

The Senate

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Community Affairs  
Legislation Committee

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Stronger Futures in the Northern Territory  
Bill 2011 [Provisions]

Stronger Futures in the Northern Territory  
(Consequential and Transitional Provisions)  
Bill 2011 [Provisions]

Social Security Legislation Amendment Bill  
2011 [Provisions]

March 2012

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43<sup>rd</sup> Parliament

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# Recommendations

## Recommendation 1

**3.18** The committee recommends that the Stronger Futures in the Northern Territory Bill 2011 be amended to allow infringement notices to be issued in relation to minor alcohol offences and to make it clear that infringement notices may be issued relating to the possession and supply of liquor.

## Recommendation 2

**3.27** The committee recommends that processes be implemented to ensure that the Minister responds to alcohol management plan applications in a timely manner.

## Recommendation 3

**3.50** The committee recommends section 23 (1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended to remove the text "at the Land Councils expense".

## Recommendation 4

**3.94** The committee recommends that the Commonwealth include in its engagement program with remote NT communities going forward a specific component designed to build understanding of customary law provisions and support for this measure and in particular to clear up misunderstandings that have arisen.

## Recommendation 5

**3.95** The committee also recommends that the measure and its level of understanding in communities be reviewed in 5 years time as part of the review and evaluation of the proposed National Partnership agreement.

## Recommendation 6

**3.129** The committee recommends that the government amend the Social Security Legislation Amendment Bill to require that only agencies that have in place appropriate internal and external review and appeal processes be approved by the Minister to make income management referrals.

## Recommendation 7

**3.147** The committee recommends the Commonwealth and NT governments provide greater clarity regarding SEAM and the *Every Child, Every Day* measures, how they interact and will operate in parallel together. Further education needs to be provided to communities where these policy changes will



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apply in the Northern Territory as of 1 July 2012 and advice provided by both governments must be clear as to what policy applies in different areas throughout the Northern Territory.

### **Recommendation 8**

**3.153** The committee recommends the SEAM 2012 evaluation, and any other material monitoring the effectiveness of SEAM and the *Every Child, Every Day* initiative, be made publicly available as soon as possible following its completion. Timing of the evaluation's release is particularly important given the inappropriate delay in releasing the 2010 evaluation of SEAM.

### **Recommendation 9**

**4.9** The committee recommends governments work closely with the Australian Human Rights Commission to build a culturally competent workforce.

### **Recommendation 10**

**4.17** The committee recommends that when conducting further consultation in relation to Stronger Futures the Commonwealth government:

- work with the framework provided by the Australian Human Rights Commission for meaningful and effective consultation processes that are culturally safe, secure and appropriate; and
- give consideration to the effective use of Land Councils in consultation processes given their knowledge and expertise in consulting appropriately with communities.

### **Recommendation 11**

**4.25** The committee recommends that in addition to the reviews of the legislation already announced, the Commonwealth also ensure that any National Partnership Agreement is the subject of an independent and public review and evaluation after 5 years.



# Chapter 1

## **Stronger Futures in the Northern Territory Bill 2011; Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011; and the Social Security Legislation Amendment Bill 2011**

### **The referral**

1.1 On 25 November 2011, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Stronger Futures in the Northern Territory Bill 2011, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, and the Social Security Legislation Amendment Bill 2011 to the Community Affairs Legislation Committee for inquiry and report by 29 February 2012.<sup>1</sup> On 8 February 2012, the Senate extended the reporting date to 13 March 2012.<sup>2</sup>

1.2 References to page numbers in Committee Hansards are references to the Proof Hansard transcripts. Page numbers may differ to those in the Official Hansard when the Official Hansard becomes available.

### **Scrutiny of Bills consideration**

1.3 The bills were considered by the Scrutiny of Bills Committee in its *Alert Digest No. 1 of 2012*. The Scrutiny of Bills Committee commented extensively about its concerns with elements of the bills in this Alert, and then considered the Minister's response to issues raised by the Scrutiny of Bills committee in its *Second Report of 2012*.

### **Conduct of the inquiry**

1.4 The committee advertised the inquiry in the national press and on its website and invited a large number of known stakeholders to make submissions. The committee received 452 submissions (listed at Appendix 1) and form letters from approximately 560 individuals. Submissions and examples of the form letters are available for viewing on the committee's website [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=clac\\_ctte/strong\\_future\\_nt\\_11/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/strong_future_nt_11/submissions.htm). Seven public hearings were held in a number of locations: Ntaria (Hermannsburg), Alice Springs, Maningrida, Darwin and Canberra. A list of stakeholders who appeared before the committee is set out in

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1 *Journals of the Senate*, 2011, p. 1961.

2 *Journals of the Senate*, 2012, p. 2057

Appendix 2. Tabled documents and additional information provided at these hearings are at Appendix 3.

1.5 A representative of the National Congress of Australia's First Peoples was present at all hearings of the committee. This was a valuable exercise and the committee looks forward to continuing to work with Congress. The committee sincerely thanks all submitters and witnesses for their contribution and participation in the inquiry process. The committee wishes to extend its gratitude to the communities of Ntaria and Maningrida for their hospitality. It also wishes to thank representatives of communities who travelled long distances to appear before the committee during its hearings in the Northern Territory.

1.6 The committee noted the high level of interest in the inquiry, which included it being followed by documentary makers associated with a group of concerned Australians, as well as reporting of the hearings through National Indigenous Television.

### **Background to the policy development**

1.7 The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 (the Consequential Amendments Bill) contains five schedules. The first of these schedules repeals the *Northern Territory National Emergency Response Act 2007* (NTNER Act) and sets out necessary savings and transitional provisions.<sup>3</sup> Measures implemented through the NTNER Act are commonly referred to as the Northern Territory Emergency Response (NTER) or 'the intervention'.

1.8 On 21 June 2007 the Commonwealth government announced a set of measures known as the NTER. These measures were stated to be in response to *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.<sup>4</sup> The legislative package to provide the legal basis for implementation of the NTER comprised of five acts, and provisions of the NTER were excluded from the *Racial Discrimination Act 1975* (RDA).

1.9 A key plank of the NTER legislation was the creation of 'prescribed areas', to provide the legislative basis for many of the measures in the NTER to operate within these prescribed areas. Prescribed areas include all freehold land held by a Land Trust under the *Aboriginal Land Rights (Northern Territory) Act 1976*, other Aboriginal communities described as Northern Territory Community Living Areas,<sup>5</sup> town camps

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3 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 3.

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

5 Community Living Areas are a form of freehold title issued to Aboriginal corporations by the Northern Territory Government.

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declared by the Minister for Families, Housing, Community Services and Indigenous Affairs under the *Northern Territory National Emergency Response Act 2007* and any other area declared by the Minister to be a prescribed area.<sup>6</sup>

1.10 Pornography and alcohol were restricted in prescribed areas, and offences were created for possessing and supplying prohibited material in prescribed areas.

1.11 People receiving Centrelink payments who lived in prescribed areas became subject to compulsory income management. A number of the measures, such as school nutrition and community cleanup programs, did not require legislation.

1.12 The NTER was amended in 2010 by the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2009*. The RDA was reinstated and income management was redefined.<sup>7</sup>

1.13 Between 2008 and 2010, a former Senate committee, the Select Committee on Regional and Remote Indigenous Communities, tabled five reports to the Senate, and reported extensively on the impact of the NTER measures on people living in the Northern Territory. This committee made a number of recommendations over the life of the inquiry, and had regard to the extensive reports conducted by a review committee chaired by Peter Yu in 2008 as well as ongoing implementation and evaluation reports published by the Commonwealth government.

1.14 The Stronger Futures package repeals the NTER Acts but retains policy elements of this legislation. A breakdown of key differences between the NTER and the Stronger Futures package were provided by FAHCSIA, this information is at Appendix 4. The Commonwealth government states that:

Between the end of June and mid-August 2011, wide-ranging consultations were held with Aboriginal people and other Territorians on new approaches and new ideas for the future beyond the Northern Territory Emergency Response. This built on conversations and consultations the Australian Government has been conducting over the past four years.

There were more than 470 consultation meetings in over 100 hundred towns and communities. A discussion paper, *Stronger Futures in the Northern Territory*, outlined eight priority areas for the future and provided a starting point for discussion.

These eight key areas are school attendance and educational achievement, economic development and employment, tackling alcohol abuse,

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6 Described in detail in *First Report*, Senate Select Committee on Regional and Remote Indigenous Communities, 2008.

7 Dr. J. Gardiner-Garden and K. Magarey, Bills Digest No. 103, 2011-12, *Stronger futures in the Northern Territory Bill 2011*, Parliamentary Library, 8 February 2012, p. 5.

community safety and the protection of children, health, food security, housing and governance.<sup>8</sup>

### **Consideration in the House of Representatives**

1.15 On 27 February 2012, the bills were considered in the House of Representatives. Amendments proposed by both the Government and Opposition in relation to the Stronger Futures in the Northern Territory Bill 2011 were agreed to by the House.<sup>9</sup>

### **Structure of the report**

1.16 This report is comprised of 4 Chapters.

- Chapter 2 provides an overview of the package of bills.
- Chapter 3 identifies and examines the main issues that were raised throughout the inquiry in light of the evidence which the committee received.
- Chapter 4 addresses those broader matters raised with the committee throughout the inquiry process.

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8 Australian Government, *Stronger Futures in the Northern Territory*, Policy Statement, November 2011, p. 1.

9 Information on the passage of Bills and amendments can be found at the following webpage: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Ffr4736%22> (accessed 12 March 2012).

# Chapter 2

## About the bills

### Overview

2.1 The Stronger Futures in the Northern Territory legislative package comprises three bills: the Stronger Futures in the Northern Territory Bill 2011; the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011; and the Social Security Legislation Amendment Bill 2011. The package of bills was introduced into the House of Representatives on 23 November 2011 by the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs.<sup>1</sup>

2.2 On introducing the bills the Minister stated:

Together, these bills form a part of our next steps in the Northern Territory, undertaken in partnership with Aboriginal people and the Northern Territory government.

These are steps taken with a clear eye to the future.

A stronger future which sees a substantial and significant change for Aboriginal people in the Northern Territory.

Where people live in good houses, and in safe communities.

Where parents go to work, and children go to school each day.

A stronger future, grounded in a stronger relationship between government and Aboriginal people in the Northern Territory.

...

Across the Territory, people have told us that more needs to be done to achieve the change we all want to see for Aboriginal people who live there.

People in the Northern Territory want for their children what each of us, right across the country, want for our children:

- that they will grow up healthy and safe and get a good education,
- that they have a bright future that includes a roof over their heads, food on the table, and a good job, and
- that they will be strong people, proud of who they are.

It is clear that, if we are to see these stronger futures take shape, we must not walk away and we must continue to work hard.

...

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1 The Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, 23 November 2011, p. 13539.

...[I]f children do not go to school, the best teachers and the best classrooms cannot give them a good education. The strongest work ethic and the most driving ambitions will be wasted if there are no jobs.

If people cannot get sober, if they cannot set the best example for their children—a parent who goes to work each day and brings home a pay cheque each fortnight.

The measures in this legislative package I am introducing to the parliament today help tackle the barriers to change. They clear the path for us to walk together and work together for the change we all want to see.

They make clear our expectations of parents—that they will send their children to school to get a good education.

They support more jobs in the Northern Territory.

And they do more to tackle alcohol abuse.<sup>2</sup>

2.3 The three bills contain measures that address the areas identified in the Minister's second reading speech. All three follow through on measures that had their origin in the Northern Territory Emergency Response (NTER). The measures contained in the Stronger Futures legislative package however have been modified to take account of the consultation that has occurred since the NTER in 2007.<sup>3</sup>

2.4 The passage of the bills will ensure that measures are in place following the sunseting (in August 2012) of the 2007 Northern Territory National Emergency Response legislation.

2.5 During hearings, FAHCSIA provided information to the committee to clarify existing NTER measures that would be discontinued under the Stronger Futures bills package. This response is contained in Appendix 4.

### **Stronger Futures in the Northern Territory Bill 2011**

2.6 The Stronger Futures in the Northern Territory Bill 2011 (Stronger Futures bill) contains three measures to address:

- alcohol abuse;
- land reform; and
- food security.<sup>4</sup>

2.7 These measures are set out in Parts 2, 3 and 4 of the bill.

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2 The Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, 23 November 2011, pp 13539, 13541, 13542.

3 Dr. J. Gardiner-Garden and K. Magarey, Bills Digest No. 103, 2011-12, *Stronger futures in the Northern Territory Bill 2011*, Parliamentary Library, 8 February 2012, p. 3.

4 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 1.



2.8 The remaining parts of the Stronger Futures bill deals with introductory matters, setting out the commencement date of the provisions, a guide to the bill and dictionary of terms (Part 1); and contain miscellaneous provisions including both a requirement that an independent review of the operation of the Act occur after the first seven years of its operation and that the Act sunsets at the end of ten years after its commencement (Part 5).<sup>5</sup>

### **Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011**

2.9 The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 (the Consequential Amendments Bill) contains five schedules.

- Schedule 1 of the bill repeals the *Northern Territory National Emergency Response Act 2007* (NTNER Act) and sets out necessary savings and transitional provisions.<sup>6</sup>
- Schedule 2 of the Consequential Amendments bill amends the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) to ensure that its operation is consistent with the repeal of the NTNER Act.<sup>7</sup> Schedule 2 also repeals Part IIB of the Land Rights Act and introduces an additional function for Land Councils to provide assistance to community living area landowners, in relation to dealings in their land.<sup>8</sup>
- Schedule 3 will amend the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act) to add a sunset and review date to the provision in Part 10 of that Act and to make other minor amendments.<sup>9</sup> Part 10 of the Classification Act allows special measures to be taken to protect children living in Aboriginal communities in the Northern Territory from being exposed to material that is, or is likely to be, classified as restricted material or X18+.<sup>10</sup>

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5 Stronger Futures in the Northern Territory Bill 2011, Clauses 1–5 and 118.

6 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 3.

7 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 8.

8 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 8.

9 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 12.

10 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 12.

- Schedule 4 of the bill amends the *Crimes Act 1914* to ensure that, following repeal of the NTNER Act, customary law and cultural practices can be considered in bail and sentencing decisions for offences against Commonwealth and Northern Territory laws that protect cultural heritage, including sacred sites or cultural heritage objects.<sup>11</sup>
- Schedule 5 of the bill sets out minor amendments to other Acts to give effect to the repeal of the NTNER Act.<sup>12</sup>

## **Social Security Legislation Amendment Bill 2011**

2.10 The Social Security Legislation Amendment Bill 2011 is designed to complement the measures set out in the two schedules to the Stronger Futures in the Northern Territory Bill 2011. The two schedules of this bill relate to income management (Schedule 1) and school attendance (Schedule 2); both of which are designed to support disadvantaged and vulnerable Australians.<sup>13</sup> (The responsibility for determining who is classified as a disadvantaged or vulnerable Australian is determined by the Secretary pursuant to section 123UGA of the *Social Security Administration Act 1999*. In making a determination under section 123UGA the Secretary will consider the guidelines available at [http://www.fahcsia.gov.au/guides\\_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.2/ssguide-11.4.2.10.html](http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.2/ssguide-11.4.2.10.html)).

2.11 These measures have application broader than the Northern Territory – the government has identified five sites where income management will apply from 1 July 2012. Income management is covered in more detail in Chapter 3.

### **Issues raised**

2.12 Throughout its inquiry, the committee received evidence from a wide range of stakeholders. The evidence consistently identified the following matters as the areas of most concern.

- (a) The alcohol management provisions – Part 2 of the Stronger Futures in the Northern Territory Bill 2011.
- (b) The land reform provisions – Part 3 of the Stronger Futures in the Northern Territory Bill 2011.
- (c) The food security provisions – Part 4 of the Stronger Futures in the Northern Territory Bill 2011.

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11 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 18.

12 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 25.

13 Social Security Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. 2.

- (d) The amendments to the Crimes Act – Schedule 4 of the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011.
- (e) The income management provisions – Schedule 1 of the Social Security Legislation Amendment Bill 2011.
- (f) The School Attendance measures – Schedule 2 of the Social Security Legislation Amendment Bill 2011.

2.13 Chapter 3 of the report discusses these issues in detail, as well as stores licensing provisions. Chapter 4 expresses the committee's observations on consultation that occurred in the lead up to the announcement of the measures and afterwards.



# Chapter 3

## Issues identified with legislative amendments

### Overview

3.1 The committee received significant evidence regarding the proposals outlined in the Stronger Futures package of bills and six key areas received the majority of commentary. These areas are in all three bills and are as follows:

- (a) **Alcohol Management** (Stronger Futures in the Northern Territory Bill 2011);
- (b) **Land Reform** (Stronger Futures in the Northern Territory Bill 2011);
- (c) **Food Security** (Stronger Futures in the Northern Territory Bill 2011);
- (d) **Customary law** (Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011);
- (e) **Income Management** (Social Security Legislation Amendment Bill 2011); and
- (f) **School attendance** (Social Security Legislation Amendment Bill 2011).

3.2 This chapter explores these key areas as ordered and draws on evidence to highlight issues that were raised by submitters to this inquiry. It also sets out the committee's views and recommendations in each area.

### Alcohol Management

3.3 Provisions relating to alcohol management are contained in Part 2 of the Stronger Futures in the Northern Territory Bill 2011 (hereafter referred to as the Stronger Futures bill). The measures set out in Part 2 of the bill (tackling alcohol abuse) propose various initiatives designed to tackle alcohol-related harm to Aboriginal people.

3.4 These initiatives include:

- a review of the relevant Commonwealth and Northern Territory alcohol and licensing laws, in relation to alcohol regulation aimed at reducing alcohol-related harm to Aboriginal people;
- enabling the Minister for Indigenous Affairs to request that Northern Territory licensing assessors assess premises that sell, or allow for the consumption of alcohol, where there is concern that they are contributing to alcohol-related harm to Aboriginal people;
- retaining current alcohol restrictions in Aboriginal communities including offences arising from those restrictions; and

- strengthening alcohol management plans to help bring about local solutions for Aboriginal communities that are focused on harm minimisation.<sup>1</sup>

3.5 The measures set out in the bill have been developed in response to general community support for ongoing alcohol restrictions that aim to reduce the incidence of alcohol related harm.<sup>2</sup>

3.6 Although there is support for some continued Commonwealth Government involvement, there is a clear consensus that how support is rolled out should involve consultation with those affected.

...Aboriginal people want to be directly engaged in the development of alcohol approaches impacting their communities. As most Aboriginal members of the Uniting Church live in Aboriginal communities, we call for the further development of local community and, as applicable, regional alcohol management plans. Funding for development of these plans should be increased and made more widely available so that Aboriginal people, on a community-by-community basis, may develop their own solutions in partnership with other relevant stakeholders.<sup>3</sup>

3.7 Although not broadly supportive of the Stronger Futures legislation, in relation to consultation, the Australian Hotels Association stated their support for government involvement:

The Northern Territory's per capita consumption of alcohol rate is about 1.5 times the National average. There is no doubt that the Northern Territory has a significant problem with alcohol misuse. The AHA (NT) is, and has always been, keen to be part of the solution in reducing alcohol related harm in the Territory and we will never be successful in doing so without all stakeholders sitting at the table.<sup>4</sup>

### ***Harsh penalties***

3.8 Division 2 of Part 2 of the Stronger Futures bill will amend the NT Liquor Act and the NT Liquor Regulations to amend the penalties for the possession and supply of liquor in alcohol protected areas. Throughout its inquiry many stakeholders raised concerns with the committee in respect of these matters given their very punitive nature.

We have concerns about a way of dealing with alcohol issues that plays the law-and-order card and being seen to introduce tougher penalties in response to the consumption of alcohol. Our concerns are that there are a number of initiatives from the Territory government and some of them this legislative framework that have the effect of increasing the likelihood that Aboriginal people will end up in jail and for longer periods of time. That is

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1 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 3.

2 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 3.

3 Mr Peter Jones, Uniting Church Northern Synod, *Committee Hansard*, 23 February 2012, p.10

4 Australian Hotels Association (NT), *Submission 190*, p. 1.

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an issue that we really should be backing away from. We should be trying to implement steps that reduce the rate of incarceration rather than ones that are likely to increase it.

...our underlying philosophy is that communities need to be given some responsibility for developing their own responses to alcohol management.<sup>5</sup>

3.9 When these matters were raised with government officials, information was provided detailing that the amendments set out in the bill merely act to bring consistency with existing laws.

**Senator SCULLION:** If it assists, Madam Chair: my understanding, following discussions with the minister, is that they had been requested by the Northern Territory government to make this legislation consistent with the existing Northern Territory regulation outside the prescribed areas.

