintaining a large, open household is an obligation for many who have Aboriginal or Torres Strait Islander identity. Matthew Lovering, *When is crowding 'overcrowding'?* AHURI Evidence Review 062 (27 August 2014). Lovering also states "Although there are a large number of people living in the dwelling, as long as people are sharing the space in a culturally appropriate way it is not psychologically stressful for the residents. It is for this reason that large Indigenous households can be referred to as crowded (rather than overcrowded).

¹⁰⁵ Memmott et al, (2012)

¹⁰⁶ Alan Tudge MP, *Welfare lobby blind to reality*, (8 September 2014) accessed 26 September 2014

<http://www.alantudge.com.au/Media/Articles/tabid/89/articleType/ArticleView/articleId/760/language/en-US/Welfare-lobby-blind-to-reality.aspx>

¹⁰⁷ Department of Human Services, 'Payment rates for Rent Assistance'

<http://www.humanservices.gov.au/customer/enablers/centrelink/rent-assistance/payment-rates>

¹⁰⁸ These houses are referred to as 'legacy dwellings by the Department of Housing, *Operational Policy 2009 – Remote Public Housing Policy*, cl. 14.

NAAJA discovered in 2012 that the Department of Housing had not kept adequate records of rent payments made to it.¹⁰⁹ The Department admitted it had \$1.34 million in remote rental payments that had not been allocated to a tenant. The Department has been forced to undertake a reconciliation of all remote rent payments received since 2009.¹¹⁰ NAAJA has assisted numerous clients in remote communities who had been told by the Department of Housing that they owe significant rent arrears. Following reconciliation of rent accounts, the Department has advised many of these tenants that they are up-to-date with rent, or owed money for overpayment of rent.

Remote housing tenants can also be seen to be paying a non-pecuniary price for being a remote tenant. In remote settings, houses physically deteriorate around families as a result of inappropriate building materials, inadequate maintenance over a long period of time and overcrowding. NAAJA regularly assists clients in need of emergency repairs such as broken stoves and hot water services, blocked drains and toilets, electrical faults, serious roof leaks and tap leaks. Clients have waited months and even years for repairs to be completed. Individuals, children or whole families sometimes have to move away or resort to using housing facilities at other family's houses. Long wait times for emergency repairs increases the burden on overcrowded houses. It can make houses unsuitable, unhealthy and inhabitable.

Those in social housing do not get it easy

The Forrest Review implies that those in public housing get it easy by suggesting that there are 'stricter requirements' in the private rental sector.¹¹¹

The truth is that the same law applies to public and private tenants in the Northern Territory - the *Residential Tenancies Act*. Like all tenants in Australia, public housing tenants are required to remain up-to-date with rent, maintain premises in a 'not unreasonably dirty condition' and comply with obligations under the law. The *Housing Act* and Department of Housing policies impose higher standards on public housing tenants and failure to comply with these provisions can lead to eviction.¹¹² For example, the *Housing Act* empowers Public Housing Safety Officers to patrol public housing premises and to issue infringements for antisocial behaviour.

The Department of Housing has aggressively pursued eviction proceedings against urban tenants in Darwin for alleged breaches of tenancy agreements, including rent arrears and a failure to keep premises 'neat and tidy' (in the case on one NAAJA client, the Department sought eviction for a tenant not mowing their lawn). Frequent inspections, including 'drive-by' inspections, are also the norm. Income, asset and household structure reports are also a requirement.¹¹³

Discrimination against women in the home

A number of recommendations for changes to housing policy discriminate against women by only placing value on paid work done in the paid 'labour market' and penalising those who do not participate by channelling funding for housing only to those considered 'deserving' because of their participation in the labour market.

While some women do participate or aspire to participate in the paid labour market, the reality is that Aboriginal women overwhelmingly bear the responsibility for caring for children and families and often take

¹⁰⁹ ABC Lateline, *NT housing accounts 'a shambles'*, 17 August 2012, accessed 26 September 2014 at <http://www.abc.net.au/lateline/content/2012/s3570663.htm>

¹¹⁰ NAAJA has concerns about the adequacy of that reconciliation

¹¹¹ Forrest Review, Creating Parity, Commonwealth of Australia (2014), p 172

¹¹² See for example, Department of Housing, *Three Strikes Policy*, accessed at http://www.housing.nt.gov.au/public_housing/publications

¹¹³ Department of Housing policies such as, *Public Housing Eligibility Policy*, *Income and Assets Policy* and *Inspections Policy* can be found at: http://www.housing.nt.gov.au/public_housing/publications.

on the responsibility of head tenant.¹¹⁴ This undervalued work is vital for the functioning of families and communities.