**Mr Brodie:** I am responsible for the licensing regulation scheme in the Northern Territory. The provisions that are being mooted in the Stronger Futures bill essentially deactivate the penalty provisions in the existing Northern Territory Liquor Act and replace new sets of penalty provisions in respect of offences in what is now called a 'prescribed area' but under the new act will be called an 'alcohol protection zone'. Essentially, you get only one set of penalty provisions that are in force in those alcohol protection zones at any one point in time. Obviously, where there is a general restricted area under the Northern Territory legislation that is not concurrent with an alcohol protection zone in the normal provisions in the Northern Territory Liquor Act would take effect at that point in time.

...We were asked what the Northern Territory law looked like, but we found out what the proposal was without necessarily being consulted about what an appropriate structure would look like.

Mr Henderson: But in terms of the principles: I am not sure what happened at the departmental level, but in my discussions with Minister Macklin it was about having consistency of legislation and penalties across both pieces of legislation... The policy intent was to try to get alignment and consistency around penalties.<sup>6</sup>

3.10 The provisions that are of the greatest concern are those set out in subclause 75C(7) which specify that if a person supplies liquor to a third person in an alcohol protected area and the amount of liquor involved is greater than 1,350 millilitres, the maximum penalty for the offence is 680 penalty units or imprisonment for 18 months. Among submitters, there is concern that the use of such harsh penalties will result in greater levels of aboriginal incarceration.

3.11 Mr Hunyor, Principal Legal Officer of the Northern Australian Aboriginal Justice Agency explained:

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5 Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 10.

6 Mr Micheile Brodie, Northern Territory Licensing Commission, *Committee Hansard*, 24 February 2012, p. 17.

Where is the evidence that it is going to make any difference to increased penalties? I think one of the issues we need to look at every time an increase in penalty and an increase in imprisonment is imposed is: what is the opportunity cost if realistically that is going to mean sending more people to jail? Jail costs more than \$100,000 per person per year, according to the Productivity Commission. Surely there are better ways to be spending that money on the sorts of things that Ms Rosas has touched on today that are lacking in our communities—that is, rehabilitation, culturally appropriate services and culturally relevant treatment. That is where we think we should be putting the energy and resources, not on increasing the potential for people to go to jail. It is unlikely to lead to a greater number of cases for our service, but it will mean we will need to put more work into a number of cases. If someone is facing a period of imprisonment, we will obviously be wanting to spend more time on that case and more time before the court. So it will be another work pressure on us.<sup>7</sup>

### 3.12 The Maningrida Progress Association voiced similar concerns:

During a recent board of committee meeting, our board members indicated that the proposed changes under the Stronger Futures bill, under the penalty for liquor offences, for under 1,350 ml to include six months imprisonment is very harsh. There are very few instances of grog running in Maningrida compared to other types of illicit drug running. Illicit drug running of cannabis or kava in remote communities is a very lucrative business.

...

All we are concerned with is that, if the bill is passed, our jail will be overcrowded by people with grog offences and punishment for illicit drug runners will be much lighter due to insufficient prison space. I have got statistics here that indicate the number of offences during the last court hearing: for drug offences, including cannabis and kava, there were 14 cases; for drink driving there were four cases; for other motor vehicle offences there were 12 cases; for domestic violence there were six cases; there were 21 break-ins; and there were 22 cases of public disorderly behaviour.<sup>8</sup>

### 3.13 When responding to the concerns raised by submitters regarding the harsh and punitive nature of the penalty provisions, FaHCSIA explained:

**Ms Edwards:** The first point to make is that penalties for supply of an amount of alcohol under 1,350 mils was an offence with strong penalties prior to the NTER. When the new provisions came in and that was displaced, it was something that caused some concern. Some magistrates and so on had seen people many times with relatively small amounts of alcohol coming before the courts and no longer had the option of the stronger penalty. So that was one of the key factors directing the

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7 Mr Jonathon Hunyor, Northern Australian Aboriginal Justice Agency, *Committee Hansard*, 23 February 2012, p. 40.

8 Mr Jimmy Woon Tan, Maningrida Progress Association, *Committee Hansard*, 22 February 2012, pp 21–22.



government. We needed to make sure we gave a full range of options and, as has been in the public statements of the minister, were really tough on grog running.

The second point to make is that the penalty of so much of a fine or up to six months in prison is, of course, a maximum penalty for supply of, say, an amount of alcohol up to 1,350. The key thing to remember about 1,350 is that that equates to three cartons of full-strength beer or 6.25 flagons of wine. I think it is 4.something bottles of gin. So we are not talking about totally insubstantial amounts of alcohol here.

**Senator SIEWERT:** Yes, but it is also less than, so you could be talking about small amounts of alcohol.

**Ms Edwards:** You could be talking about someone committing the offence of supply of less than 1,350. That would be an offence which would be punishable by a penalty of up to the fine or amount of imprisonment. You would expect the court, as it would normally, to look at the range of penalty and the severity of the offence and apply a penalty within that range. So, for a first offence or one for a very small amount of alcohol, you would normally expect the court to apply at the lower end of that range. The provisions return to the courts who are looking at these offenders the full range of penalties. For supplying of over 1,350 there are more stringent penalties to recognise. It provides a range that in the ordinary discretion judicial officers apply. We have handed over to them to apply the penalty that fits the offence.<sup>9</sup>

3.14 There is a common view among submitters that more action is required to treat substance abuse and address rehabilitation; penalties alone will not achieve the desired outcomes. The Australian Human Rights Commission:

...reiterates its recommendation from the Social Justice Report 2007 for the Australian Government to ensure alcohol restrictions are supplemented by investment in infrastructure in the health and mental health sectors (including culturally appropriate detoxification facilities) and investment in culturally appropriate community education programs delivered by Indigenous staff [Recommendation no. 15].<sup>10</sup>

#### *Committee view*

3.15 The committee acknowledges the advice given by the Australian Government Departments to explain the proposed penalty provisions.

3.16 The committee shares the concern of witnesses, including the Commonwealth and NT Government officials who appeared before it, that penalties may lead to increased Aboriginal imprisonment. The committee acknowledges however the advice provided by the Commonwealth and NT Government Departments who clarified that

9 Ms Caroline Edwards, Department of Families, Housing and Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, pp 39-40.

10 Australian Human Rights Commission, *Submission 351*, p. 10.

the penalty provisions are maximum amounts not default amounts and that it is the courts that will apply the penalty to fit the offence.

3.17 The committee agrees with witnesses such as the Central Australian Aboriginal Legal Aid Service that infringement notices are a useful tool. The committee also agrees that more needs to be done to facilitate effective rehabilitation, treatment and education programs that target prevention and that rehabilitation should be conducted in a culturally appropriate way.

### **Recommendation 1**

**3.18 The committee recommends that the Stronger Futures in the Northern Territory Bill 2011 be amended to allow infringement notices to be issued in relation to minor alcohol offences and to make it clear that infringement notices may be issued relating to the possession and supply of liquor.**

#### *Assessing licensed premises*

3.19 Division 5 of the Stronger Futures bill provides the Minister with the authority to request that the relevant Northern Territory Government Minister appoint an assessor to conduct an assessment of a licensed premise if it is believed that the sale or consumption of liquor at or from a premise is causing substantial alcohol-related harm to Aboriginal people.<sup>11</sup>

3.20 The People's Alcohol Action Coalition (PAAC) presented evidence to the committee that suggested alcohol-related harm is not a racial issue in the Northern Territory and the operation of the bill could be enhanced through a minor change to Clause 15(1)(b) of Division 5 of Part 2 of the Stronger Futures Bill.<sup>12</sup>

3.21 PAAC suggested to the committee that this provision, which enables the Minister to assess licensed premises where it is reasonably believed that the sale or consumption of liquor at those premises is causing substantial alcohol related harm to 'Aboriginal people' (Clause 15(1)(b) of Division 5 of the bill) could be amended so that it refers to 'the community'.

...it would be preferable to remove the reference to Aboriginal people in the provision that gives the Commonwealth the powers to intervene and ask for an independent audit on particular alcohol outlets. It is not a racial issue. I think that could be amended to read that where any particular outlet is deemed to be causing excessive problems for 'the community', and not for 'Aboriginal people'. This is not a racial issue. In the Northern Territory, non-Aboriginal people drink at twice the level of other Australians and have much higher rates of alcohol related problems. Non-Aboriginal people who are addicted to alcohol are just as likely to gravitate towards the cheapest forms of alcohol as Aboriginal people are. There is nothing racially based about the message we are proposing and we do not think the

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11 Stronger Futures in the Northern Territory Bill 2011, Clause 15, lines 2–27, p. 21.

12 Dr John Boffa, PAAC, *Committee Hansard*, 21 April 2012, p. 34.

bill should single out Aboriginal people in that way, although we do support very much the intent behind giving the Commonwealth minister the powers to order an independent review of particular outlets that are causing particular harm to the community.<sup>13</sup>

*Committee comment*

3.22 The committee considers that the evidence provided demonstrates that excessive alcohol consumption leading to alcohol-related harm is a serious matter in the Northern Territory.

***Alcohol Management Plans***

3.23 Division 6 of Part 2 of the Stronger Futures bill introduces an application process for the approval of alcohol management plans (AMPs).<sup>14</sup> The changes being introduced will ensure that all AMPs are brought to the attention of the Commonwealth Minister for Indigenous Affairs who in approving a plan must consider all its elements to ensure it is aimed at minimising alcohol-related harm.<sup>15</sup>

3.24 The committee received evidence that suggests there is general support for the continued use of AMPs, particularly as it enables communities to tailor plans to suit their individual circumstances.

**Mr Hoffman:** ...It is not a one-fits-all solution and all communities basically need to have sets of rules for their own needs.<sup>16</sup>

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**Senator CROSSIN:** Do you think that having an alcohol management plan, camp by camp or community by community, is a good way to go?

**Miss Shaw:** Yes. It is no good my camp having an alcohol management plan for our camp and then using that in my grandfather's community; it should be his people in his community making up their own rules. But we residents have done our own.<sup>17</sup>

CAAAPU supports and encourages alcohol management plans that are developed by the communities with professional support and input from our organisation. Alcohol management plans should be completed with professional assistance from persons qualified and experienced in the field of alcohol and substance abuse issues.<sup>18</sup>

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13 Dr John Boffa, PAAC, *Committee Hansard*, 21 April 2012, p. 34.

14 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 13

15 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 13.

16 Mr Rodney Hoffman, *Committee Hansard*, 23 February 2012, p. 60.

17 Miss Barbara Shaw, *Committee Hansard*, 21 February 2012, p. 21.

18 Ms Eileen Hoosan, Central Australian Aboriginal Alcohol Programs Unit, *Committee Hansard*, 21 February 2012, pp 44–45.

3.25 Although there is community support for the continued use of AMPs, there is some concern around the approval process; the concern being that AMPs will be 'hijacked' through the approval process given the 'layers' of bureaucracy involved leading to unnecessary delays in the process.

**Ms Hoosan:** ...but our concern is the delay of government. This plan has to go through before it gets to the minister.

...

**Miss Shaw:** We do not want it hijacked by them saying, 'We are going to look at the Mount Nancy camp as a model.' It needs to work and it needs to be supported. We need a chance to make it work. If we announce it today or tomorrow, then somebody else might hijack it—an organisation or another community. We want to be able to use it as a model to allow it to get off the ground.<sup>19</sup>

#### *Committee view*

3.26 The committee agrees with the view that the effectiveness of AMPs will be impeded if prolonged delays in the approval process are experienced. The committee notes that at present the bill does not prescribe a timeframe in which the Minister is required to make a decision concerning an AMP application. The committee considers that there must be urgency in any such approval process.

#### **Recommendation 2**

**3.27 The committee recommends that processes be implemented to ensure that the Minister responds to alcohol management plan applications in a timely manner.**

#### *More needs to be done*

3.28 The evidence presented to the committee suggests a level of community support for ongoing Commonwealth Government involvement in alcohol management matters, however, the committee consistently heard that stakeholders would like to see more done in addition to the measures set out in the bill.

#### *Reducing supply*

3.29 Several stakeholders suggest that reducing the supply of alcohol is required.

We believe that, until the flow of alcohol in Central Australia is reduced, we are not going to see a long-term improvement in Indigenous health, school attendance or employment. Access to alcohol in Alice Springs must be reduced. Recent territory moves such as the buyout of two liquor shops, the introduction of ID scanners and the Banned Drinkers Register have helped a lot. But more needs to be done.<sup>20</sup>

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19 Ms Eileen Hoosan, Central Australian Aboriginal Alcohol Programs Unit, *Committee Hansard*, 21 February 2012, p. 44.

20 Mr David Hewitt, *Committee Hansard*, 21 February 2012, p. 59.

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The association supports the retention of the current restrictions on the availability of alcohol imposed under the Northern Territory emergency response measures and considers that restrictions are an important element of overall alcohol management and for reducing harm in communities. The association also considers that more needs to be done to restrict the sale of takeaway alcohol given that it can lead to uncontrolled consumption and often contributes the greatest harm in communities. This would require focus on restricting current and future liquor licences.<sup>21</sup>

3.30 Similarly, PAAC advocate reducing supply through the introduction of a floor price. They believe that this would reduce supply, particularly of cheap wine which is causing substantial alcohol-related harm in the Northern Territory.

The Northern Territory has a much higher level of alcohol consumption and alcohol-related harm than any other jurisdiction in the country; higher than other countries that are going to implement a floor price, such as Scotland. It seems to me that we cannot afford to wait for deliberations which are clearly going to come up and say that the overwhelming weight of evidence is that a minimum price on alcohol is a key population measure which will reduce alcohol-related harm. We think there is a strong case to argue that this jurisdiction should have a minimum price—a floor price—on alcohol imposed on it by the Commonwealth government in the absence of this jurisdiction itself being able to do that.<sup>22</sup>

3.31 The Distilled Spirits Industry Council of Australia (DSICA) however suggests that the idea that introducing a floor price for alcohol will fix alcohol-related problems in any part of Australia is flawed and will not work.

DSICA acknowledges that there is a current policy and media focus on minimum floor pricing for alcohol products. In particular, the Australian National Preventative Health Agency (ANPHA) has been tasked with the development of a minimum floor price concept. It is understood that the potential introduction of a minimum floor price is a likely response to claims of misuse of cheap wine products, particularly in Indigenous communities.

DSICA strongly opposes the introduction of a minimum floor price on a number of grounds, including:

- The fact that there is a lack of economic evidence confirming the effectiveness of minimum floor pricing in reducing risky and high-risk drinking behaviours;
- A minimum floor price will negatively impact the population at large (particularly responsible consumers and those of lower socio-economic backgrounds), rather than targeting at-risk drinkers and those who are determined to misuse alcohol; and

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21 Mr David Jan, Local Government Association of the Northern Territory, *Committee Hansard*, 23 February 2012, p. 62.

22 Dr John Boffa, PAAC, *Committee Hansard*, 21 February 2012, p. 33.

- International experience demonstrates the difficulties associated with implementing a minimum floor price which delivers desired health and social policy objectives.<sup>23</sup>

3.32 The committee raised these matters with the Commonwealth Department of Families and Community Services and Indigenous Affairs. In response, the Department commented that:

...The National Preventative Health Task Force is looking at the minimum price mechanisms, and the new Australian National Preventive Health Agency will develop the public interest case for a minimum price. They are expected to provide initial advice to their minister in 2012—this year.<sup>24</sup>

#### *Education is lacking*

3.33 The committee heard concerns that more education around responsible drinking and alcohol awareness is required as is support for treatment and rehabilitation.

3.34 The Local Government Association of the Northern Territory identified that there is a lack of education around responsible drinking in the Northern Territory.

...there does not seem to be much work done in the area of education. The Living with Alcohol program run by the Territory government some years ago was an excellent education program but unfortunately was not ongoing. The association would like to see more resources employed in the area of alcohol education.<sup>25</sup>

3.35 Ms Hoosan of the Central Australian Aboriginal Alcohol Programs Unit (CAAAPU) outlined that although CAAAPU support alcohol management initiatives, more needs to be done to support rehabilitation.

We would like to see the Australian government commit to increasing the support and funding for treatment and rehabilitation facilities for Aboriginal people, especially for residential treatment for families. Implementing a holistic preventative approach will reduce the demand for alcohol and problem drinking. It is critical to reduce the demand for alcohol through increasing employment opportunities, training, improving health services, early intervention at school, improving community stores, having better housing schemes and building community capacity and leadership. It is about good governance.

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23 Distilled Spirits Industry Council of Australia, Pre-budget Submission 2012-13, January 2012, p. 19.

24 Ms Caroline Edwards, Department of Families, Housing and Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 42.

25 Mr David Jan, Local Government Association of the Northern Territory, *Committee Hansard*, 23 February 2012, p. 62.

We recognise that there are some good decisions in the Stronger Futures NT plan, including the NT government's 'Enough is Enough' alcohol reform campaign. We refer to the substance misuse assessment and referral for treatment courts for alcohol related offences. The CAAAPU organisation are doing everything possible to support the Northern Territory government's campaign by providing culturally appropriate rehabilitation treatment services, delivered by highly qualified Aboriginal employees and elders.<sup>26</sup>

### *Committee view*

3.36 The committee acknowledges the serious challenges facing the Northern Territory to reduce alcohol-related harm. The committee is of the view that the evidence it received indicates that alcohol is causing substantial harm in parts of the Northern Territory however, that increasingly, other drugs, such as marijuana and kava, are also causing problems. The committee considers that the measures in the Stronger Futures bill will go some way to supporting the Northern Territory as it seeks to address alcohol-related harm however the committee concedes that more does need to be done, particularly in the areas of alcohol education and rehabilitation.

3.37 The committee notes the importance of the independent review that is planned to occur three years after the commencement of the proposed provisions and takes the view that any policy changes recommended by the independent review should be acted upon.

## **Land Reform**

3.38 Land reform provisions are outlined in Part 3 of the Stronger Futures bill. These provisions enable the Commonwealth to make regulations to amend Northern Territory legislation relating to town camps (Division 2) and community living areas (Division 3) to facilitate voluntary long-term leasing, including for the granting of individual rights or interest and the promotion of economic development.<sup>27</sup>

3.39 The broad objectives of the land reform measures outlined in Part 3 of the bill are designed to overcome Northern Territory (NT) legislative restrictions and impediments relating to residential and economic development in town camps and community living areas. Introduction of a regulation making power provides a practical way of being able to implement, appropriate, sustainable and community supported residential and economic models designed in consultation with, and supported by, relevant stakeholders, including the relevant interest holders in the land and the NT Government.<sup>28</sup>

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26 Ms Eileen Hoosan, Central Australian Aboriginal Alcohol Programs Unit, *Committee Hansard*, 21 February 2012, pp 44–45.

27 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. of 2012*, 8 February 2012, pp 48-49

28 Senate Standing Committee for the Scrutiny of Bills, *Second Report for 2012*, pp 90-91.

3.40 Given the complex nature of the relevant NT legislation, restrictions and impediments in NT legislation must be identified through a thorough analysis of the relevant models developed in consultation with stakeholders. The proposed land reform regulation powers will allow implementation of models to commence once this analysis has been completed and also ensure that appropriate safeguards in relation to dealings in land can be maintained where necessary or relevantly modified under NT legislation.<sup>29</sup>

3.41 Related to the land reform amendments, Schedule 2, item 4 of the Consequential Amendments bill amends the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) to ensure that its operation is consistent with the repeal of the NTNER Act.<sup>30</sup> Schedule 2 also repeals Part IIB of the Land Rights Act and introduces an additional function for Land Councils to provide assistance to community living area landowners, in relation to dealings in their land.<sup>31</sup> This Part also constitutes a special measure for the purposes of the RDA, affording 'Aboriginal people opportunities for home ownership and economic development.'<sup>32</sup>

#### ***Removal of section 23(1)(eb) of the Aboriginal Land Rights (Northern Territory) Act 1976 Act***

3.42 The inclusion of a provision, section 23 (1)(eb), into the Land Rights Act expressly provides that Land Councils have a statutory function to assist Aboriginal associations or corporations which own community living areas when requested to do so.<sup>33</sup> While this was accepted as a role for Land Councils, an issue was raised by both the Central Land Council (CLC) and the Northern Land Council regarding the limited nature of this provision as making it explicit only Land Councils should meet these costs.

3.43 The CLC explained that funding for this role is a matter between the Government and the Land Councils and should not be made explicit in the legislation:

**Ms Newell:** We have been consistently urged to do more cost recovery, so it would be remiss of us not to mention that as an issue that is of concern to the land council. In terms of the new power for land councils to be inserted into the Land Rights Act, none of our powers are constrained by a clause at the end that says, 'at your own expense.' That just seems an unnecessary clause to have in there.

**Senator CROSSIN:** I am just trying to find the Northern Land Council's reference—

...

29 Senate Standing Committee for the Scrutiny of Bills, *Second Report for 2012*, pp 89–90.

30 Northern Land Council, *Submission 361*, p. 4.

31 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 20.

32 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 20.

33 Northern Land Council, *Submission 361*, p. 4.



**Senator CROSSIN:** It is proposed section 23(1)(eb) should be removed, which is to delete the words 'at the land council's expense'.

**Ms Newell:** That is our submission as well. We have said that we do not support it in its current form and that that phrase should be removed. How we get funded by the government is totally for the government and us to discuss. There should not be a clause there that says 'at our own expense' going on in perpetuity. It is just not appropriate.

**Senator CROSSIN:** So it is an anomaly in relation to what currently exists.

**Ms Newell:** That is it.<sup>34</sup>

3.44 The NLC reiterated this view in their submission and explained that:

...as presently drafted the proposed s 23(1)(eb) inappropriately includes a constraint. If assistance is provided regarding a community living area, this must and can only be “at the Land Council's expense”. This constraint - which appears inadvertent - is inappropriate, both in practical terms and also from the perspective of broader Commonwealth policy. Ordinarily Land Councils would meet the expense of providing assistance, however exceptions will appropriately arise especially where a proponent is able to contribute to those expenses. For example, a mining company which seeks tenure for a road across Aboriginal land would ordinarily contribute to expenses (eg the costs of meetings and sacred site surveys). There is no constraint in the statute to preclude such cost recovery; indeed s 33A contemplates that this will occur. Where a portion of that road also crosses a community living area, a mining company would likewise contribute to such expenses. As presently drafted, the proposed s 23(1)(eb) appears to preclude such contribution.

Since 2002 (pursuant to orders made by the Finance Minister), Commonwealth policy has required full recovery of costs by Commonwealth entities, including Land Councils, except “where it is not cost effective, where it is inconsistent with government policy objectives or where it would unduly stifle competition or industry innovation.” As presently drafted, the proposed s 23(1)(eb) is inconsistent with that policy. The drafting of the proposed s 23(1)(eb) appears to have inadvertently been adopted from the existing s 23(1)(f), which empowers a Land Council to provide legal assistance in relation to traditional land claims “at the expense of the Land Council”. That constraint has not caused difficulty in the context of land claim litigation, but is inappropriate where development is proposed on existing titles. The appropriate precedent is s 23(1)(e) which empowers a Land Council to negotiate leases regarding development on Aboriginal land. That provision does not include any cost recovery constraint. It is submitted that the cost recovery constraint in the proposed s 23(1)(eb) should be removed. This can be achieved by deleting the words “at the Land Council's expense”.<sup>35</sup>

34 Ms Virginia Newell, Central Land Council, *Committee Hansard*, 21 February 2012, pp 4–5.

35 Northern Land Council, *Submission 361*, p. 5.

3.45 The Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) explained the intent behind the drafting of this provision:

**Ms Moyle:** It was intended to make clear that the work the land councils would be able to do under the Aboriginal Land Rights Act would not be at the expense of the CLA association, which is unfunded. It was intended to make clear—

**Senator CROSSIN:** It does not do that, though, does it?

**Ms Moyle:** Our advice is that it does. It enables the land council to perform its functions in the usual way and to be funded in the usual way, and that is, as Mr Dillon said, through the ABA or by some cost recovery from lease proponents but not from the CLA association.<sup>36</sup>

3.46 However, as the NLC pointed out, the Land Councils also do not receive funding for this and there are issues with current policies regarding cost recovery:

The question for us is more or less the role of the NLC in providing assistance to these peoples. We do not get funding. It also clashes with Commonwealth policies with regard to how we extract cost recovery in representing these peoples. We are doing it merely because some of the people who are occupying this are actual traditional owners.<sup>37</sup>

3.47 The fact that Land Councils are not presently funded for this purpose was confirmed by FaHCSIA when the committee queried whether they were actually funded to represent the organisations on CLAs under the current funding they receive:

**Senator CROSSIN:** So why would they do that work if they are not funded to do it? How would they fund themselves to do it?

**Ms Moyle:** They absorb that cost at present. To the extent that they are doing work for CLA associations, it is absorbed by the land councils.

**Senator CROSSIN:** They do not like it, though, do they?

**Ms Moyle:** I am sure they would rather be funded for the work they do.<sup>38</sup>

3.48 The Australian Human Rights Commission (AHRC) also emphasised the need for adequate resourcing and stated:

...if this function is to rest with the Land Councils, the Government must ensure the Land Councils are adequately resourced to perform this task. This would be consistent with Article 39 of the Declaration which outlines the right of Indigenous peoples access to financial and technical assistance from the States, for the enjoyment of their rights.

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36 Ms Sally Moyle, Department of Families, Housing and Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 39.

37 Mr Kim Hill, Northern Land Council, *Committee Hansard*, 23 February 2012, p. 30.

38 Ms Sally Moyle, Department of Families, Housing and Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 39.

Similarly, the Government should ensure town camp councils also have access to sufficient financial and technical assistance to enable them to utilise any new provisions affecting town camp leasing.<sup>39</sup>

*Committee view*

3.49 The Committee agrees that section 23 (1)(eb) should be amended to remove "at the Land Councils expense". The Committee believes this drafting is appropriate only when the Land Councils are funded for this purpose.

**Recommendation 3**

**3.50 The committee recommends that section 23 (1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended to remove the text "at the Land Councils expense".**

***Support for five year leases being abolished under Stronger Futures and move toward voluntary leasing arrangements***

3.51 The Committee received evidence that the Commonwealth Government recognised that the compulsory nature of the five-year lease arrangements were 'counter-productive' and would expire on 17 August 2012.<sup>40</sup>

3.52 There was broad support from submitters regarding these five-year lease arrangements<sup>41</sup> not continuing under the Stronger Futures bill. The AHRC clearly expressed this view in their submission to the Committee:

The Consequential and Transitional Provisions Bill repeals the NTNER Act, which contains the provisions relating to the acquisition of five-year leases. This Bill also repeals Part IIB of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (ALRA). The Commission strongly supports the repeal of these provisions, and is encouraged by the Australian Government's commitment to transition to voluntary leasing arrangements in the Northern Territory.<sup>42</sup>

***Removal of Part 3 (Divisions 2 and 3) of the Stronger Futures Bill***

3.53 Although the Committee was provided with evidence supporting land reform as it brings attention to a 'genuine and pressing need for comprehensive reform,'<sup>43</sup>

39 Australian Human Rights Commission, *Submission 351*, p. 53.

40 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 343*, p. 33.

41 Under the Northern Territory Emergency Response the Australian Government held five-year leases over 64 Northern Territory communities;  
[http://www.fahcsia.gov.au/sa/indigenous/progserv/ntresponse/about\\_response/housing\\_land\\_reform/Pages/five\\_year\\_leased\\_aboriginal\\_land.aspx](http://www.fahcsia.gov.au/sa/indigenous/progserv/ntresponse/about_response/housing_land_reform/Pages/five_year_leased_aboriginal_land.aspx); (accessed 2 March 2012).

42 Australian Human Rights Commission, *Submission 351*, p. 52.

43 Aboriginal Peak Organisations of the Northern Territory, *Submission 330*, p. 12.

many submitters outlined arguments for having Part 3 removed from the Stronger Futures bill.

3.54 The CLC explained to the committee that they would prefer a comprehensive legislative package that affects CLAs (Division 3) and title in order to overcome current constraints, through a process separate to the Stronger Futures bill:

CLAs—generally small excisions from pastoral properties—were granted by the Northern Territory government. Unlike the land rights act, there is a suite of Northern Territory legislation that constrains land dealings on CLAs. These include, among other things, the inability to grant leases and licences for all but a limited number of purchasers. Ten of these larger communities in the Central Land Council region are CLAs, including Lake Nash, Titjikala and Imanpa.

...

The Central Land Council would prefer the Australian government to devolve a comprehensive and detailed CLA reform agenda and introduce a bill that expressly sets out the reform for debate and comment.<sup>44</sup>

3.55 In relation to town camps (Division 2), the Tangentyere Council Inc. also stated this should be removed:

**Senator CROSSIN:** Mr Shaw, under part 3, division 2 as to town camps, there is a very similar treatment to the community living areas whereby this just specifies that for the Commonwealth government it provides for regulation-making powers. What are you saying about this actual division, that there is no need for it or that it needs to be changed or that if any regulation-making power were instigated you would want to be part of the consultations?

**Mr Shaw:** I think what we are saying is that the minister should explore all options for time ownership and the excision of land whether it be dealing with private home ownership or economic development as per the residents of the town camps without the loss of secure land tenure. This could be achievable with the community land trust model without the regulation-making powers under this legislative package. I think at this point in time Aboriginal people really want a commitment of negotiations with the current government and Aboriginal people are over consulted with the raft of social policies and we want to move towards proper negotiations to ensure that models suit the community, community expectations versus government policy and government legislation.

**Senator CROSSIN:** So you would like to see all of division 2 actually deleted? It is unnecessary and should be taken out; is that what you are saying?

**Mr Shaw:** Yes.<sup>45</sup>

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44 Mr David Ross, Central Land Council, *Committee Hansard*, 21 February 2012, p. 2

45 Mr Walter Shaw, Tangentyere Council Inc, *Committee Hansard*, 21 February 2012, p. 28.

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### ***Broad Commonwealth regulation powers***

3.56 Division 3 allows for broad Commonwealth regulation making powers that will amend any NT legislation relating to land matters, should the Northern Territory Government not amend relevant legislation themselves. The committee received evidence outlining concerns regarding these broad powers. The AHRC stated they were:

...cautious that given the lack of detail provided concerning the proposed Regulations, we are unable to comment on whether the proposed Regulations, and therefore subsequent amendments to Northern Territory laws and leases, will be consistent with human rights obligations...<sup>46</sup>

3.57 FaHCSIA explained to the Committee that these regulation powers need to be broad in scope as:

...the precise form of home ownership and economic development models is a matter for consultation between the town camp landholders, residents and the Territory and Commonwealth governments, and because of the complex nature of the relevant Territory legislation.<sup>47</sup>

3.58 Although broad in scope, the Commonwealth cannot make regulations to modify NT law until appropriate consultations with relevant stakeholders have been undertaken; these requirements are outlined in subclauses 34(9) and 35(5).<sup>48</sup>

3.59 The Commonwealth regulation making power does not prevent the NT from concurrently using its legislative powers in relation to the same matters<sup>49</sup> and should the NT Government implement reforms that meet the commitments outlined in the bill for more flexible land tenure, the Commonwealth regulation will not be required.<sup>50</sup>

3.60 The CLC advised the committee that work was already being undertaken with the NT Government regarding amending the suite of NT legislation to accommodate changes:

...the Northern Territory has been considering amendments of its own, so it is possible that the Northern Territory may introduce amendments which could deal with this comprehensively. The alternative is—as we set out in our submission—that the Commonwealth could actually take the time, instead of just giving the broad regulation-making power to the executive, to sit down and map out what changes were necessary in order to provide certainty for CLAs for secure tenure and economic development.

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46 Australian Human Rights Commission, *Submission 351*, p. 54.

47 Mr Michael Dillon, Department of Families, Housing and Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 28.

48 Senate Standing Committee for the Scrutiny of Bills, *Second Report for 2012*, p. 90.

49 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 21.

50 Stronger Futures in the Northern Territory Bill 2011, *Explanatory Memorandum*, p. 22.

**Senator SIEWERT:** In your submission, you go into the various acts which need to be amended. If I understood correctly, it has been on the Northern Territory government's agenda for some time but has not happened. Is that correct?

**Ms Newell:** Certainly we have been pushing for it for a number of years and the intervention and the focus on formalisation of land tenure has helped it along. We have been in discussions with the Northern Territory government about reform measures for well over 12 months.

...

**Ms Weepers:** Senator, certainly the easiest option is for the Territory to move ahead quickly with a comprehensive reform package. That is the most straightforward solution to the problem.

**Senator SIEWERT:** In terms of taking out of this and then develop a comprehensive package—is that what you meant?

**Ms Weepers:** For the Northern Territory government to implement a comprehensive reform is the simplest solution.<sup>51</sup>

3.61 The NT Government advised the committee that they are well placed to progress the changes separate to the Stronger Futures bill and these changes would be subject to consultation with those affected:

**Mr Henderson:** We will do the amendments. Of course, when we are amending legislation that impacts on Aboriginal people, we need to consult. The consultation process has started with the NLC and, in particular, the CLC, about those amendments. We go to an election in August, and parliament will obviously be prorogued after the budget sittings, so it is a bit touch and go, but we have started those discussions. I do not want to ram legislation into the house that would affect community living areas without the support of the land councils to say that the legislation is appropriate.

**Senator SIEWERT:** I apologise, but I really want to understand this bit: do you support the position of the CLC and the NLC that that should come out of the Stronger Futures legislation and be dealt with by the NT? I hope I am not verballing them, but that is my take on their position.

**Mr Henderson:** I would agree. I think those provisions are redundant, given the Territory's commitment to actually doing that. That is a commitment we have made. The legislation is not in the house yet because we are still trying to get agreement, in the same way that, if the Commonwealth were going to legislate, I would hope that the Commonwealth minister would consult with the land councils about appropriate amendments before, once again, legislating for the Northern Territory and affecting Aboriginal people.<sup>52</sup>

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51 Ms Virginia Newell and Ms Jayne Weepers, Central Land Council, *Committee Hansard*, 21 February 2012, p. 3.

52 The Hon Paul Henderson MP, Chief Minister and Mr Ken Davies, Northern Territory Government, *Committee Hansard*, 24 February 2012, p. 13.

3.62 The CLC supported the view of the NT Government being better placed to progress necessary legislative amendments in regard to land reform, but understood the rationale for the Commonwealth having regulation making powers. Ms Newell from the CLC stated:

Ideally, comprehensive reform would be led by the Northern Territory government. In the absence of such proactive leadership by the Northern Territory government, the approach being taken by the Australian government in the Stronger Futures in the Northern Territory Bill 2011 and the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 is understandable but is not ideal. The regulation-making power proposed in relation to CLAs is very broad and we do not support it in its current form. The delegation of such extensive power over an important reform agenda to the executive creates difficulties because it requires the Aboriginal land owners and the land councils to unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time over the next 10 years.<sup>53</sup>

3.63 The committee inquired about precedent with the Commonwealth and a jurisdiction having dual abilities to amend legislation and whether this will cause confusion:

**Senator BOYCE:** ...Are you aware of any other legal areas where this is happening, where the Northern Territory and the Commonwealth can jointly or dually change the same provisions?

**Ms Newell:** No, I am not aware of a similar provision. I am aware of essentially similar regulation making powers in entirely different fields. In relation to the Northern Territory, I am not aware of a similar one.

**Senator BOYCE:** Do you share the concern about 'interesting results'?

**Ms Newell:** I am not sure what that refers to. I do not know that critique.

**Senator BOYCE:** I think the concern is about opposing provisions.

**Ms Newell:** That is implicit in our preference that the land measures be undertaken by the Northern Territory government, who has responsibility for land reform, has the departments and is across the detail of land administration in the Northern Territory. That is implicit in that we said we would prefer it to be done at the Northern Territory level. However, the overriding concern of the land council is that we do get reform in this area. Therefore, if the Commonwealth is able to do that we would be supportive.<sup>54</sup>

3.64 When questioned about whether the Commonwealth regulation powers were required at all given this work between the NT Government and Land Councils, the

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53 Ms Virginia Newell, Central Land Council, *Committee Hansard*, 21 February 2012, p. 2.

54 Ms Virginia Newell, Central Land Council, *Committee Hansard*, 21 February 2012, p. 7.

CLC response was that it may 'simply serve to incline the Northern Territory government to make those changes.'<sup>55</sup>

### *Committee view*

3.65 The committee agrees that land reform is needed in the NT and that the move toward voluntary leasing arrangements as outlined in Part 3 of the bill is positive. The committee notes that these amendments must be undertaken with close cooperation between the NT and Commonwealth governments.

3.66 The committee acknowledges the regulation making power for the Commonwealth as outlined in clause 34 and 35 of the bill is broad, however based on the evidence provided, considers these powers will only be drawn on should the Northern Territory Government not progress amendments. Based on advice provided by the Northern Territory Government, the committee understands they will continue to progress the necessary amendments.

## **Food Security**

3.67 Part 4 of the Bill deals with food security measures. The NTER measures of 2007 created the legislative framework for stores in prescribed communities to be licensed. The Stronger Futures bill provides for a community store licensing scheme to operate for a ten-year period to provide food security for Aboriginal communities.<sup>56</sup>

3.68 The Revised Explanatory Memorandum to the Bill states that the measure "...is intended to enhance the contribution currently made by the community stores licensing system to continue to improve access to fresh, healthy food."<sup>57</sup> This was shown in the independent evaluation of the community stores licensing program, which also showed that there are areas "...where the scheme could be strengthened, including addressing problems of non-compliant traders and greater community understanding of store business."<sup>58</sup> The Northern Territory Government agrees that there have been improvements in store governance, and the availability and affordability of fresh fruit and vegetables.

Prior to the intervention, community stores were a world away in terms of their governance, in terms of fresh fruit and in terms of appropriate pricing given freight costs and what have you. Food security is very important and has been a big gain.<sup>59</sup>

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55 Ms Virginia Newell, Central Land Council, *Committee Hansard*, 21 February 2012, p. 4.

56 Stronger Futures in the Northern Territory, *Policy Statement*, November 2011, p. 9. Available at: <http://www.indigenous.gov.au/stronger-futures-in-the-northern-territory/> (accessed 7 March 2012).

57 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, p. 2.

58 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, p. 28.

59 The Hon Paul Henderson MP, Chief Minister, *Committee Hansard*, 24 February 2012, p. 8.



3.69 The proposed provisions set out licensing procedures, the conditions under which licences are granted, business registration requirements, and arrangements for the stores to be assessed, and introduces a penalty scheme for breaches of licenses including fines and injunctions, and the withdrawal of a license in some circumstances.

3.70 All stores in 'designated food security areas'<sup>60</sup> will be required to be licensed. The Revised Explanatory Memorandum explains:

The Bill recognises that community stores differ greatly and that the regulation of the store should be tailored to its individual circumstances. Community stores licensing will only apply to stores that are an important source of food, drink or grocery items for an Aboriginal community. Community stores licensing will not apply in areas that are major centres of the Northern Territory where there is adequate competition and choice in the supply of food, drink and grocery items.<sup>61</sup>

3.71 Existing licences will be transitioned and communities will be consulted before a decision is made as to whether any further stores should be required to hold a licence. In order for a community store to be required to hold a license it must fulfil the criterion of being an 'important source of food, drink or grocery items for an Aboriginal community'.<sup>62</sup>

3.72 The Financial Impact Statement in the Revised Explanatory Memorandum states that the cost of implementing the food security measure will be \$40.9 million.<sup>63</sup>

3.73 The Commonwealth government considers the food security measure to be a special measure for the purposes of the Racial Discrimination Act, in that it will improve the health and wellbeing of Aboriginal people in the Northern Territory:

It advances the enjoyment by Aboriginal people of human rights, such as the right to an adequate standard of living, including adequate food, and the right to the highest attainable standard of physical and mental health. The licensing of community stores helps to achieve this outcome, resulting in an improved supply of food, drink and grocery items for Aboriginal people living outside of major centres.<sup>64</sup>

3.74 While the committee appreciates the importance of ensuring that there is adequate, affordable and accessible healthy food for communities, it also notes the

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60 A 'designated food security area' is the whole of the Northern Territory other than an area that is prescribed by the rules as outlined in see section 74 of the Bill.

61 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, pp 2–3.

62 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, p. 28.

63 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, p. 3.

64 Stronger Futures in the Northern Territory Bill 2011, *Revised Explanatory Memorandum*, p. 29.

concerns raised during the inquiry that it is setting up a separate set of business rules for this type of enterprise.<sup>65</sup>

3.75 Evidence was also provided to the committee concerning the need for direct action to immediately reduce healthy food prices and make sure people have easy access to this healthy food:

At no point in Part 4, is there any provision relating to the cost of food, or ensuring that a store will be available and open within 20km of a community for a community to access food, despite licensing regulation and conditions.

The omission of any such provisions, appears to point out how far removed Part 4 is from its promoted object to promote food security.

Ultimately, increasing regulation on these stores, and increasing pressure, is not going to drive prices downwards.<sup>66</sup>

3.76 The Northern Territory Coordinator General of Remote Services, Ms Havnen suggested that the Commonwealth government should expand its food security activities to ensure there is more monitoring of stock to ensure it is of good quality, and to consider food supplement programs to increase nutrition in communities:

...whilst the licensing of community stores has probably been a useful exercise, things could actually go a little further, and I would include a recommendation around the systematic monitoring and assessment of store turnover, particularly of healthy foods. Simply licensing a store as a one-off licence and assuming that store managers and so on will ensure that adequate food supply is available at affordable prices and of a good quality, I think, is an assumption that ought not to be left untested.