Recommendations

17.1.1: This recommendation is broadly supported, so long as they are voluntary, however the same support structures and benefits should apply to people who move from one remote community to another remote community to take up job opportunities. Funding for such programs should not be taken from remote housing funding.

17.1.2 – 17.1.4: NAAJA cannot comment on the operation of Indigenous Business Australia, however we reiterate the above concerns about the Reviews' excessive focus on home ownership as the panacea to ending disparity and overcrowding in remote communities.

17.1.5: This recommendation cannot be taken seriously. In effect, it is a policy of assimilation. Its intention seems to be to force Aboriginal people to move away from living on traditional lands by refusing to provide funding for remote housing and instead only offering funding for home loans in urban and regional centres. If remote housing funding was redirected towards such a policy, it would result in further deterioration of housing in remote communities, with flow on consequences including widening the gap in health and increased social exclusion. The Review itself claims to recognise that the poor state of housing in remote communities impacts on the ability of children to attend school. It also impacts on health and social cohesion both within families and broader communities.¹¹⁵ Redirecting already inadequate funding away from building, repairing and maintaining remote housing in already disadvantaged communities would clearly be devastating.

Forcing people to relocate from traditional lands so as to 'move to where jobs are available', undermines the Government's commitment to the United Nations Declaration on the Rights of Indigenous Peoples, particularly the ability to practice and maintain unique cultures.¹¹⁶ It also ignores the severe shortage of affordable urban housing in the Northern Territory. It is not an acceptable solution.

This recommendation, like many others in the Forrest Review, also indirectly discriminates against women by only placing value on paid work done in the 'labour market'. Aboriginal women overwhelmingly bear the responsibility for caring for children and families and often take on the responsibility of head tenant. This recommendation would in effect penalise them for taking on such critical roles in remote communities.

17.1.6: Another compulsory rent deduction policy is unnecessary as there are already mechanisms in place, including Income Management, Centrepay and the Rent Deduction Scheme. It is also a provision of public housing tenancy agreements in the NT that rent is deducted from Centrelink payments if a person's main source of income is social security

NAAJA has assisted numerous clients who had rent payments set up by Centrelink or their employer without having a corresponding obligation to pay rent. Further compulsory deduction measures are likely to create further confusion and potentially payment of rent absent any legal obligation.

¹¹⁴ See for example Musharbash, Yasmine 'Marriage, Love Magic, and Adultery: Warlpiri Relationships as Seen by Three Generations of Anthropologists' (2010) *Oceania* 80, 272, 285.

¹¹⁵ Access to adequate food, income and shelter are fundamental social determinants of health and in turn are more readily achieved with good health. See *The Ottawa Charter for Health Promotion*, First International Conference on Health Promotion, Ottawa, 21 November 1986. See also Committee on Economic, Social and Cultural Rights, *General Comment 14* (2000): The right to the highest attainable standard of health (UN doc. E/C.12/2000/4). Structural barriers to social inclusion and health are already significant in remote Aboriginal communities, including the high cost of food and other living expenses, poor housing conditions and housing shortages leading to overcrowding.

¹¹⁶ See Cooper, David, *Closing the Gap in cultural understanding: social determinants of health in Indigenous policy in Australia*, Aboriginal Medical Services Alliance of the Northern Territory, (AMSANT) (2011). Cooper explains that "The proportion of The Aboriginal population that maintains traditional rich lifestyles and continues to live on ancestral lands they own is higher than in other jurisdictions in Australia", at 1

We also reiterate our comments above in response to 17.1.5. Ensuring rent money is used to “subsidise rent for people who move to take up employment and pursue a career” is another way of channelling money away from building, repairing and maintaining remote public housing, where this money is desperately needed.