There needs to be further consideration given to governments looking at other food supplementation programs,—like those in the United States such as the Women, Infants, and Children program—particularly in remote areas where you have such high levels of failure to thrive and nutrition related illness. By way of noting, that particular program in the US has continued to be funded and supported by the federal government and has been expanded over last 10 to 20 years.<sup>67</sup>

3.77 Mr Morrish, the Chief Executive Officer of Bawinanga Aboriginal Corporation which operates a store in Maningrida, suggested that subsidies or other forms of assistance to reduce the cost of food would be more helpful than the licensing system:

...the bottom line is that we are saying we do not agree with that piece of legislation because we do not need to be licensed. We have run our store for a long time. We have run it properly and there have been no questions

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65 Australian Lawyers Alliance, *Submission 319*, p. 31.

66 Australian Lawyers Alliance, *Submission 319*, p. 35.

67 Ms Olga Havnen, Northern Territory Coordinator General for Remote Services, *Committee Hansard*, 23 February 2012, p. 22.

raised about how we have run it. What we are saying is: government, work with us on the issues that affect us. Freight is a killer.<sup>68</sup>

...our stores do not make money on fruit and vegetables because we cannot afford to pass on the freight costs. To do that to the consumer makes it unaffordable. We would price out people's ability to buy fresh food, so we hold those costs down on those particular items so that the affordability and the food security are there. I can say, about the amount of money spent on legislating and monitoring from a store licence point of view, that, if we invested that in a freight subsidy to this community or other communities, it would go a long way to ensuring the food security, as opposed to store licensing.<sup>69</sup>

3.78 Mr Tan, from the Maningrida Progress Association that also operates a store in Maningrida, provided the committee with more information on this issue:

Generally, fresh fruits and healthy foods in remote communities cost significantly more than in urban town centres because of the freight component. The freight costs for bringing freezer goods from Brisbane to Darwin are 80c per kilo and then 91c from Darwin to Maningrida by barge. For example, if we were to buy a kilo of apples from a Brisbane supplier at \$3.50 per kilo, by the time it reaches Maningrida—if we include the freight costs—that kilo of apples costs \$5.21. With our mark-up of only 10 per cent, we have to sell that kilo of apples for \$5.73 compared to the original cost of \$3.50. In view of the high freight costs of bringing healthy fruit into the community, we are seeking subsidy for freight from the government. This would definitely help to bring down the price of healthy foods to sell in the supermarket. With better affordability, this will encourage locals to spend more on healthy food.<sup>70</sup>

#### *Committee Comment*

3.79 The committee acknowledges that more needs to be done in the area of guaranteeing food security in remote communities. In particular, the committee agrees that there is a need for ongoing work with the communities regarding the issues identified in relation to the freight and delivery costs associated with getting healthy food into communities. Ensuring healthy food is available in communities at an affordable cost is essential and should remain on the agenda for future action.

#### **Customary law**

3.80 Schedule 4 of the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 (The Consequential and Transitional Provisions

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68 Mr Luke Morrish, Bawinanga Aboriginal Corporation, *Committee Hansard*, 22 February 2012, p. 12.

69 Mr Luke Morrish, Bawinanga Aboriginal Corporation, *Committee Hansard*, 22 February 2012, p. 11.

70 Mr Jimmy Woon Tan, Maningrida Progress Association, *Committee Hansard*, 22 February 2012, p. 21.

Bill) contains the proposed amendments that will ensure that customary law and cultural practices cannot be considered in bail or sentencing decisions for offences under Commonwealth or Northern Territory law **except for** situations when considering bail or sentencing decisions for offences against such laws that protect cultural heritage, including sacred sites or cultural heritage objects.<sup>71</sup>

3.81 The existing provisions which prevent the consideration of customary law and cultural practices are contained within the intervention legislation and although they were introduced to prevent customary law and cultural practice being used to mitigate the seriousness of any offence involving violence against women and children, their application has had unintended adverse consequences for offences against cultural heritage, including cultural heritage objects and sacred sites.<sup>72</sup>

3.82 The current prohibition on considering customary law in bail and sentencing decision will continue to apply for offences against Commonwealth and Northern Territory laws including those that relate to violence against women and children.<sup>73</sup>

### *Calls for broader reform*

3.83 Evidence received by the committee throughout its inquiry was supportive of the changes set out in the bill given that their application has resulted in unintended adverse consequences. However many submitters gave evidence to the committee suggesting that the amendments should go further and that there is a need to ensure that these practices are in fact considered in all sentencing and bail applications.

3.84 The Central Australian Aboriginal Legal Aid Service (CAALAS) have recommended that Clauses 3 and 8 of Schedule 4 to the Consequential and Transitional Provisions Bill be removed. CAALAS 'strongly oppose the exclusion of cultural practice and customary law from bail and sentencing considerations' as they are of the view that:

...this puts Aboriginal people into a different position for sentencing and bail purposes than any other member of the population when they come before the courts. It is a discriminatory practice that needs to be abolished. The argument that this gives better protection to Aboriginal women and children is a fallacious argument and in some instances people will be worse off because of this particular provision.<sup>74</sup>

Basically the legislation means that for an Aboriginal person coming before the court charged with an offence the court is not able to look at the reasons

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71 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 18.

72 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, p. 18.

73 Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, *Explanatory Memorandum*, pp 21–23.

74 Mr Mark O'Reilly, Central Australian Aboriginal Legal Aid Service, Committee Hansard, 21 February 2012, p. 8.

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for committing the offence which may have been influenced by cultural practice or some aspect of Aboriginal culture.<sup>75</sup>

3.85 The Northern Australian Aboriginal Justice Agency is of the same view as CAALAS. When appearing before the committee, NAAJA provided compelling evidence of how the exclusion of customary law and cultural practice results in unjust outcomes for Aboriginal people.

Possibly a good example would be a situation involving a non-Aboriginal person who was being prosecuted for having received too much by way of Centrelink and not having declared their true income. Let us say that person had received overpayments in the period leading up to Christmas and they came to court and, by way of mitigation, said to the court, 'Yes, I agree; I knew I was getting paid too much, but Christmas was coming around and I wanted to buy presents for the kids.' You can expect that the court might say, 'Well, you've still done the wrong thing, but I take that into account. That's relevant. It was not a situation of greed; it was something that you did for that reason.' That relates to a cultural practice: the cultural practice of giving presents at Christmas time. This provision either applies to that—in which case I think most Australians would think that that is ludicrous—or it does not or is not intended to apply to that, in which case it is clearly discriminatory, because we are trying to target one set of cultural practices and not another.<sup>76</sup>

3.86 NAAJA also explained that prior to the introduction of the provisions in the original intervention legislation, the courts were well able to apply the laws appropriately without mitigating the seriousness of offences:

The position of the law before these provisions was simply that those sorts of considerations for non-Aboriginal people or for Aboriginal people could be taken into account. Frequently in cases where cultural law was raised—in the difficult and sensitive cases involving, for example, sex with girls under 16—the courts made it very clear that it was a factor they took into account, for example, to distinguish the person from a sexual predator, so it was relevant to try to figure out where in the scale of things this offending came, but that factor was outweighed by the need to protect women and children.

...

The point that I would really seek to draw out of them is that the court has never placed those considerations of customary law and culture above the interests of protecting women and children. So I think it is a misconception—if it exists—that really should be laid to rest.<sup>77</sup>

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75 Mr Mark O'Reilly, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 11.

76 Mr Jonathon Hunyor, NAAJA, *Committee Hansard*, 23 February 2012, pp 40–41.

77 Mr Jonathon Hunyor, NAAJA, *Committee Hansard*, 23 February 2012, p. 44.

3.87 While supporting reform, not all submitters suggested that it go as far as suggested by CAALAS and NAAJA. The Human Rights Commission in its submission recommended that the changes concerning the consideration of cultural law and customary practice in the Consequential and Transitional Provisions bill could go further but suggested that they continue to be excluded from situations involving violence or sexual abuse:

The Commission considers that the continued exclusion of customary law and cultural practice from bail and sentencing decisions is too broad. Sections 15AB(1)(b) and 16(A) of the Crimes Act 1914 (Cth) should instead be amended to prevent authorities from considering customary law or cultural practices only when considering offences that involve violence or sexual abuse.<sup>78</sup>

3.88 Asked about witnesses' concerns about customary law provisions, representatives of the Attorney General's Department commented:

**Senator CROSSIN:** Supreme Court Justice Riley...has some grave concerns about the impact of the fact that the courts can no longer take into account the custom and practice in relation to bail and sentencing, and he makes some very strong comments...about the impact that it has on Indigenous people...It is pretty unusual, I think, for magistrates to be saying, 'Please have another look at section 91.' Why do you believe that could not be seriously re-examined?

**Ms Chidgey:** We have seen Chief Justice Riley's comments. I have them in front of me. Our view would be different. He made a comment about Aboriginal offenders not having the same rights as offenders from other sections of the community. We would maintain that that is not correct.

**Senator CROSSIN:** Why do you think it is not correct?

**Ms Chidgey:** Because the provisions apply to not being able to take into account any cultural practice to mitigate the seriousness of the conduct of an offender, and that would apply to cultural practices regardless of whether they were Indigenous or from other cultures.<sup>79</sup>

3.89 In 2009, the Attorney General's Department expressed the view that there was no evidence that the limiting of consideration of customary law and cultural practice in bail and sentencing decisions was having any unintended adverse consequences.<sup>80</sup> It also noted the case of *The Queen v Wunungmurra*,<sup>81</sup> which addressed the laws in question. It concluded that:

If this interpretation is taken up as a precedent, it appears likely that the provision will only preclude consideration of customary law and cultural practice in sentencing decisions to the limited extent intended.

78 Australian Human Rights Commission, *Submission 351*, p. 62.

79 Ms Sarah Chidgey, Attorney-General's Department, *Committee Hansard*, 1 March 2012, p. 43.

80 Attorney General's Department Criminal Justice Division, *Review of customary law amendments to bail and sentencing laws*, November 2009, p. 4.

81 *The Queen v Wunungmurra* [2009] NTSC 24.

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3.90 And:

According to Southwood J's remarks, the affidavit [of Ms Laymba Laymba, a senior member of three Aboriginal clan groups who is knowledgeable about the customary laws and cultural practices of the Yolngu people] contained information on circumstances in which an Aboriginal man from a particular clan group who is also a Dalkaramirri (said to have a similar role to judicial officer) may inflict severe corporal punishment on his wife with the use of a weapon. His remarks indicate that Ms Laymba Laymba states that the defendant was acting in accordance with his duty as a Dalkarra man. This contradicts the argument put by stakeholders and commentators who have argued that Aboriginal customary law does not condone violence. While it may be the case that Aboriginal customary law does not condone domestic violence or sexual abuse, it appears that in some cases it may permit or require physical punishment.<sup>82</sup>

3.91 Attorney General's Department representatives also made a point that was important to the committee's consideration of the issue:

They are forbidden to consider cultural practice as a factor that would mitigate the seriousness of the offence, but there are other factors that they can consider such as the nature and circumstance of the offence, and there has been at least one case where, for example, they did not consider it in terms of cultural practice to mitigate the seriousness but did consider the fact that the families involved were supportive of the actions. So there are some lines to be drawn, but there is some ability, still, to take factors into account in other ways.<sup>83</sup>

*Committee view*

3.92 The committee acknowledges the opposition expressed to it regarding continued restrictions on consideration of customary law and cultural practice in bail and sentencing decisions. It recognises the importance of customary law and cultural practice in Aboriginal and Torres Strait Islander communities, and understands that people want to ensure that those laws and practices are kept strong in communities, through ensuring their continuing relevance. At the same time, it believes that nothing in customary law should be allowed to in any way condone violence or sexual abuse.

3.93 The committee believes that the 2009 case *The Queen v Wunungmurra* has demonstrated that the current provisions provide a framework within which customary law and cultural practice can play an appropriate role in cases involving Aboriginal and Torres Strait Islander Australians. The amendments in the current bill will ensure that there will be no unintended consequences regarding cultural heritage, including sacred sites and cultural heritage objects.

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82 Review of customary law amendments to bail and sentencing laws, 2009.

83 Ms Sarah Chidgey, Attorney-General's Department, *Committee Hansard*, 1 March 2012, pp 43–44.

#### **Recommendation 4**

**3.94** The committee recommends that the Commonwealth include in its engagement program with remote NT communities going forward a specific component designed to build understanding of customary law provisions and support for this measure and in particular to clear up misunderstandings that have arisen.

#### **Recommendation 5**

**3.95** The committee also recommends that the measure and its level of understanding in communities be reviewed in 5 years time as part of the review and evaluation of the proposed National Partnership agreement.

#### **Income Management**

3.96 Schedule 1 of the Social Security Legislation Amendment Bill 2011 contains proposed changes to income management regime for vulnerable individuals<sup>84</sup> and families outlined in Part 3B of the Social Security Administration Act 1999.

3.97 Part 3B of the *Social Security (Administration) Act 1999*, provides for an income management regime, the purpose of which is outlined in the Act as being to reduce immediate hardship and deprivation by ensuring that the whole or part of certain income support payments is directed to meeting priority needs, reduce expenditure on certain goods, and encourage socially responsible behaviour.<sup>85</sup>

3.98 Under the existing regime, the following criteria must be met before a person can be made subject to involuntary income management.

- (a) a child protection officer of a State or Territory requires the person to be subject to the income management regime; or
- (b) the Secretary has determined that the person is a vulnerable welfare payment recipient; or
- (c) the person meets the criteria relating to disengaged youth; or
- (d) the person meets the criteria relating to long-term welfare payment recipients; or
- (e) the person, or the person's partner, has a child who does not meet school enrolment requirements; or

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84 For a person to be assessed as a vulnerable welfare payment recipient, a delegate, in this case a Centrelink social worker, must make a written determination that the person is a vulnerable welfare payment recipient. In making such a determination, the delegate must consider: whether the person is experiencing an indicator of vulnerability (11.4.2.20), whether the person is failing to meet their priority needs or the priority needs of their partner, children or other dependants, as a result of experiencing the indicator of vulnerability, and whether the person's total circumstances could be assisted by income management, having regard to other services and mechanisms available. Source: [http://www.fahcsia.gov.au/guides\\_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.2/ssguide-11.4.2.10.html](http://www.fahcsia.gov.au/guides_acts/ssg/ssguide-11/ssguide-11.4/ssguide-11.4.2/ssguide-11.4.2.10.html), (accessed 7 March 2012).

85 Section 123TB, *Social Security Administration Act 1999*, pp 173–174.



(f) the person, or the person's partner, has a child who has unsatisfactory school attendance; or

(g) the Queensland Commission requires the person to be subject to the income management regime; or

(h) the person voluntarily agrees to be subject to the income management regime.<sup>86</sup>

3.99 In circumstances where a person becomes subject to income management, the person will have an income management account. Amounts will be deducted from the person's welfare payments and credited to the person's income management account. However, amounts will be debited from the person's income management account for the purposes of enabling the Secretary to take action directed towards meeting the priority needs of: the person; and the person's children (if any); and the person's partner (if any); and any other dependants of the person.<sup>87</sup>

3.100 Part 3B also provides for a person to voluntarily elect to participate in income management.<sup>88</sup>

3.101 Although the focus is often on the Northern Territory, the committee notes that income management applies more broadly. The Government has identified five trial sites throughout Australia where income management will commence on 1 July 2012<sup>89</sup> – Playford (South Australia), Bankstown (New South Wales) Shepparton (Victoria), Rockhampton (Queensland) and Logan (Queensland).<sup>90</sup>

3.102 The provisions set out in Part 1 of Schedule 1 will amend Part 3B of the *Social Security Administration Act 1999*, to enable income management referrals from a range of State and Territory authorities. It will do this through the changes proposed by Clause 123UFAA. New Clause 123UFAA will enable referrals for income management to be made by an officer or an employee of a recognised State or Territory authority.<sup>91</sup>

3.103 The 'recognised State or Territory authority' referred to in Clause 123UFAA will be specified by legislative instrument.<sup>92</sup> Under the existing provisions of Part 3B, the authority to refer a person to income management resides with a child protection officer.

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86 Section 123TA, *Social Security Administration Act 1999*, pp 172–173.

87 Section 123TA, *Social Security Administration Act 1999*, p. 173.

88 Section 123UM, *Social Security Administration Act 1999*, p. 202.

89 Social Security Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. 3.

90 Social Security Legislation Amendment Bill 2011, *Explanatory Memorandum*, p. 2.

91 Clause 123UFAA, Social Security Legislation Amendment Bill 2011, lines 23–30, p. 4, lines 1–18, p. 5.

92 Clauses 123TGAA, 123TGAB, Social Security Legislation Amendment Bill 2011, lines 3–14, p. 4.

### *Income management – a difficult policy*

3.104 Throughout its inquiry the committee heard conflicting views on income management. Some stakeholders are supportive of income management:

The phrase 'women's counsellor', as it attaches to case management, is our way of providing proper support. Proper support, in terms of case management, is working closely with the client but also with their family.

...

That is another reason why the women are also supportive of income management, because it is the cash economy. It is those that are not engaged in the community, particularly young people, who are using what they do receive to access cannabis.<sup>93</sup>

Without exception, women whom we know in remote communities have supported income management. Last year a friend from a South Australian community who was visiting Alice Springs told us that, when she got back to her community, she was going to get a BasicsCard because she had seen the benefits of having part of her pension quarantined. We had to tell her that, for now, she could not use a BasicsCard in South Australia. I think this illustrates the support that women in the remote communities have given to the BasicsCard.<sup>94</sup>

3.105 Others however view the measures as discriminatory and 'dehumanising'.

My objection to the compulsory nature of the BasicsCard is summarised in the following quote from the letter written to the minister for Indigenous affairs, Jenny Macklin, in August last year. I said very clearly to her:

Madayin Traditional laws do not allow the control of an individual's personal possessions or property by another person.

For us molu rrupiya, tax money taken through official processes, become the individual's personal possession when they receive it. Therefore in the light of Madayin traditional law compulsory quarantining of Centrelink payments breaks the right of an individual to control their own life.'

...

The solution the Yolngu people seek is for the Australian government to remove compulsory quarantining of Centrelink payments, and instead respond to the needs of our children with education and assisting their parents with budgeting. It would also be beneficial to have a voluntary quarantining service. Yolngu people are completely capable of providing for their children without being dehumanised and humiliated by having to use the BasicsCard.<sup>95</sup>

93 Ms Andrea Mason, Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, *Committee Hansard*, 21 February 2012, p. 15.

94 Mr David Hewitt, *Committee Hansard*, 21 February 2012, p. 59.

95 Dr Djiniyini Gondarra OAM, Dhurili Clan Nation, *Committee Hansard*, 22 February 2012, pp. 29–30.

3.106 National welfare organisations expressed their strong opposition to income management, and what is regarded by many organisations as the implementation of policy without sufficient evidence to indicate that it works.<sup>96</sup>

3.107 Dr Cassandra Goldie of the Australian Council of Social Services expressed it in this way:

We want to emphasise just how deeply concerned national groups, local groups and regional groups—who have deep expertise in how to provide the right supports to people who are living on low incomes and who are struggling in a particular way—are with the way in which government should be working with those communities. We really want to emphasise that this set of bills takes us off further entrenching what we see as being fundamentally contrary to basic human rights, to what is practical and is working. To the best of our knowledge, there is nothing like this in comparative countries, so we really want to highlight how deeply concerned our groups are with the direction that this legislation will set us off in...<sup>97</sup>

3.108 Dr Falzon of the St Vincent de Paul Society says:

The Society has consistently opposed compulsory income management and punitive welfare policy that pathologises people in poverty and fails to take into account the complexity of their lives. Topdown imposition of measures such as compulsory income management and SEAM are not only fundamentally antithetical to our mission and vision, but also antithetical to the Australian Governments' commitment to "resetting the relationship" with First Nations People.<sup>98</sup> The committee heard concerning evidence from submitters that they are encountering discrimination when using their BasicsCard:

That does not read right to me, because this is racist this intervention—call it money management, the BasicsCard. It is an intervention. The government should not have brought this in at all...

They want to put in the BasicsCard in Bankstown. You have to use Woolworths, Coles, Kmart and Target. I do not want to go into Woolworths with my BasicsCard. If I want some cat food for my cat or some ice-cream to give myself a little treat, the girl will get on the intercom at Woolworths and say: 'Item 25, Peters ice-cream. Is that allowed on the BasicsCard?' How humiliating. Woolworths have certain checkouts that you can use because not every one of the checkouts will take this BasicsCard. As then

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96 Ms Gabriel Moore, *Committee Hansard*, 6 March 2012, p. 1; Ms Maree O'Halloran, *Committee Hansard*, 6 March 2012, p. 25; Dr Falzon, *Committee Hansard*, 6 March 2012, p. 17.

97 Dr Cassandra Goldie, *Committee Hansard*, 6 March 2012, p. 32.

98 St Vincent de Paul Society, *Submission 24*, p. 1.

Minister Tanya Plibersek said at the closed forum, 'It looks like a credit card.' It does not look like a credit card.<sup>99</sup>

3.109 The Northern Territory Discrimination Commissioner Mr Eddie Cubillo advised the committee that there had been instances where Aboriginal people subject to income management had been treated poorly when using their BasicsCard:

We have had complaints from the urban centres with regard to how they are treated with their cards at shops in various places. We have had to pull a big shopping centre and provide training for them on how they treat Indigenous people with those welfare quarantine cards.

...It was in a major centre in the Territory. The big shopping centre was making people line up in a separate queue even though they lined up previously. They were saying it was a process for them, but people were—

...This was in Alice Springs.<sup>100</sup>

3.110 In addition to the evidence received that may demonstrate instances of discrimination, the committee heard that the limited range of vendors involved in the income management scheme is also causing stress among families:

**Mr Oliver:**...Income management does not really teach people to budget; it just takes half their money away. So you have anxiety issues over that—having enough money to feed your kids, to pay your rent or to have a power card. Even though power cards are \$20, for us people who are working it is nothing but for people who are on income management it is actually something.

**CHAIR:** Thanks, Mr Oliver. Can you buy your power card with your BasicsCard?

**Mr Oliver:** I believe so, yes.

**CHAIR:** And you can buy food with your BasicsCard?

**Mr Oliver:** Yes, that is what it is for, but Centrelink always had that capacity; they called it Centrepay.

**CHAIR:** Sure, but I am just trying to clarify from your previous statement that people have not been refused power cards for electricity because of the BasicsCard.

**Mr Oliver:** No, there has been no refusal of that, but when people go into Darwin there are only a certain number of shops that actually accept BasicsCards.<sup>101</sup>

3.111 The committee also heard evidence that suggests communities, particularly those where income management is being trialled, do not understand how it works:

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99 Miss Carol Carter, Deputy Chairperson, Bankstown Aboriginal and Torres Strait Islander Advisory Committee, *Committee Hansard*, 6 March 2012, p. 10.

100 Mr Eddie Cubillo, Northern Territory Discrimination Commissioner, *Committee Hansard*, 24 February 2012, p. 3.

101 Mr Cyril Oliver, Malabam Health Board, *Committee Hansard*, 22 February 2012, p. 8.

**Mr Thomas:** We have been involved in meeting community organisations in Logan just recently. We are finding that there is not a lot of awareness in Logan at the moment about income management, so we have been assisting in explaining the possible changes out there. We have been doing the same thing out at Bankstown as well and have travelled to Shepparton. We are located here in Sydney, in Surry Hills, but we do not have the resources to have a casework service out there or to do some outreach. Certainly we have talked to community groups. We have been talking with Legal Aid and the Aboriginal Legal Service. We still have a legal working party looking at this issue at the moment, and it is our hope that we would be able to provide some outreach in these areas. We have had similar discussions with people at Shepparton about the need for community legal education. We are finding that there is a lot of not misinformation but just distortions, and people are really unclear about the model of income management that is going to be put in place in these locations. So people are needlessly anxious, and that is really unfortunate. Add to that the fact that people tell us that the engagement of the Department of Human Services or Centrelink has been, to quote someone who emailed me yesterday, 'ordinary' in these areas. So there needs to be more engagement there on the ground, and also with people who like income management and people who do not like it as well.

There is also the fact that the focus is on income management. There is confusion about the role of income management and all of the other place-based initiatives, which some groups have been very supportive of in these areas. So we think that is one of the reasons why it is important not just to get the information about people's social security rights but to get clear information about how the other proposals are working in the area as well. We have put this to government in our federal budget submission this year about this particular issue and mentioned it in relation to welfare rights funding overall, because we see a particular growth in the need to address this issue immediately.<sup>102</sup>

3.112 The committee notes that the purpose of income management is to ensure better protection of vulnerable Australians and ensure that priority needs are met and expenditure on certain goods is reduced. The Northern Territory Children's Commissioner, however, identified that in situations of domestic violence, although income management may be helpful in ensuring that expenditure on alcohol or drugs is reduced, the quarantining of money may in fact prevent the person suffering abuse from leaving the domestic violence situation.

**Dr Bath:** I can say this, that I have come across many examples where women and children, in particular, are extremely stuck in terms of knowing what to do when they are exposed to domestic violence. I am sure most of us have personal experience of having to assist people in that situation who are living in Darwin and Alice Springs. So, in a broad sense, I think it is certainly true that many of the victims of domestic violence have very few resources, very few options and very few places to turn. That goes

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102 Mr Gerard Thomas, Policy and Media Officer, National Welfare Rights Centre, *Committee Hansard*, 6 March 2012, p. 28.

absolutely without saying. My ears did prick up when I heard that mentioned because I think the issue is that if someone truly needs to have their income managed it is probably because kids are at risk in that situation. I am talking about if they truly do need to have their income managed. I do not know whether making some sort of blanket statement that the money should be returned is necessarily a good thing. Maybe if it were assessed by a professional I would be more comfortable about it rather than making a blanket statement. But if the issue is that it is being managed because kids have been neglected in the past, I do not think that is a valid contention.<sup>103</sup>

3.113 Submitters are strongly opposed to compulsory income management and would prefer that it remain voluntary.

CAALAS continues to oppose the current regime of compulsory income management in the Northern Territory but in particular the proposed expansion under the social security bill. We are highly concerned about the continuation of income management and its expansion in the absence of independent evidence that income management is working to protect women and children or to encourage socially responsible behaviour.<sup>104</sup>

...

We are not opposed to income management. We are opposed to compulsory income management. If someone genuinely and voluntarily elects to be income managed, we support that decision. We do not support compulsory income management in the way that it currently exists in the Northern Territory—there is a difference there.<sup>105</sup>

3.114 The Public Health Association of Australia (PHAA) explained why compulsory income management should include clear entry and exist points and be a measure of last resort:

The PHAA acknowledges that there may be a case, in some limited instances, for compulsory income management for targeted individuals, where transparent, priority criteria have been established, such as child abuse or neglect, or alcohol-related violence. If compulsion is to be applied, there should be legal and ethical criteria to govern the process, including transparent methods of decision making, defined criteria to determine 'entry' and enable 'exit' from the scheme, and the right to appeal and review. Compulsory income management should only be implemented as a last resort and as part of a case management program, implemented by a properly consisted non government organisation, with safeguards against arbitrary decision making.<sup>106</sup>

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103 Dr Howard Bath, Northern Territory Children's Commissioner, *Committee Hansard*, 23 February 2012, p. 51.

104 Ms Katie Robertson, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 8

105 Ms Katie Robertson, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 13.

106 Public Health Association of Australia, *Submission 159*, p. 6.

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*Committee view*

3.115 The committee takes the view that public opinion on the effectiveness and public benefit of income management remains divided. The committee is generally supportive of initiatives that aim to empower and protect vulnerable Australians but would be concerned if the measures prevent those in circumstances of distress from improving their situation. The committee is however concerned by the apparent lack of understanding in the place-based communities where income management is being trialled.

3.116 The committee is gravely concerned by the anecdotal evidence it received which suggested people using the BasicsCard are encountering discrimination. The committee views such practices as completely inappropriate and considers cases of discrimination should be addressed.

3.117 Ongoing work is needed with the community, Centrelink, elders and vendors, to ensure an understanding of the BasicsCard, including education for vendors that will ensure there is never discriminatory or stigmatising treatment.

***Broadening of the referral powers***

3.118 Throughout its inquiry, the proposed broadening of the referral power contained in Clause 123UFAA of the Social Security Legislation Amendment Bill 2011 was strongly criticised and raised as a concern by many stakeholders, particularly legal representatives. The Central Australian Aboriginal Legal Aid Service (CAALAS) raised concerns with this proposal given that it broadens the referral power to State and Territory authorities which will result in multiple agencies, without relevant knowledge and training of how income management works, making decisions of a significant magnitude.

The main concern that I will talk about today is the referral by a state or territory authority of a recipient on income management. We strongly oppose the ability for staff of a recognised state or territory authority to be able to make a decision regarding whether a welfare recipient should be subject to income management. We recommend that this provision be removed from the social security legislation amendment bill or, should it provide, we strongly recommend that an additional section be inserted into this legislation whereby the secretary has the final discretion as to whether a referral is implemented or actioned.

We have grave concerns about the government seeking to extend income management referral decision-making powers to other Northern Territory government departments based on our experience to with child protection income management. Our greatest anxiety relates to the insufficient understanding among many NT authorities of how income management works, what it involves and whether it will assist a welfare recipient.<sup>107</sup>

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107 Ms Katie Robertson, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, pp. 8–9.

3.119 Similarly the Northern Australian Aboriginal Justice Agency (NAAJA) were of the view that "[d]ecisions about social security and administration should be done by Centrelink, and I think that is what people expect."<sup>108</sup>

3.120 CAALAS explained that their concern with the broadening of the referral provisions is twofold. Not only are they concerned that there is a lack of knowledge of income management in state and territory authorities who may be recipients of this delegated legislative power but that in some cases, such as the Northern Territory, such a delegation will create access to justice problems given the absence of an administrative appeals review process.

We are of the opinion that Centrelink income management staff are best placed to determine a recipient's eligibility for income management, given that it is a highly complex regime. Giving Centrelink final discretion will also afford recipients subject to a decision access to Centrelink review mechanisms, such as the authorised review officer, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.<sup>109</sup>

#### *Committee view*

3.121 The committee shares the concerns of submitters about the delegation of the referral power to authorised state and territory authorities given the potential impact of decisions concerning income management can have on families.

3.122 The committee also notes that it would be an undesirable outcome if the proposed provisions could affect access to justice for vulnerable Australians, and considers that all decisions about whether a person is made subject to income management must allow for appropriate review of administrative power and accord natural justice.

3.123 The committee notes the argument made in a number of submissions, including the Australian Human Rights Commission and Aboriginal Peak Organisations NT, that the usual Social Security appeal mechanisms should be available to Centrelink recipients who are referred for income management by a proposed State/Territory body.

3.124 The committee notes that all decisions made by Centrelink in relation to income management are appealable through the usual Social Security appeal mechanisms. This proposal would bring into the Social Security appeals process decisions that are not made by Centrelink. In this sense it would be a new use of these appeals mechanisms and the committee has been advised by FAHCSIA that it is not practicable. In particular, decision making powers on income management will be provided to state/territory bodies where they have particular expertise e.g. in child

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108 Mr Alexander Clunies-Ross, Northern Australian Aboriginal Justice Agency, *Committee Hansard*, 23 February 2012, p. 44.

109 Ms Katie Robertson, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 9.



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protection or substance abuse – and where Centrelink does not have such expertise. It is not practicable that Centrelink would review decisions of a body where they do not hold the expertise.

3.125 It is unclear to the committee how Centrelink would review a decision that may be based upon many years of case files from authorities working closely with families and individuals, without having full access to these case files. It is also questionable whether it is appropriate for Centrelink to be examining case files which will contain intensely personal information about individuals and their children, and may contain a range of unsubstantiated allegations.

3.126 To allow for the usual Social Security appeal mechanisms would essentially require the duplication of expertise that is already held by particularly state or territory bodies.

3.127 However, the committee certainly agrees that there should be opportunities for people to seek review of decisions about income management. Therefore, it would be appropriate for the amended bill to require that the Minister only approve authorities which have an appropriate review process. This would apply specifically to decisions made by the authority to give a notice to place a person on this measure of income management, and would enable people referred under the measure to have that decision reviewed. An appropriate review process would be one where there is review by a person not involved in the original decisions; the review is easily accessible and is provided in a timely fashion, and available at no cost.

## **Recommendation 6**

**3.128 The committee recommends that the government amend the Social Security Legislation Amendment Bill to require that only agencies that have in place appropriate internal and external review and appeal processes be approved by the Minister to make income management referrals.**

## **School Attendance**

3.129 Schedule 2 of the Social Security Legislation Amendment Bill 2011 amends the provisions in the social security law that underpin the Government's *Improving School Enrolment and Attendance through Welfare Reform Measure* (known as SEAM). It enables some local tailoring of this measure so the operation of SEAM can be integrated with the Northern Territory Government's *Every Child, Every Day* initiative, to support greater improvement of school attendance. Under the amended arrangements, a parent may be required to attend a compulsory conference to discuss their child's school attendance, to enter into a school attendance plan, and to comply with the plan. Failure to meet the compliance arrangements provided by the Bill would lead to suspension of a parent's income support payment, unless certain circumstances apply.<sup>110</sup>

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110 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 12.

3.130 Under the current provisions, failure to comply with Part 3C of the Social Security Legislation results in similar penalties for school non-attendance, such as the temporary suspension of some income support payments.<sup>111</sup> The changes set out in the Bill will introduce additional steps in the process before this suspension occurs, such as conferencing and development of school attendance plans. These additional steps are set out in a new Division 3A of Part 3C of the Bill.

3.131 The financial impact of this Bill in implementing the school attendance measure is \$28.2 million over four years from 1 July 2011, with the measures in this Bill commencing from 1 July 2012.<sup>112</sup>

### **The proposed amendments – new SEAM model**

3.132 Division 3A will be inserted into Part 3C of the Social Security Administration Act, which relates to SEAM and sets out provisions for school attendance plans. Division 3A enables the Secretary or a person responsible for the operation of a school to:

- require a person to attend a conference to discuss the school attendance of their child, to enter into a school attendance plan at the conference, and to comply with the plan;<sup>113</sup> and
- to give compliance notices where a person fails to attend a conference, fails to enter a plan, or fails to comply with a plan. The compliance notice would require the person to attend a conference, enter a plan, or comply with a plan, depending on circumstances surrounding the giving of the notice.<sup>114</sup>

3.133 Failure to comply with a compliance notice under these amendments will then result in payments being suspended.<sup>115</sup> This suspension of income support remains a last resort measure under the amendments and a suspension is subject to the following exceptions:

- suspension of payments could not occur if the Secretary were satisfied that there were ‘special circumstances’ to justify the failure to comply with the compliance notice; and
- a determination can be made, having regard to all the circumstances, that, if a person has been fined under a State or Territory law regarding a failure of the person’s child to attend school, payments may not be suspended despite

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111 *Social Security Administration Act 1991*, Part 3C, section 124M.

112 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 0.

113 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 12.

114 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 12.

115 Department Families, Housing, Community Services and Indigenous Affairs, *Submission 343*, p. 22.

non-compliance with the compliance notice, even if no special circumstances exist.<sup>116</sup>

3.134 A new section 124NC provides for school attendance plans to be part of SEAM rather than just issuing compliance notices. Under this amendment, the Secretary or the person responsible for the operation of the school may require a parent or carer enter into a school attendance plan which would set out requirements to meet in order to improve attendance for the child/ren that the plan covers.<sup>117</sup>

### **SEAM trials and extension to additional NT locations**

3.135 In 2009, SEAM was trialled in six locations across the Northern Territory and six locations in Queensland. The trials in the Northern Territory have involved a total of 14 schools (including nine government schools). The Australian Government announced in 2011 that SEAM will be extended to an additional 16 sites in the Northern Territory.<sup>118</sup> The locations where SEAM is being implemented in the Northern Territory is set out in Appendix 5.

### ***Importance of school attendance to lift educational outcomes***

3.136 The committee heard broad support from submitters regarding the benefits of education leading to better life outcomes, and the need to lift educational outcomes through school attendance. This was highlighted in the bill's second reading speech:

School attendance in the parts of the Northern Territory is unacceptably low – as low as 40% in some schools. With such a level of absence, a child cannot build a sufficient foundation in literacy and numeracy to enable them to succeed in later schooling and in the modern world.<sup>119</sup>

...

This work must continue, but it is clear that for these improvements in schools to translate into improvements in educational outcomes for students, regular school attendance is essential.

Improving attendance can never be done by governments and schools alone. For all the funding that governments invest and all the skills that teachers bring to their schools, we still ultimately rely on the parents to get their children ready and to the school gate each morning.<sup>120</sup>

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116 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 12.

117 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 15.

118 Ministers Macklin and Garrett, Joint Press Release, *Good Progress in improving school enrolment and attendance in Queensland and the Northern Territory*, 2 February 2012 <http://ministers.deewr.gov.au/garrett/good-progress-improving-school-enrolment-and-attendance-queensland-and-northern-territory> (accessed 6 March 2012).

119 Minister Garrett, Social Security Legislation Amendment Bill 2011, Second Reading Speech, *House of Representatives Hansard*, 23 November 2011, p. 13559.

120 Minister Garrett, Social Security Legislation Amendment Bill 2011, Second Reading Speech, *House of Representatives Hansard*, 23 November 2011, p. 13559.

3.137 Despite receiving evidence supporting school attendance, the committee received little evidence from stakeholders that supported current measures to address school non-attendance. A number of issues were raised by submitters regarding the approach taken in the Stronger Futures bills, particularly SEAM. These key issues often were not directly related to the proposed legislative amendments but spoke to broader issues relating to the policies being implemented under these arrangements. Issues identified included:

- policy confusion between Commonwealth policies and jurisdiction based policies to improve school attendance;
- lack of evidence supporting SEAM as an effective measure to address school non-attendance; and
- punitive measures are ineffective in addressing school non-attendance and intensive case management approaches are required.

***Policy confusion between Commonwealth policies and jurisdiction based policies to improve school attendance***

3.138 The Bill's Explanatory Memorandum explains that amendments enables 'local tailoring' so the operation of SEAM can be integrated with the Northern Territory (NT) Government's *Every Child, Every Day* initiative to support school attendance.<sup>121</sup> This integration is not made explicit in the legislative amendments so the new Division 3A can potentially apply outside the Northern Territory.

3.139 Given SEAM will be extended in the Northern Territory to specific locations, and the Territory Government has recently implemented the *Every Child, Every Day* initiative which can include fining parents when children do not attend school, it is unclear to the community how these two policies will interact and what policy will take precedent.

3.140 The Australian Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) explained SEAM will support the NT Government's approach and sought to provide clarity to the committee regarding its integration with the NT *Every Child, Every Day* initiative and stated that SEAM:

...is supported by the Northern Territory government, recognising that it will complement its own every child, every day policy and operate in the context of a range of other measures encouraging improved levels of school attendance. In other words, SEAM is not the only lever being used in this area.

There have been a range of comments about SEAM that it is punitive and that there is a lack of evidence that it works. I would like to respond to those. First, SEAM is a strong measure, but it is not the only measure. SEAM is another strategy to complement others aimed at improving school

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121 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 12.

attendance. It is not seen as a panacea. The new SEAM model provides positive support to parents and families. It builds on the Territory government's attendance conference process. That process gets families and schools together to try and resolve the barriers to attendance before a suspension of income support occurs. Social work and other support services will be provided to assist the family throughout the SEAM process. Where required, however, the new SEAM enables a tougher approach to be applied. Suspension of income support is the lever at the end of the process for the small number of parents who refuse to engage and in so doing, deprive their children of the opportunities that schooling provides, the opportunities for a life with much greater potential.<sup>122</sup>

3.141 The Northern Territory Government also stated that SEAM is just one aspect of an approach to improving attendance in the Territory, and this measure is part of a broader strategy:

The NTG considers that the SEAM provides a mechanism to enhance school attendance, through its integration with the NTG's Every Child, Every Day school attendance strategy and its Strong Start, Bright Futures comprehensive service delivery modelin [sic] Territory Growih [sic] Towns. However the SEAM alone cannot deliver the educational outcomes being sought, It [sic] must be complemented by effective engagement with families, further enhancing teacher quality and numbers, including growing a strong Indigenous education workforce, teacher housing, and student reengagement strategies.