Finally, NAAJA submits that it is appropriate for rents to be adjusted via rebates according to income, as already occurs. This equitably accounts for the varying levels of income and number of dependents in a given household.

17.2.1: Measures to enable those relocating for jobs in urban, regional and remote setting, to be able to access affordable rentals are broadly supported by NAAJA, so long as relocation is voluntary. Such measures must be implemented in tandem with measures to increase the number and suitability of both urban and remote public housing stock.

17.2.2: NAAJA supports lengthening the period in which a person can be eligible for public housing after securing and retaining employment to 30 months. In the NT, the Employment Incentive Scheme currently allows any person under 55 years¹¹⁷ of age to remain in public housing for up to 26 weeks after obtaining employment and exceeding income eligibility.¹¹⁸ The median personal income for Aboriginal people in the NT is significantly lower than that of non-Aboriginal.¹¹⁹ Aboriginal people also face systemic discrimination in the private rental market.¹²⁰ Both present challenges to securing an affordable rental within 26 weeks and justify an extension of the current 26 week period.

17.2.3 and 25.3: these recommendations are not supported. The NT already has systems for priority housing in both the urban and remote contexts. Priority criteria include homelessness, health, disability, domestic and family violence and local employment. Appropriately, in remote communities Housing Reference Groups can establish additional grounds for priority status.¹²¹ To prioritise allocations towards those families that work and whose children attend school regularly, creates additional barriers to housing security, especially for single parents (predominately women) and those escaping domestic violence.

This recommendation is based on the presumption that single nuclear family units inhabit houses, rather than a number of individual family units and extended family staying in all rooms of the house, including kitchen and lounge as occurs in remote housing because of housing shortages. It is unclear how the recommendation would deal with family groups which contain a mix of workers, carers and people unable to work because of barriers to employment or the lack of jobs.

17.2.4: We refer to our response in relation to 17.1.6 and reiterate that different families receive different levels of income support payments from Centrelink based on differences in family structure, income and assets. It is not appropriate to fix rent at ‘not less than 80%’ of comparable market rent because some families would simply not be able to afford to pay that level of rent.

17.2.5 & 25.4: These recommendations appear to be founded on the false premise that Aboriginal people tend to not pay rent. As evidenced above, Aboriginal people do pay rent in public housing and remote housing and have in many cases paid too much rent. It would be more appropriate for public reporting to provide data on: rates of homelessness; number of applications for housing and priority housing on urban and remote waiting lists; number of houses condemned as ‘Beyond Economic Repair’ in remote communities; number of bedrooms added to the community through the construction or refurbishment of houses.

¹¹⁷ Those over 55 years of age are permitted to remain in public housing if they exceed income eligibility criteria, however they are required to pay market rent, Department of Housing, *Employment Incentive Scheme*, available at http://www.housing.nt.gov.au/public_housing/publications

¹¹⁸ Department of Housing, *Employment Incentive Scheme*, available at http://www.housing.nt.gov.au/public_housing/publications

¹¹⁹ see Olga Havenan (2012), p 21

¹²⁰ Acknowledged in the Forrest Review, p 173

¹²¹ Department of Housing, *Allocation and Commencement of Tenancy Policy*, accessed http://www.housing.nt.gov.au/public_housing/publications

25.1: This recommendation is redundant in the NT, as Territory Housing already enforces tenant obligations, as discussed above. It also assumes that statutory housing authorities always comply with their own legal obligations. This is not always the case. NAAJA has represented remote clients who pay their rent and maintain their houses but have been forced to wait months for emergency repairs that should have been completed with the statutory time limit of two weeks.

25.2 & 26.1.3: Only offering funding to build houses in communities that agree to long-term leasing arrangements or freehold title brazenly undermines the decision-making authority of Traditional Owners by only offering funding for one particular development path.

Whilst the Forrest Review cites the 16 home owners in Wurrumiyanga on Bathurst Island as indicating the success of 99 year leases and home loans through IBA, we are not told how many others from Wurrumiyanga's estimated population of 1528 continue to rent or are homeless (including those staying with family in overcrowded conditions). On 19 September 2014, NAAJA was informed that there were 34 applications for housing on the Wurrumiyanga housing waitlist but no housing availability. This suggests that home ownership is not an aspiration for all, but more likely that it is not a realistic option for many living in Wurrumiyanga, let along the rest of Australia.