Investments in the area of re-engaging disengaged students are needed to ensure the desirable impacts of the SEAM legislative reform do not have unintended consequences of disrupting the learning of students who have been more consistently engaged with schooling, as is coordinated support for families of disengaged students' This investment would importantly build on the early encouraging signs of improved outcomes from the collective NT and Commonwealth government investment in remote Indigenous schools and communities.<sup>123</sup>

3.142 These clarification points however do not appear to have filtered out to all the communities which it affects. The committee heard from many submitters that there was still confusion around how the two policies operated together. The Aboriginal Peak Organisations of the NT stated:

...duplicated NT and Federal school attendance regimes provide a confusing and inconsistent policy environment for parents to negotiate and indicate an unwillingness or incapacity to provide a coherent whole-of-government approach to this critical issue. While APO NT appreciates that SEAM will not apply to a family fined under the NT scheme for their child's non-

122 Mr Michael Dillon, Deputy Secretary of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 27.

123 The Northern Territory Government, *Submission 403*, p. 9.

attendance at school, the possibility of varied consequences is unnecessarily confusing.<sup>124</sup>

3.143 Some community schools, however, did indicate to the committee how SEAM relates to the *Every Child, Every Day* initiative and how this may operate on the ground. When asked what both the Commonwealth and Territory governments provide to address school non-attendance issues, the Principal of Maningrida school stated:

It is very similar to our current NT policy around Every Child, Every Day. It is really coming back even before the fines or any of that are rolled out. It comes back to the communication with parents. So, if Trish Crossin has not come to school for 10 days, we would need to then go around to the family and say, 'What is happening with Trish? What is the story here?' and then, 'How can we help Trish to come to school?' We then work it out with the parents or the family and say, 'Okay, what is the background here?' Our attendance officers will then come to the school and say, 'We need these types of support for this type of child,' and that is different support for different children that are not attending. We can then work with that child and really engage them into the school. But we keep that conversation happening all the time. Even when Trish does come back into the school, we need to have that conversation the week after as well to make sure the parents engage and know what is happening in the class for that student, so the parents can support the students in the classroom, because they know what is happening in each class.<sup>125</sup>

3.144 The need for further education in the community about what these two measures entail, how they will interact and what implications there may be for parents, and communities affected remain. This need was made clear in the Aboriginal Peak Organisations of the Northern Territory submission that stated significant 'community education is needed to ensure Aboriginal People fully understand the new SEAM measure'.<sup>126</sup>

#### *Committee view*

3.145 Based on feedback received in the Northern Territory, the committee believes the distinction between the NT Government's *Every Child, Every Day* initiative and the SEAM measure remains unclear within the community.

### **Recommendation 7**

**3.146 The committee recommends that the Commonwealth and NT governments provide greater clarity regarding SEAM and the *Every Child, Every Day* measures, how they interact and will operate in parallel together. Further education needs to be provided to communities where these policy changes will**

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124 Aboriginal Peak Organisations of the Northern Territory, *Submission 330*, p. 8.

125 Mr Stuart Dwyer, Maningrida School Principal, *Committee Hansard*, 22 February 2012, p. 26.

126 Aboriginal Peak Organisation of the Northern Territory, *Submission 330*, p. 8.

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**apply in the Northern Territory as of 1 July 2012 and advice provided by both governments must be clear as to what policy applies in different areas throughout the Northern Territory.**

***Lack of evidence supporting SEAM as an effective measure to address school non-attendance***

3.147 The committee heard from many stakeholders concerned with SEAM being extended under the legislative amendments despite the apparent lack of evidence that supports it as an effective measure to address non-attendance. The National Congress of Australia's First Peoples stated:

...there is insufficient evidence to support improved attendance and educational outcomes through an expansion and extension of SEAM and that these resources would be better directed at alternatives such as changing the school environment and supporting community-driven initiatives. We note that the Department of Education, Employment and Workplace Relations released an evaluation report on SEAM for 2010 at the concluding stages of the consultation period of this review. Due to the late timing of the release, there has been insufficient time to analyse the evaluation report and its implications. Accordingly, we reserve our position on the evaluation report.<sup>127</sup>

3.148 The Central Australian Women's Legal Service (CAWLS) Inc. expressed shared this concern through their submission and requested the extension of SEAM be put on hold until more evidence is gathered.

CAWLS is concerned at the expansion of SEAM despite a lack of evidence that it has worked to positively impact school attendance in the trial communities. The evaluation of the 2009 model states that "SEAM did not demonstrably improve the rate of attendance of SEAM children overall, nor was any effect apparent at any stage of the attendance process in 2009". CAWLS asks the Committee to recommend that the expansion of SEAM be put on hold until substantive evidence is available to show that the serious step of suspending and/or cancelling parental income support payments works to significantly improve school attendance.<sup>128</sup>

3.149 The committee received advice from FaHCSIA and the Australian Department of Education, Employment and Workplace Relations however that evaluations of SEAM in 2009 and 2010 have found positive outcomes, and that no other evaluation is being conducted in late 2012. FaHCSIA advised that:

...an early 2009 evaluation report relating to SEAM's operation in the Northern Territory was released in mid-December 2011. A subsequent 2010 evaluation report has also been released and a copy has been provided to the committee. The 2010 report showed that SEAM is having a positive effect

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127 National Congress of Australia's First People, *Submission 224*, p. 23.

128 Central Aboriginal Women's Legal Service Inc., *Submission 317*, p. 4.

on both enrolment and attendance. From 2009 to 2010, students who were involved in the SEAM trial improved their attendance rates more than other children attending the same schools. We understand that this improvement was mostly a result of a decrease in unauthorised absences, those directly targeted by SEAM. Social worker contact provided by Centrelink was also shown to be vital in helping to improve the absence rates of referred students during the compliance period. This is particularly the case for students with higher absence rates, where assistance was provided to address attendance issues, helping to limit a relapse in absence rates.

These evaluations also outlined a number of areas in which SEAM could be improved. The government has acted on these recommendations. Accordingly, the new model of SEAM proposes as part of the Stronger Futures package has key differences from the existing SEAM model.<sup>129</sup>

3.150 The Australian Government also advised that a final evaluation of the SEAM trial will be conducted in 2012 and further evaluations are being planned to monitor the effectiveness of improving and integrating SEAM with the Northern Territory's *Every Child, Every Day* strategy.<sup>130</sup>

#### *Committee view*

3.151 The committee notes the intention for an evaluation of SEAM in 2012 and believes this evaluation, and any others conducted in relation to *Every Child, Every Day*, should be made available as soon as possible and inform future amendments in this policy area.

### **Recommendation 8**

**3.152 The committee recommends that the SEAM 2012 evaluation, and any other material monitoring the effectiveness of SEAM and the *Every Child, Every Day* initiative, be made publicly available as soon as possible following its completion. Timing of the evaluation's release is particularly important given the inappropriate delay in releasing the 2010 evaluation of SEAM.**

#### ***Punitive measures are ineffective in addressing school non-attendance and intensive case management approaches are required***

3.153 Suspension of income support payments under amended SEAM arrangements remain a last resort. This information however was often not evident in the understanding expressed by organisations and individuals who presented evidence to the committee. In their submission, the Australian Council of Social Services asserted that SEAM in the Northern Territory:

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129 Mr Michael Dillon, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 27.

130 Families, Housing, Community Services and Indigenous Affairs, *Submission 343*, p. 20.



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...started at the punitive and simplistic end of the range of potential solutions to a set of complex problems. It started with the imposition of a penalty, and then, in its various iterations, worked backwards to identify the causes of individual non-attendance through the use of social workers, and as proposed now (in conjunction with the Every Child Every Day initiative), via case conferencing and attendance plans. While these measures will help identify the underlying causes of non-attendance, they are unlikely to resolve them. That requires a combination of intensive case management and action to deal directly with the underlying problems including changes in school environments and their relationship to communities.<sup>131</sup>

3.154 The view of SEAM as simply a punitive measure was also shared in the NT Indigenous community of Ntaria who told the committee that:

...We have to praise our school because they work really hard for our children. The only thing most of the people are afraid of now is that, if their children do not attend school, they will be fined and they will be punished for that.<sup>132</sup>

3.155 The National Congress of Australia's First Peoples also stated that the implementation of SEAM under the bill 'does not address the underlying issues' and continues a punitive approach to address non-attendance.<sup>133</sup>

3.156 In addressing issues that lead to school non-attendance, the need to adopt a holistic approach was a common theme among submitters to the inquiry. The Aboriginal Peak Organisations in the Northern Territory (APO NT) welcomed the 'addition of conferencing and school attendance plans in addition to the more punitive aspects of SEAM'<sup>134</sup> in the amendments, however emphasised this support needs to be:

...a culturally relevant, strength-based intensive case management approach which seeks to work with parents to address the underlying reasons impacting on their children's school enrolment and/or attendance. The suspension of income support and family assistance payments should only be considered as part of such an approach.<sup>135</sup>

3.157 The Central Australian Aboriginal Legal Aid Service (CAALAS) shared this view, and stated that they:

...advocate for a culturally relevant, strength based, intensive case management approach, with officers working with school age children and their families to address the reasons behind poor school enrolment and poor

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131 Australian Council of Social Services, Submission 1, p. 4.

132 Ms Williams, *Committee Hansard*, 20 February 2012, p. 10.

133 National Congress of Australia's First Peoples, *Submission 224*, p. 23.

134 Aboriginal Peak Organisations of the Northern Territory, *Submission 330*, p. 4.

135 Aboriginal Peak Organisation of the Northern Territory, *Submission 330*, p. 7.

attendance. The suspension of schooling requirement payments should only be one component of that kind of approach.<sup>136</sup>

3.158 The committee heard broad support for intensive case management and the need to provide appropriate resources for these support services. The National Congress of Australia's First Peoples commented that the:

...level of support they will need to stay there and to achieve is significant, and I think there are real issues about the capacity and workforce to meet those needs. That is not to say it should not happen at all. If you want children to attend school they are going to have to be supported, ultimately, to do that.

...

The SEAM evaluation said some different things but it said that social worker contacts had more impact than the SEAM. On page 47 it said '...tailored social worker support was considered to be the most critical factor in addressing issues underlying poor school attendance'.<sup>137</sup>

3.159 FaHCSIA also identified social work support is vital to addressing issues underlying school non-attendance and identified this as a key difference in the legislative amendments:

...up front social work support for all families under SEAM will ensure that parents facing multiple complex barriers, thwarting their attempts to get children to school, are supported with tailored case management.<sup>138</sup>

3.160 The committee heard from the Australian Human Rights Commission that also advocated that a holistic approach be taken to this address issues as:

...that SEAM is the type of measure that could only be appropriate as a matter of last resort. It is certainly not a substitute for the provision of adequate educational facilities and also supporting communities.<sup>139</sup>

3.161 The Australian Government Departments explained to the Committee that the additional steps in the proposed amendments, such as the school attendance plans, provide for a more comprehensive, tailored response to addressing issues.<sup>140</sup>

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136 Miss Shanna Satya, Central Australian Aboriginal Legal Aid Service, *Committee Hansard*, 21 February 2012, p. 9.

137 Ms Jody Broun, National Congress of Australia's First Peoples, *Committee Hansard*, 1 March 2012, pp 13–14.

138 Mr Michael Dillon, Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 27.

139 Mr Mike Gooda, Australian Human Rights Commission, *Committee Hansard*, 1 March 2012, p. 3.

140 Mr Michael Dillon, Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 27.

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*Committee view and comment*

3.162 The committee is supportive of the additional steps outlined in the legislative amendments which provide for engagement of families prior to consideration being given to income support suspension, particularly the development of school attendance plans in section 124NC.

3.163 The committee notes the advice from the Commonwealth Government regarding additional support service resources being provided to the Northern Territory to facilitate these provisions, however suggests consideration be given to extending these resources to SEAM trial sites outside the Northern Territory.

***Criteria for designating persons responsible for the operation of a school for the purposes of the amendments***

3.164 The addition of subsection 124A(2) in the amendments provides that the Minister may, by legislative instrument, specify a class of persons for the purposes of defining the persons responsible for the operation of a school.<sup>141</sup> The committee heard from submitters that this amendment provides scope for a range of people being able to provide notices for the new Division 3A of Part 3C of the Social Security Administration Act and this should be made explicit in the legislation, not by legislative instrument.

3.165 Central Australia Aboriginal Legal Aid Service suggested school councils in Aboriginal communities should be identified as designated persons under the legislation as this would provide cultural considerations be included in decision making. CAALAS told the committee that:

...decisions made by persons responsible for the operation of the school that could result in suspensions of payment or even cancellations will be subject to social security appeal mechanisms. But we think that the legislation should specifically stipulate that people have access to that route of people. We also submit that school councils in Aboriginal communities should be designated as persons responsible for the operation of the school in conjunction with the employees of the department of education in the Northern Territory. This would allow school councils to contribute to decisions around compliance with school attendance plans and conference notices. It means that cultural considerations will be given their due weight in those decisions.<sup>142</sup>

3.166 The NT Department of Education also explained to the committee that there are currently two types attendance officers in the Territory school system, home liaison officers (remote communities) and Aboriginal and Islander education workers

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141 Social Security Legislation Amendment Bill, *Explanatory Memorandum*, p. 14.

142 Miss Shanna Satya, Central Australia Aboriginal Legal Aid Service, *Committee Hansard*, 20 February 2012, p. 9.

<sup>143</sup> These officers may be well placed to be part of decisions regarding school attendance and appropriate responses to address underlying issues.

*Committee view*

3.167 The committee believes criteria should be considered by the Minister regarding defining persons responsible for the operation of a school prior to setting these out in a legislative instrument. Criteria should be culturally relevant when referring to remote indigenous schools, such as specifying Aboriginal Liaison officers in the NT as persons responsible for operation of a school.

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143 Mr Gary Barnes, Northern Territory Government, *Committee Hansard*, 24 February 2012, p. 20.

# Chapter 4

## Other issues

### Consultation process

4.1 During the inquiry the committee considered significant evidence to indicate that there was a high degree of confusion amongst people in the communities who will be most affected by the measures in the Stronger Futures bills. There continues to be great confusion between the previous Emergency Response and the new process, and this too was reflected in the evidence given by submitters and the questions that witnesses asked of the committee during hearings.

4.2 In Ntaria the committee heard that people did not understand the difference between the Intervention and the Stronger Futures package.

All [the people] want to know is what is the difference between Stronger Futures and the intervention. That is what they want to know. What are the changes?<sup>1</sup>

4.3 Many submitters and witnesses also expressed their frustration with the consultation that took place around the Stronger Futures measures. There was a lot of concern about the perceived lack of consultation, but also about the way in which the consultation occurred, with evidence to suggest that officers and consultants running the consultations need to be better prepared for the task, and that more time needed to be taken building relationships with people to support effective communication.<sup>2</sup>

4.4 Given the confusion about the Emergency Response, and the content of the Stronger Futures package, and given also that there are many other policy reforms also taking place, the committee found that witnesses wished to give evidence on a wide range of matters. These included issues such as housing, or governance reforms that lie outside the Stronger Futures reforms.

4.5 The Commonwealth government, as part of the Closing the Gap initiative, has developed a framework for engagement with Aboriginal and Torres Strait Islander Australians, published as *Engaging Today, Building Tomorrow*. Developed in FAHCSIA, it was released in May 2011.

4.6 The need to improve engagement processes was made clear to the committee during its visit to the Northern Territory. It also noted the evidence from the Australian Human Rights Commission (AHRC). In its submission it commented:

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1 Ms Roxanne Kenny, *Committee Hansard*, 21 February 2012, p. 4.

2 Mr Peter Jones, Uniting Church Northern Synod, *Committee Hansard*, 23 February 2012, p. 9; Australian Human Rights Commission, *Submission 351*, p. 14.

The Commission is concerned that despite five years of effort under the NTER, both the Northern Territory and Australian Governments continue to lack the capacity and cultural competency to effectively implement the measures in the NTER (as redesigned through the proposed Stronger Futures Bills).

The capacity of government officials working with Aboriginal and Torres Strait Islander peoples must be developed to ensure engagement with local communities is effective. Therefore, it is suggested that government officials working with Aboriginal and Torres Strait Islander peoples must be supported with professional development training from nationally accredited training providers...

[T]he Commission is of the view that the Government should identify cultural competency as an essential skill required from its workforce. One way of doing this is by ensuring that identified criteria are used for all positions.<sup>3</sup>

4.7 The Commission reinforced the importance of cultural competency during its evidence. The committee notes that the Government's framework document does emphasise building trust and promoting dialogue as key to effective engagement.<sup>4</sup> Building relationships is an important part of this. The Director of Catholic Education in the Northern Territory, referred to the positive impact of enduring relationships in the following way:

I think it is very hard for us to have deep and meaningful consultation till we have an ongoing relationship, and that takes time. Those people coming up for SEAM do not have time. I think they make a good attempt, but I do not think it is really landing with the people themselves. One of the things I said before you came in is that you have to have consistency of faces. You have to have consistency. We employed my colleague Alan after a period of 30 years with DEEWR. One of the attractive things for us is that he can walk into any community and they actually know him and trust him. He has been known much longer than me or most people in the office. That is a critical part of change.<sup>5</sup>

4.8 The AHRC outlined key considerations for governments to achieve a culturally competent workforce in engaging with Indigenous communities. These included:

- The mandatory use of Identified Positions/Criteria for all positions in the public service that have any involvement with the Stronger Futures measures, and the requirement for relevant officers to have the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities

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3 Australian Human Rights Commission, *Submission 351*, pp 18–20.

4 *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians*, May 2011, p. 7.

5 Mr Michael Avery, *Committee Hansard*, 23 February 2012, p. 6.

- The development of targeted education and training programs with accredited training providers to facilitate the development of appropriate skills and cultural competency
- Increasing the capacity of Government Business Managers and Indigenous
- Engagement Officers to work with communities and build community engagement processes with a view to improving community engagement.<sup>6</sup>

## Recommendation 9

### **4.9 The committee recommends that governments work closely with the Australian Human Rights Commission to build a culturally competent workforce.**

4.10 FAHCSIA advised the committee of the consultation process that was undertaken, and the committee notes the published reports on consultation, referred to earlier in Chapter 1, as well as the independent evaluation on the consultation process that was commissioned by FAHCSIA and completed by Cultural and Indigenous Research Centre Australia.<sup>7</sup> Discussing the detail of consultations in Maningrida, FAHCSIA explained how it had used Cultural and Indigenous Research Centre Australia's analysis of 2009 consultations to help structure the 2011 consultations for Stronger Futures.<sup>8</sup>

4.11 FAHCSIA provided additional information to the committee regarding their consultation process in the NT through questions on notice, including communication products and the engagement framework that was used to inform this process. This information is at Appendix 6.

4.12 The committee considered evidence from the Australian Human Rights Commission which advocates the use of specific criteria to deliver effective consultation and engagement with Aboriginal and Torres Strait Islander communities in a culturally safe and secure way.<sup>9</sup> These criteria, developed by the Aboriginal and Torres Strait Islander Social Justice Commissioner, were outlined in their submission:

- The objective of consultations should be to obtain the consent or agreement of the Aboriginal and Torres Strait Islander peoples affected by a proposed measure, not simply to outline what is proposed. Consultation is a two way

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6 Australian Human Rights Commission, *Submission 351*, p. 8.

7 Cultural & Indigenous Research Centre Australia, *The Department of Families, Housing, Community Services and Indigenous Affairs, Report on Stronger Futures Consultation 2011 Final Report* (2011).

8 Families, Housing, Community Services and Indigenous Affairs, Response to Question on Notice #1, received 9 March 2012.

9 Australian Human Rights Commission, *Submission 351*, Features of a meaningful and effective consultation process and Appendix C, Creating Cultural Competency.

process, which includes listening to community's views and using this feedback to influence and develop proposals from government.

- Consultation processes should be products of consensus.
- Consultations should be in the nature of negotiations.
- Consultations need to begin early and should, where necessary, be ongoing.
- Aboriginal and Torres Strait Islander peoples must have access to financial, technical and other assistance.
- Aboriginal and Torres Strait Islander peoples must not be pressured into making a decision.
- Adequate timeframes should be built into consultation processes.
- Consultation processes should be coordinated across government departments.
- Consultation processes need to reach the affected communities.
- Consultation processes need to respect representative and decision making structures.
- Governments must provide all relevant information and do so in an accessible way.<sup>10</sup>

#### *Committee comment*

4.13 The committee recognises that the Commonwealth government has acknowledged that the way that the Northern Territory Emergency Response was introduced without consultation caused affront and hurt to Aboriginal people. The committee acknowledges that the government has been consulting with remote communities and town camps in the Territory about the Emergency Response and its future. It notes the efforts undertaken in 2008 by the Independent Review Board and in 2009 and 2011 by the Minister and her Department. The committee accepts that the Government has carried out these consultations in good faith and sought to make them as open and as transparent as possible.

4.14 Nevertheless, the committee is concerned that there remains misunderstanding of the stronger futures bills in the Northern Territory and that the committee has heard complaints raised about the manner in which the consultations were undertaken. The committee notes with serious concern the degree of confusion, and frustration expressed in relation to the Stronger Futures consultations. There appears to be a discrepancy between the level of consultation undertaken, as reflected in FAHCSIA's evidence and the consultation evaluation report, and the level of understanding within communities.

4.15 While the committee appreciates that the Commonwealth government made significant efforts to consult with people on the changes, and to inform them of the impact, more needs to be done to ensure that these processes are effective. The committee notes the development of the framework for engaging with Aboriginal and Torres Strait Islander Australians, but emphasises that the success of such a

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10 Australian Human Rights Commission, *Submission 351*, p. 15.



framework lies in commitment to implementation by agencies. It notes also the concern of the Australian Human Rights Commission that the capacity of communities has declined since the introduction of the Northern Territory Emergency Response,<sup>11</sup> and that this could make effective consultation more difficult.

4.16 The committee agrees with the Australian Human Rights Commission that the criteria (outlined in paragraph 4.12) should guide the way that governments and agencies engage with Aboriginal and Torres Strait Islander communities. Consultations should also build on the cultural competency principles advocated by the Australian Human Rights Commission.

### **Recommendation 10**

**4.17 The committee recommends that when conducting further consultation in relation to Stronger Futures the Commonwealth government:**

- **work with the framework provided by the Australian Human Rights Commission for meaningful and effective consultation processes that are culturally safe, secure and appropriate; and**
- **give consideration to the effective use of Land Councils in consultation processes given their knowledge and expertise in consulting appropriately with communities.**

### **10 year sunset clause and review timeframe**

4.18 The committee heard concerns from many submitters about the length of the sunset clause provisions of the Stronger Futures bill. An example of this evidence was presented by the Reverend Dr Gondarra OAM:

...the Northern Territory's emergency response took away any sense of cooperation with the Indigenous jurisdiction by introducing section 91 of the NTA law. Now the government wishes to extend this law for another 10 years. Our law is about justice and is active against crime. That is the Australian law. So why is this sanction necessary?<sup>12</sup>

4.19 Some submitters welcomed the length of investment in Aboriginal communities, however advised the committee that they were concerned that seven years is too far into the 10 year timeframe to conduct a review. The Northern Territory Coordinator General of Remote Service Delivery stated that the 10 year timeframe:

....does provide a degree of stability and certainty for Aboriginal people in communities here in the Northern Territory. It also provides an opportunity for some long-term planning—for proper community based planning, not the kind of planning processes we have seen to date. It also provides an opportunity for governments to make good on their commitments and

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11 Mr Mike Gooda, Australian Human Rights Commission, *Committee Hansard*, 1 March 2012, p. 2.

12 Rev Dr Djiniyini Gondarra OAM, *Committee Hansard*, 22 February 2012, p. 29.

practice about good governance, transparency in decision making and accountability and for undertaking jointly with Indigenous people a more rigorous monitoring and evaluation process over that time.<sup>13</sup>

4.20 Mr Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner stated 'the formal review of legislation at seven years is too far away to address these critical issues'.<sup>14</sup>

4.21 FAHCSIA provided evidence to the committee regarding the basis for the seven year review timeframe as follows:

...the rationale was to put it at a point where (1) it is not rushed and (2) it leads into what happens next, because the legislation does sunset at 10 years. So there is going to be a need to have a look at how things have gone and decide what is happening next, in 10 years time. So we felt, I think, that that was an appropriate time to place a comprehensive evaluation.<sup>15</sup>

#### *Committee view*

4.22 The committee agrees that long-term investment is needed in the Northern Territory as there is a breadth of evidence to suggest implementation requires time to see positive outcomes. As reflected in the Child Protection in the Northern Territory Report, 2010, 'implementation science tells us that if things are done well, it will take time to see any improvements'.<sup>16</sup>

4.23 The Committee notes that provisions in the two Stronger Futures in the NT Bills are to be reviewed starting 7 years after its commencement, and alcohol laws that are designed to benefit Indigenous Territorians including the provisions in the Stronger Futures Bills will be reviewed after 2 years. However, the Committee has also been made aware that the Government is also actively considering a new program funding package to strengthen additional services that were funded through the NTER. The program funding, if approved, may be the subject of a new National Partnership Agreement between the Territory Government and the Commonwealth.

4.24 In addition to points already discussed, the committee heard evidence of real concerns around the issues of homelands and the permits system. The committee

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13 Ms Olga Havnen, Northern Territory Coordinator General of Remote Service Delivery, *Committee Hansard*, 23 February 2012, p. 20.

14 Mr Mike Gooda, Australian Human Rights Commission, *Committee Hansard*, 1 March 2012, pp 3–4.

15 Mr Michael Dillon, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 1 March 2012, p. 55.

16 Report of the Board of Inquiry into the Child Protection System in the Northern Territory, *Growing them Strong, Together*, 18 October 2010, p. 18, [http://www.childprotectioninquiry.nt.gov.au/\\_data/assets/pdf\\_file/0009/49779/CPSR\\_Summary.pdf](http://www.childprotectioninquiry.nt.gov.au/_data/assets/pdf_file/0009/49779/CPSR_Summary.pdf) (accessed 7 March 2012).

considers that these issues must continue to be discussed with governments, communities and elders.

### **Recommendation 11**

**4.25 The committee recommends that in addition to the reviews of the legislation already announced, the Commonwealth also ensure that any National Partnership Agreement is the subject of an independent and public review and evaluation after 5 years.**

**Senator Claire Moore**

**Chair**



## **Additional Comments by Coalition Senators**

1.1 Coalition Senators make the following additional comments and recommendations concerning the Committee's inquiry into Stronger Futures in the Northern Territory Bill 2011, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011, and the Social Security Legislation Amendment Bill 2011.

### *Assessing licensed premises*

1.2 Coalition Senators agree with evidence provided to the committee that excessive alcohol consumption leading to alcohol-related harm is not just confined to Aboriginal people but is an issue that affects the entire community.

1.3 Clause 15 of Division 5 of the Stronger Futures in the Northern Territory Bill 2011 states that alcohol sales must be restricted where harm may be caused to 'Aboriginal people'. This clause ignores the fact that the entire community suffers directly or indirectly from the consequences of alcohol abuse.

1.4 Coalition Senators recommend that Clause 15 of Division 5 of the Stronger Futures in the Northern Territory Bill 2011 be amended to specify that an independent assessor may only be appointed where there is a reasonable belief that the sale of alcohol is causing harm in the 'community'. This removes any race based reference and stigma and clearly identifies that excessive alcohol consumption and alcohol abuse has community wide consequences and requires a whole of community commitment to ameliorate.

### **Additional Coalition Recommendation 1**

**All requests made by the minister to the Northern Territory government to appoint an independent assessor must be based upon a reasonable belief, that the sale of alcohol is causing harm in the community.**

### *Income Management referrals*

2.1 The *Social Security Legislation Amendment Bill 2011* inserts a new income management measure to enable income management referrals from State and Territory authorities.

2.2 Coalition Senators share the concerns raised by a number of submissions and individuals who provided evidence to the committee that there must be an established

and transparent appeals mechanism applicable to all income management referral processes.

2.3 Coalition Senators believe that while some State and Territory agencies that work with individuals and families may be suitable authorities to initiate an income management referral, because they have access to private information to base that referral, the decision must be able to be appealed by the individual or family.

2.4 Referrals from State or Territory authorities shall only be accepted by Centrelink if the authority is specified in legislation instrument and the authority has satisfied the minister that there exists an internal and external review mechanism for any decision made.

### **Additional Coalition Recommendation 2**

**State or Territory authorities may only be authorised by legislative instrument to refer an individual for compulsory income management where the minister is satisfied that an internal and external review mechanism exists for any decision made by that authority.**

### ***Stronger Futures Legislation Review Timelines***

3.1 The Committee received evidence in Darwin detailing some of the statistics that detail the level of disadvantage and disconnect experienced by Aboriginal people living in both remote and regional Northern Territory. The evidence from Dr Bath revealed that child safety and well being impacts and domestic violence remain disproportionately high when compared to not only non Aboriginal people in the NT but to Aboriginal people living in other States and Territories<sup>1</sup>.

3.2 Coalition Senators accept that long term change will require long term strategic investment and involvement by both Aboriginal people and governments. The systemic change required demands a degree of leadership and monitoring that the Coalition Senators believe is not evidenced through the Stronger Futures in the Northern Territory Bill 2011.

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<sup>1</sup> Dr Howard Bath, Northern Territory Children's Commissioner Committee Hansard p47 dated 23 Feb 2012

3.3 The Stronger Futures in the Northern Territory legislation proposes a 10 year timeframe with most provisions other than the alcohol measures being reviewed after 7 years.

3.4 A lengthy 10 year timeframe for the specific measures contained in the stronger futures legislation is considered counterproductive to achieving the necessary outcome of empowering individuals and communities to take control of their lives and of the management of their communities as soon as possible. The proposed legislation has also encouraged the emotive criticism that the government is embarking on a further 10 year intervention into the lives of Aboriginal people in the Northern Territory.

3.5 While long a term commitment and investment is necessary to overcome disadvantage and disconnect, addressing alcohol abuse and land tenure in communities is fundamental before there can be any advancements towards closing the gap on disadvantage. Resolving these issues must be achieved much earlier than the 10 years specified in the Stronger Futures in the Northern Territory Bill 2011.

3.6 There must be continual monitoring of programs and policies involving alcohol reforms, land tenure and community store standards with a formal review of progress to be completed after 3 years. The end goal being that the need for these measures contained in the Stronger Futures Legislation to be redundant and therefore lapse after 5 years.

#### **Additional Coalition Recommendation 3**

**The Stronger Futures in the Northern Territory Bill 2011, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill be formally reviewed after 3 years and lapse after 5 years from the date of assent.**

**Senator the Hon Nigel Scullion**

**Senator Sue Boyce**

**Senator Bridget McKenzie**





# **Dissenting Report**

## **The Australian Greens**

1.1 The Stronger Futures package of legislation effectively extends the measures put in place by Northern Territory Emergency Response (NTER) or 'Intervention'. The Australian Greens opposed the Intervention and we likewise oppose the Stronger Futures legislation. There is no substantive evidence to show that the Intervention has had a positive effect on the lives of Aboriginal people in the NT. Rather, Aboriginal people, their representative organisations, and the community sector have made it clear that the top-down, punitive nature of the Intervention is actually undermining and disempowering Aboriginal people and communities. The ineffectiveness of these measures is not surprising considering international research on Indigenous economic development points to the success of community driven measures over top-down approaches.<sup>1</sup>

### **Extension of an Ineffective and Expensive Approach**

1.2 The Australian Greens oppose the continuation of the ineffective and expensive approach of the Intervention. To date there has been no evidence the measures of the intervention have been effective. Rather, they appear to be eroding local governance and disempowering communities. Furthermore, the new legislative package has not been subject to effective consultation.

### ***Poor Consultation***

1.3 It became quite obvious from the start of this inquiry that the consultation process undertaken by the Government was totally inadequate. The vast majority of submissions and evidence addressing the consultation process expressed serious concern at how the consultations were carried out and the way comments were interpreted in the consultation report.

1.4 Numerous problems were raised about the process throughout the inquiry: meetings were scheduled at times people could not attend; inadequate notice was given, not enough time was given to discuss the issues; comments were misreported; there was no follow up and materials were not translated in local language.

1.5 The Australian Human Rights Commission summarises this in their submission:

The Commission has previously brought these concerns to the attention of the government in relation to the inadequacy of the consultation process as outlined below:

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<sup>1</sup> See research from the Harvard Project on Indian Economic Development, available at <  
<http://hpaied.org/>>

- the timeframe for consultations was inadequate given the scope and depth of the issues raised in the Stronger Futures Discussion Paper
- significant measures such as income management were not listed for discussion during the Stronger Futures consultation process
- despite the Australian Government's efforts to work with the Aboriginal Interpreter Service (AIS), there was neither sufficient time to translate the paper into the languages of Northern Territory communities nor to provide the Stronger Futures Discussion Paper to the interpreters sufficiently in advance of the consultations.<sup>2</sup>

1.6 This was reiterated by the NT Anti-Discrimination Commissioner:

In regard to consultation, as the commissioner in the Northern Territory, I have been told by many Aboriginal Territorians impacted by the Commonwealth intervention of their disappointment at federal consultations. In particular there were concerns that only a few were spoken to, that the duration of visits was too short and that some Aboriginal Territorians could not participate because of language, dialect or hearing impairments.<sup>3</sup>

1.7 Evidence provided by community members and their representative organisations also points to the inadequacy of the consultation process. This was particularly evident at Ntaria (Hermannsburg) where it became clear that there was very little knowledge about the contents of the legislation amongst community members attending the hearing. This is extremely troubling considering that the Government undertook consultations in that area.

1.8 The Maningrida community were particularly critical of the consultation process. Community members commented that meetings were disorganised and rushed; materials were not given in time for people to properly understand them; no one returned to follow up; and in one instance men and women were divided into separate groups for discussion, despite wanting to consult as group.

1.9 Mr Morrish CEO of, Bawinanga Aboriginal Corporation stated:

Just to clarify in relation to the consultation process, I want to bring a couple of points to the committee's attention. The discussion paper on Stronger Futures was actually handed to members of the community minutes—literally minutes—before the minister arrived for that consultation. I am not sure how community members, with low levels of numeracy and literacy in some cases, where English is a third or fourth language, are supposed to digest a 28-page document in a matter of minutes in order to have an informed consultation, and for the results of that consultation to be taken back and considered and used informing the Stronger Futures legislation. Certainly the Stronger Futures legislation

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<sup>2</sup> AHRC submission, p.13

<sup>3</sup> Mr Cubillo, Anti Discrimination Commissioner *hansard* 24 February p1

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report does not reflect in any knowing way what was actually said here. There were a number of clear statements made that certainly have not found their way into that report.<sup>4</sup>

1.10 Members of the Babbarra Women's Centre, supported this:

In fairness to everybody, including the politicians who came out, there was a lack of preparation. There was a lack of time for the community to digest, think about and discuss with their families what the policy really meant and how it would apply to them. Equally, when the minister and all her staff came in, it was just crazy. It was just so unorganised and everything branched off and everything was quick. People had not really even had time to consider the correlation between the policy and addressing it with the minister. They did not have time to do that...

At that time the men were separated from women or women separated from men. We were sitting over at the pub down at a big gazebo, tent, or whatever they call it, and actually no stories were being put together in the real world. This woman never came back to Maningrida after. She said, 'I'll be back to consult a second time.' We were hoping that they would be back, but nothing.<sup>5</sup>

1.11 It is self-evident that this lack of consultation has led to a lack of understanding amongst Aboriginal people about what the legislation contained. For example, Miss Shaw from the Intervention Rollback Action Group, speaking about her Grandfather's experience, stated:

There were no consultations at his nearest community—the only one he has ever known and the one he grew up in. So here he is: an old man who is almost 80—he looks very well for his age—who has lived on the same country his whole life as a caretaker, who is a prominent elder in his community and who is the holder of stories of his country. Yet he does not know anything about the three bills being passed... In my grandfather's community, for example, how they went about it is that a time and a place were booked for somebody to go out there, but a few days later a phone call was received to say it had been cancelled. The people in my grandfather's community were not consulted about the Stronger Futures. So they do not know. The only consultation that he had came from land council. If people are not going to have their say and their input into the Stronger Futures policy then how are you supposed to work in partnership and have genuine consultation with people? How are you going to find out what people's needs and wants are?<sup>6</sup>

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<sup>4</sup> Mr Morrish, Chief Executive Officer, Bawinanga Aboriginal Corporation, *hansard*, 22 February p.9

<sup>5</sup> Babbarra Women's Centre, *hansard*, 22 February, p. 16

<sup>6</sup> Miss Shaw, Intervention Rollback Action Group, *hansard*, 21 February, p.18 & 22

***Stronger Futures consultation report***

1.12 These problems were completely ignored in the *Stronger Futures Consultation Report*. Submissions and evidence received during the Inquiry outlined the following criticisms of the report: the report was not reflective of communities view; the way the information was statistically analysed was unsound and the information gathered did not inform the Government's approach or the drafting of the Bill.

1.13 It is deeply disappointing that the Government refuses to provide the feedback reports from the consultations to the Committee for review. It is extremely difficult for the Committee to comment on the veracity of the consultation report and quantitative analysis without the raw data collected in the feedback reports.

1.14 This is problematic considering that both submissions and evidence expressed concern at the analysis of data. For example, Ms Cox from Jumbunna House of Learning clearly outlines problems with the analysis undertaken by O'Brien Rich:

I have taught research methods for probably about 20 years in varying guises. You cannot have a system where you have got a whole lot of people recording things, probably in a fairly haphazard manner, particularly under what might be called a 'tier one'—which are many hundreds of things—where you have got a GBM or somebody who is writing some notes while having a bit of a chat to somebody and then you suddenly collect all of those notes, plus the notes from the tier two things, which also seem to be fairly chaotic and done in varying ways. And you hand them to somebody and you say, 'Analysis this.' They did not put it through an ethics committee. You yourself asked, or somebody asked, a question on that. It was never cleared through an ethics committee.

I think it is actually unethical as a researcher to use data which was collected in a way which was unprofessional in terms of research professionalism, and put it through SPSS. It is totally bizarre. I would fail any of students who came up with something and did it that way. It does not have any credibility in terms of the level of consistency about the way that the data was collected. It was collected by people who had a vested interest, in some cases.<sup>7</sup>

1.15 Here Ms Cox comments on the impartiality of staff recording outcomes from the consultation:

My concern is that these assertions [from the O'Brien Rich Report]... make it clear that any credibility at all relates to the quality of the recording of views given, which is nowhere validated. Or even made public! The research consultants make it clear that they can at best state their products as reflecting the documents they received but not whether these are accurate

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<sup>7</sup> Ms Cox, Adjunct Professorial Fellow, Jumbunna Indigenous House of Learning, *hansard*, 1 March p. 18

records of what went on. Given the process, the lack of objectivity by FaHCSIA staff note takers and their presumed limited formal research skills, all these results should be treated as very dubious. The question of biases in the recording of views needs to be addressed as the consultations were based on materials the Government had prepared and presumably were committed to implement.<sup>8</sup>

1.16 The evidence presented on the poor quality of consultations and the consultation report was extensive. This includes a comprehensive analysis of the consultation process by Jumbunna House of Learning, based out of the University of Technology in Sydney. Amongst other things the report concluded:

The Stronger Futures consultation process did not comply with Australia's obligations to meaningfully consult with Aboriginal and Torres Strait Islander peoples. Among other failings, the process was deficient because it:

- (i) Did not involve the affected Aboriginal people in the design or implementation of the process;
- (ii) Relied on materials that were dense, complex and were not translated into relevant Aboriginal languages;
- (iii) Was conducted in very general terms, without reference to specific proposals or potential initiatives, despite the fact that the proposed legislative measures must have been in draft;
- (iv) Was decidedly partisan and did not acknowledge previous criticisms of Intervention measures or acknowledge successful community led initiatives to address community aspirations;
- (v) Covered so many themes and asked so many questions that in depth discussion was not possible;
- (vi) Did not provide any mechanisms for reaching agreement;
- (vii) Did not include a clear process for feedback to communities to verify records of meetings; and
- (viii) Gave insufficient time for considered appraisal of the complex proposed legislative measures, especially from remote Aboriginal communities.<sup>9</sup>

1.17 The Government cannot claim they have consulted over particular measures in the legislation, or that they have informed consent because the Government carried out their consultation process on the discussion paper not the legislation. The Australian Greens cannot support policy based on insufficient consultation and which is biased in favour of predetermined outcomes.

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<sup>8</sup> Jumbunna House of Learning submission, p.8.

<sup>9</sup> "Listening but not Hearing A response to the NTER Stronger Futures Consultations June to August 2011", available from  
< [www.jumbunna.uts.edu.au/researchareas/ListeningButNotHearing8March2012.pdf](http://www.jumbunna.uts.edu.au/researchareas/ListeningButNotHearing8March2012.pdf) >

1.18 The poor quality of consultation undermines any claim that these initiatives can be classed as 'special measures' under the *Racial Discrimination Act*. The Government has classed certain aspects of the Stronger Futures suite as special measures, including tackling alcohol abuse, land reform, food security measures and amendments relating to pornography restrictions. According to the Australian Human Rights Commission (AHRC), referencing case law from the Federal High Court:

where an action is intended to qualify as a special measure under s 8 of the RDA, the wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the sole purpose of securing their advancement

In the Commission's view, the consent of the affected group, or at least the beneficiaries, is of paramount concern where punitive special measures operate by limiting certain rights of some, or all, of the affected group. As Brennan J considered in *Gerhardy v Brown*, "the dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them."<sup>10</sup>

1.19 According to the High Court,<sup>11</sup> the sole purpose of a 'special measure' must be to secure adequate advancement of the beneficiaries. If, as the AHRC says, proper consultation is a requirement of determining this advancement, the measures in Stronger Futures do not meet the requirement of a special measure under Australian law. This is extremely concerning as the impact of these measures on Aboriginal people is significant, and failing to meet this criteria could leave the Government open to legal action by affected people and communities.