26 generally: The Review focusses heavily on land tenure and leasing arrangements as the major impediment to industry and economic development in remote communities. It fails to properly explore the other significant and longstanding barriers to industry and economic development, such as a sparsely spread population, lack of capital infrastructure and affordability. We refer the Review to *Pivot North*, the Joint Select Committee on Northern Australia's Final Report from the Inquiry into the Development of Northern Australia.

Governance

Recommendation 23

NAAJA welcomes the opportunity for communities to work in partnership with governments to ensure adults are in work, children attend school, and communities are safe.

We encourage the Commonwealth Government to promote community development approaches when building governance capacity in remote Northern Territory communities. Creating and supporting local authority structures will increase the capacity of communities to engage with government and assist promote the stated goals. We note that this process takes time and resources, and suggest long term engagement and investment in local authority structures, such as Law and Justice Groups.

NAAJA has observed significant and impressive work by Law and Justice Groups in the Northern Territory in the areas of governance and community safety.

NAAJA has previously helped establish and continues to work with Law & Justice (Elders) groups in four communities: Wurrimiyanga, Lajamanu, Ngukurr and Maningrida, to support their ability to improve awareness of legal issues; establish and improve governance structures; and prevent crime in their communities. NAAJA is also supporting the development of a Law & Justice Group in Gunbalanya. During January – June 2014 NAAJA facilitated 20 Law & Justice Group meetings in these five communities.

The community development aspects of NAAJA's work involves facilitating meetings of Law and Justice groups to discuss community safety issues, provide legal information relevant to these issues, and support locally-driven approaches that respond to them. It aims to increase elders' responsibility for their legal environment. For example, NAAJA provides legal information to these groups about new laws, such as

mandatory sentencing, and the group then shares the information with the wider community, through community meetings or other forums.

Following several alcohol-related road fatalities and homicides in the Kalkarindji and Lajamanu region, NAAJA supported the Kurdiji Law and Justice group in Lajamanu to engage with and give evidence to the NT Liquor Licensing Commission to have the Liquor License of the Top Springs Hotel restricted due to concerns over alcohol fuelled violence, road fatalities and serious injuries resulting from take-away alcohol purchased there. This application was ultimately successful and the written and oral submissions of the Kurdiji and NAAJA are quoted in the written decisions of the Commission.¹²² By supporting the input of elders and other community leaders into law reform and policy processes such as this, NAAJA builds the capacity of communities to positively shape the laws and practices affecting their community.

These projects also increase community members' ability to engage with the legal system. NAAJA facilitates meetings between elders groups, Night Patrol and police to discuss community safety issues, providing a forum for Night Patrol and elders to engage with police and discuss issues of concern. Facilitating these meetings builds the elders capacity to engage with services and take leadership on community safety issues.

In Lajamanu, Wurrumiyanga, Maningrida and Gunbalanya, NAAJA facilitates the writing of character references by Law and Justice groups for defendants appearing in the Local Court to provide the magistrate with further information for sentencing purposes. This provides specific deterrence to offenders as well as general deterrence to the community, as through these letters the elders express their disapproval of crime and violence in the community. Writing reference letters also serves as legal education as NAAJA explains the charges on the court list and explains possible sentences that might be received. It is through this process that community leaders learn more about the law and then share it with the rest of the community and often the offenders directly. Since the introduction of Law and Justice Group in Lajamanu, the crime rate has reduced at the same time as the overall crime rate in the NT increased.

¹²²'Pub grog restrictions is new banned drinker register: Opposition', *ABC news online*, (22 July 2014) <http://www.abc.net.au/news/2014-07-22/top-springs-hotel-prohibition-register-banned-drinkers/5614426/?site=indigenous&topic=latest>, see also, Jano Gibson, 'Indigenous elders want tougher controls on takeaway alcohol sales at Top Springs hotel', *ABC News online*, (6 February 2014) <http://www.abc.net.au/news/2014-02-06/nt-licensing-commission-top-springs-hotel-takeaway-alcohol-sale/5242928>, (accessed 26 September 2014).