### ***An approach which undermines and disempowers***

1.20 It has been made clear during the inquiry that the NTER has caused erosion of community governance and disempowerment of Aboriginal people. In particular through: the manner in which Federal, State and Territory Governments engaged with Aboriginal communities; the general 'top-down', punitive nature of NTER measures and their interaction with simultaneous reforms.<sup>12</sup> The parallel reforms to CDEP, remote service delivery, housing, homelands and abolition of Community Councils in the local Government reforms has "reduced control at the community level and increased centralisation of decision making."<sup>13</sup> As the AHRC notes comments "The feelings of disempowerment affecting these communities are symptomatic of a lack of control over issues directly affecting groups."<sup>14</sup>

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<sup>10</sup> AHRC submission para 236-7; see also, National Congress of Australia's First People submission p.17-19

<sup>11</sup> *Gerhardy v. Brown (1985) 159 CLR 70, 133* (Brennan J), cited in AHRC submission para 121

<sup>12</sup> AHRC submission para 70-71

<sup>13</sup> AHRC, submission para 73 citing ANTAR

<sup>14</sup> AHRC submission para 82

1.21 It is clear to the Australian Greens that Stronger Futures has not departed from this approach, nor has the Government made any attempts to address these major problems. This is extremely troubling as evidence indicates a top-down approach will not be effective and acutally undermines what the Government says it is trying to achieve: Aboriginal people having stronger futures and taking control of their lives.

1.22 Removing the ability for Aboriginal people to control their lives has negative impacts on their mental and physical health. As AMSANT notes:

the draft legislation will directly impact on health and wellbeing outcomes through its impacts in relation to the social determinants of health, impacts that we argue the government appears largely ignorant of. ... control and empowerment, culture and social exclusion and racism. These determinants are impacted in various ways by the Stronger Futures legislation with serious and unintended though predictable impacts, predictable because this is what the evidence shows us. For example, there is Canadian research which showed that first nation communities in Canada with the lowest levels of youth suicide were those with significant elements of community control and cultural empowerment. The Stronger Futures bills, by comparison, in failing to abandon an intervention approach, will further undermine the control and empowerment of individuals and communities and will enhance factors associated with social exclusion and racial targeting. Such adverse outcomes can be expected in relation to, for example, the continuation of compulsory income management, the expansion of powers of the federal, state and territory authorities, continued blanket bans on alcohol and restricted materials, and continuation of the extraordinary star chamber powers of the Australian Crime Commission directed at Aboriginal communities.<sup>15</sup>

1.23 This disempowerment was articulated in the evidence given by members of Maningrida Community. Mr Oliver, acting CEO of Malabam Health Board commented:

Do you all know what a lorrkon is? It is a hollow log. We use logs for coffins. Since the intervention and since this new policy has come in that is all we are seeing. We are seeing hollow people walking around. This place is definitely different from the place it was before the intervention. That is not to say that we do not have our issues; we do, as do a lot of other communities. Personally, and again this is only my personal view, they seem to be exacerbated and have been since the intervention. I am not confident that Stronger Futures is going to rectify any of that, but that is what we have got to deal with.<sup>16</sup>

1.24 This dissatisfaction with the Intervention was reiterated by Mr Gondarra of the Dhurili Clan Nation:

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<sup>15</sup> PATERSON, Mr John, Chief Executive Officer, Aboriginal Medical Services Alliance of the Northern Territory, hansard, Friday, 24 February 2012 p.47

<sup>16</sup> OLIVER, Mr Cyril, Acting Chief Executive Officer, Malabam Health Board, hansard 22 February, p.8.

If we want to see Aboriginal people better in education, better in jobs and better in any other area, we need to work together to build better legislation, because this particular legislation is not on. The Australian people should be asked to reject this legislation because it is racist. It is not helping our people. That is why we come before you and you are listening to us because we represent not stakeholders, not a department, not the service providers. We come here to represent people who are struggling, people who feel pain, people who are confused—what is going on?

Madam Chair, we want you to take this message from us. It is eating us like a cancer. We are always going to be, from the fifties until today, 2012, a puppet on a string of somebody else. We are not a free people. We are supposed to be the first people, the first nation, of this country. You should be learning so much from us than we are learning something from you. This is very important for us. We should be able to educate our people to stand and work together to build.<sup>17</sup>

1.25 As the AHRC writes, there is an:

Extensive body of research and evidence that shows Aboriginal community governance is a key factor for the sustainable development of Aboriginal Communities...This is supported by research from the Harvard Project on American Indian Economic development which demonstrates that when Indigenous Communities 'make their own decisions about what development approaches to take, they consistently out-perform external decision matters as diverse as governmental form, natural resource management, economic development, health care and social service provision.<sup>18</sup>

1.26 The top-down, paternalistic, punitive nature of the Intervention from the out set has meant that its ability to improve the lives of Aboriginal people in NT was extremely limited. Evidence of this can be found in the summary provided by Dr. Bath, NT Children's Commissioner, of ongoing child welfare issues in the NT:

The safety and wellbeing of children in remote areas and town camps is severely under threat in the Northern Territory and remains so. Their circumstances are perilous, even when compared to the circumstances of Indigenous children in other Australian jurisdictions. There is a mass of data supporting that contention. They have been documented widely. There have been a few improvements.

1.27 He then goes on to site the following:

- Up to 70% of children in some communities affected by otitis media
- Anaemia present in up to 40 per cent, with an average of around 22 per cent of remote area kids
- Exposure to neglect is dramatically on the rise.

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<sup>17</sup> Dr. Gondarra Oam , Dhurili Clan Nation, *hansard* ,22 February p.29.

<sup>18</sup> AHRC submission para 67-68



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- alarming rates of child suicide,
  - Infant mortality rates are still about 3½ times those of the rest of the country.
  - 46.8 per cent of children in the NT have multiple developmental disabilities. If we look at what is called the intervention zone, which is mainly the remote communities and the town camps, it has been estimated that the number rises to 60 per cent.
  - Indigenous people in the Northern Territory are hospitalised after being assaulted—at twice the rate of Indigenous people in other parts of Australia.
  - In 2010, for the night patrols in a target population of 29,000 adults they responded to over 100,000 incidents of violence.<sup>19</sup>

1.28 The ineffectiveness of the Intervention in improving the wellbeing of Aboriginal people in the NT is also evident when looking at the *Closing the Gap in the Northern Territory Monitoring Report*. The report details how school attendance has declined since 2009, that child hospitalisation rates have increased and confirmed incidences of personal harm and suicide have more than doubled since 2007. The Intervention was supposed to improve the lives of Aboriginal people but it has further disempowered them and has wasted resources. These resources could have been used to develop programs that were better targeted and were developed in partnership with Aboriginal people.

1.29 The Australian Greens **oppose** the continuation of the current approach through Stronger Futures. It is disempowering, ineffective and expensive – with the total cost of the Intervention climbing above \$1 billion dollars. We can only imagine what better outcomes would have been achieved if this money was spent on properly targeted, community directed programs.

### **Tackling Alcohol Abuse**

1.30 The Australian Greens support measures to address alcohol abuse but such measures must be developed in partnership with the community. The Greens are concerned that the measures contained in the Stronger Futures legislation don't adequately address alcohol abuse and may have unintended consequences. We support the emphasis on locally developed alcohol management plans but share community concerns at the increased layers of bureaucracy in developing them. We are also concerned that the harsher penalties contained in the new legislation may increase the rate of imprisonment and note that failing to address a floor price on alcohol undermines the effectiveness of all these measures.

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<sup>19</sup> Dr. Bath, Northern Territory Children's Commissioner, *hansard*, 23 February p.47-48

### *Alcohol bans and alcohol management plans*

1.31 The Australian Greens believe that blanket bans on alcohol, such as those imposed by the Intervention, are not the most effective way of tackling alcohol abuse particularly as the necessary supports such as adequate access to rehabilitation services have not been provided. We share the concern of AHRC<sup>20</sup> that this legislation automatically transitions prescribed areas into alcohol protected areas, imposing alcohol restrictions without consultation.

1.32 As Aboriginal Peak Organisations Northern Territory (APO NT) explain:

Until communities are in a position to own a decision to ban alcohol, they will find ways to circumvent it. The continuation of blanket bans ('alcohol protected areas') perpetuates the status quo, which has resulted in a drift to unsafe drinking and to townships<sup>21</sup>

1.33 This is supported by the submission of the AHRC:

evidence indicates that interventions imposed without community control or culturally appropriate adaptation and which stigmatise alcohol users do not work and can be counterproductive<sup>22</sup>

1.34 It is clear that for measures to be effective, they must be developed and implemented in partnership with Aboriginal people. The Australian Greens support alcohol controls where they have community support. The focus of the approach should be on phasing out alcohol bans and supporting communities to develop alcohol management plans (AMPs).

### **Australian Greens Recommendation 1**

**1.35 The Australian Greens recommend that alcohol bans should be transitioned to AMPs and communities should be adequately resourced and supported to develop them.**

1.36 In principle, we do not have a difficulty with the Minister approving AMPs as long as the process is not delayed by layers of bureaucracy.

### **Australian Greens Recommendation 2**

**1.37 The Australian Greens support the Committee recommendation that a time limit is placed on approval process of AMPs, and suggest a maximum of 30 days.**

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<sup>20</sup> AHRC submission para 253

<sup>21</sup> APO NT submission p.8.

<sup>22</sup> AHRC submission para 230.

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*Assessing licensed premises*

1.38 The Australian Greens support the provision which provides the Minister with the authority to request that the relevant Northern Territory Government Minister appoint an assessor to conduct an assessment of a licensed premise if it believed that the sale or consumption of liquor at or from a premise is causing substantial alcohol-related harm to Aboriginal people. However it is unclear why this provision relates only to harm to Aboriginal people, rather than to the community more generally.

1.39 As Dr. Boffa, Public Health Medical Officer of People's Action Alcohol Coalition (PAAC) noted:

...it would be preferable to remove the reference to Aboriginal people in the provision that gives the Commonwealth the powers to intervene and ask for an independent audit on particular alcohol outlets. It is not a racial issue. I think that could be amended to read that where any particular outlet is deemed to be causing excessive problems for 'the community', and not for 'Aboriginal people'. This is not a racial issue. In the Northern Territory, non-Aboriginal people drink at twice the level of other Australians and have much higher rates of alcohol related problems. Non-Aboriginal people who are addicted to alcohol are just as likely to gravitate towards the cheapest forms of alcohol as Aboriginal people are. There is nothing racially based about the message we are proposing and we do not think the bill should single out Aboriginal people in that way, although we do support very much the intent behind giving the Commonwealth minister the powers to order an independent review of particular outlets that are causing particular harm to the community.<sup>23</sup>

### **Australian Greens Recommendation 3**

**1.40 The Australian Greens recommend that paragraph 15(1)(a) of Division 5 of the Stronger Futures in the Northern Territory Bill 2011 be amended to remove reference to 'Aboriginal people' and replace that reference with 'the community'.**

#### *Harsher Penalties*

1.41 There was a great deal of concern expressed throughout the inquiry about increasing penalties for possession, consumption and supply of alcohol. In particular that amounts under 1.35 litres could attract a penalty of up to 6 months imprisonment.

1.42 APO NT noted this is their submission:

The NT already has amongst the harshest penalties in Australia for bringing alcohol into remote Aboriginal communities...A punitive response has not worked and there is no evidence than an additionally punitive response is what is needed.<sup>24</sup>

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<sup>23</sup> Dr Boffa, Public Health Medical Officer, PAAC, *Hansard*, 21 February, p. 34.

<sup>24</sup> APO NT submission p.9.

1.43 The Australian Greens oppose increasing penalties for offences relating to less than 1.35 litres, as it is unclear that punitive approaches are effective and it will likely lead to increased imprisonment of Aboriginal people in the NT.

1.44 This conclusion was supported by numerous submissions and evidence given.

1.45 Mr Hunyor, Principal Legal Officer from North Australian Aboriginal Justice Agency (NAAJA), asked:

where is the evidence that it is going to make any difference to increased penalties? I think one of the issues we need to look at every time an increase in penalty and an increase in imprisonment is imposed is: what is the opportunity cost if realistically that is going to mean sending more people to jail?<sup>25</sup>

1.46 This concern is supported by the AHRC:

The NTER Evaluation Report indicated there was a clear increase in alcohol related offences...The Commission therefore reiterates its standing concerns that the alcohol offences under the NTER continued by the Stronger Futures Bill may result in increased imprisonment of Aboriginal and Torres Strait Islander peoples<sup>26</sup>

1.47 Infringement notices provide a viable alternative to harsh penalties. Currently the legislation only makes an infringement available for the offence of defacing an 'alcohol protected area' notice. The Australian Greens believe that police officers should be allowed to issue notices for alcohol related offences under 1.35 litres.

1.48 It became clear throughout the inquiry, that what was needed was additional resources dedicated to culturally appropriate alcohol counselling and rehabilitation<sup>27</sup> – not increased penalties.

1.49 Ms Rosas from NAAJA highlighted the inappropriate emphasis on penalties rather than rehabilitation:

NAAJA recognise the need to do more to stop the damage caused by alcohol abuse in our communities, but increasing the penalties for alcohol related offences is not the answer. Aboriginal people already make up 80 per cent of the jail population in the NT. Locking more people up is not going to fix our problems and banning alcohol has not solved the problem. The alcohol bans have pushed drinkers further from their communities into very unsafe situations. We need to treat the disease. There is no professional counselling or treatment available in remote communities and

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<sup>25</sup> Mr Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, *hansard*, 23 February, p.40

<sup>26</sup> AHRC submission, para 299.

<sup>27</sup> See, eg APO NT submission p.9; Ms Haven, Northern Territory Coordinator General for Remote Services, *hansard* February 22 p.21; Ms Hoosan, Secretary, Central Australian Aboriginal Alcohol Programs Unit; *hansard* 21 February p44

we need rehabilitation centres. We need culturally relevant programs and services and we need more education in the schools to teach the younger generation the dangers of drinking and drug use. Governments need to work with elders to take ownership and responsibility of alcohol management plans and be part of the solution.<sup>28</sup>

#### **Recommendation 4**

**1.50 The Australian Greens share the concerns outlined by NAAJA and others and therefore recommend that current penalties for possession, consumption and supply of alcohol are not increased and that additional resources are committed for rehabilitation and counselling services in NT.**

**1.51 However, if the proposals proceed we recommend that the Bill is amended enable police to issue infringement notices for offences less than 1.35 litres to be issued.**

#### *Supply Reduction Measures*

1.52 What is sadly lacking from the Stronger Futures legislation is any attempt to reduce supply such as through setting a minimum floor price for alcohol and take-away free days. Evidence to the inquiry indicated strong support for this type of measure and provided strong evidence for the effectiveness of such measures.

1.53 PAAC highlighted:

National and international evidence indicates a direct link between:

- Raising the cost of alcohol and reducing consumption in the population; and
- Reduced alcohol consumption and decreases in alcohol-related harm, including hospitalisation and death

The World Health Organisation (WHO) research shows that the most effective measures are to raise prices based on alcohol content, and to reduce the availability of alcohol through strict licensing schemes limiting opening times and the number of outlets.<sup>29</sup>

1.54 They recommend:

The most effective supply reduction measures which the Commonwealth can and should take to reduce alcohol consumption in the NT are:

A minimum floor price on take-away alcohol at the price of full strength beer (1.20 per standard drink); and

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<sup>28</sup> Ms Rosas, Director, North Australian Aboriginal Justice Agency, *hansard*, 23 February, p.38

<sup>29</sup> PAAC submission, para 3.6

A take-away alcohol-free day preferably tied to a set welfare benefits payment day, but in any event to have one day a week on which to take away alcohol is not sold.

1.55 These measures were supported in numerous other submissions and evidence given, including that of the AHRC, the United Church, the NT Coordinator General and AMSANT.

1.56 It is disappointing to the Australian Greens that despite such clear evidence, the Government has not pursued a floor price, and continues with measures such as alcohol bans, which have less evidential basis and will be less effective if a more holistic approach to alcohol is not taken.

### **Australian Greens Recommendation 5**

**1.57 The Australian Greens recommend that the Stronger Futures legislation be amended to include the ability to establish a mandated floor price on alcohol across the NT, and explore – in consultation with communities, the implementation of take-away free days.**

### **Land Reform**

1.58 Submissions and evidence was broadly supportive of the aims of the land reform measures in the legislation.<sup>30</sup> It was in fact, the only area in the legislative package that had broad support.

1.59 The Australian Greens acknowledge that there is a genuine and pressing need for land reform in the NT to facilitate granting of leases for community infrastructure, utilities, home ownership and businesses. As such, we also support the intention of the legislation. However, we share the concerns of the CLC and the NLC who considered that the NT Government is better placed to make the reforms and that the regulation making power in the legislation is very broad.

1.60 As the CLC writes:

Ideally, comprehensive reform would be led by the Northern Territory government. In the absence of such proactive leadership by the Northern Territory government, the approach being taken by the Australian government in the Stronger Futures in the Northern Territory Bill 2011 and the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 is understandable but is not ideal. The regulation-making power proposed in relation to CLAs is very broad and we do not support it in its current form. The delegation of such extensive power over an important reform agenda to the executive creates difficulties because it requires the Aboriginal land owners and the land councils to

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<sup>30</sup> See eg: CLC, NLC and APO NT submissions

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unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time over the next 10 years.<sup>31</sup>

1.61 During the inquiry FaHCSIA implied they would give the NT Government time to complete the reforms before they acted.<sup>32</sup> Due to the urgency and importance of engaging in land reform, the Australian Greens support this section of the Bill, on the basis that it is only used as a last resort and that the NT Government is given time to proceed with the reform before the Minister takes action. We seek commitment from the Minister in this regard.

1.62 Finally, the Australian Greens share the concern of the Committee, that Land Councils must be adequately resourced if they are to work on CLAs as part of reform process. We therefore support the recommendation of the Committee that section 23 (1)(eb) should be amended to remove "at the Land Council's expense".

### **Food Security**

1.63 It is interesting to note that few submissions, and even less evidence addressed store licensing provisions. Generally submissions were supportive,<sup>33</sup> but there was some concern from one community store that licensing would have a negative impact.<sup>34</sup>

1.64 The Australian Greens are broadly supportive of a store licensing regime, which improves food security in Aboriginal communities and is community driven. However, we are concerned that the penalties in the legislation are unnecessarily harsh, and the monitoring powers are too broad.

### ***Enforcement and monitoring provisions***

1.65 As the AHRC notes, in the legislation "new enforcement arrangements carry civil and criminal penalties which may not always be a necessary or proportionate response to non-compliance"<sup>35</sup>

1.66 This is supported by APO NT:

APO NT is extremely concerned that the enforcement regime for a licence breach is extremely harsh, and that many stores will be unable to pay penalties. It will be extremely difficult for people in some communities to access any food and grocery items if community stores are forced to close (by virtue of incapacity to pay fine or by injunction)<sup>36</sup>

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<sup>31</sup> Ms Newell, Leasing Coordinator, Central Land Council, *Hansard*, 21 February p. 2.

<sup>32</sup> *hansard* 1 March 37-38

<sup>33</sup> See, eg: APO NT and AHRC submission

<sup>34</sup> See, Mr Morrish, Bawinanga Aboriginal Corporation *hansard* 22 February p.11

<sup>35</sup> AHRC submission para 365

<sup>36</sup> APO NT p. 38

The AHRC also expressed concern that monitoring provisions regarding entry, access to records and compulsion to provide information could potentially interfere with community store manager's and owner's right to privacy.<sup>37</sup>

1.67 The Australian Greens share the concerns outlined above and recommend that the Government closely monitor the use of enforcement and monitoring provisions to ensure they are being applied proportionately.

### *Consultations*

1.68 The Australian Greens welcome the requirement for consultation when making a determination about whether a community store licence is required. However, we note with concern the comments of the AHRC, that failure to meet this consultation requirement does not effect the validity of that determination.<sup>38</sup> It is vital to ensure that consultations are meaningful and effective. In this regard, we support the best practices standards outlined by the AHRC in appendix 2 of their submission.

### *Food Costs*

1.69 It is of great concern to the Australian Greens that this legislation does not attempt to address the issue of cost of food in remote communities in the NT.

1.70 As APO NT pointed out "there are no measures imposed in the draft bills to ensure that costs remain low and no suggestion that subsidisation has been considered by the Government."<sup>39</sup> This was supported by the AHRC: "While improving store management and governance is part of the solution to increasing access to affordable healthy choices, it is undermined by poor food supply in the Northern Territory."<sup>40</sup>

1.71 Considering the impact of high food costs across the NT on the health and wellbeing of Aboriginal people, the absence of measures to mitigate it is a glaring gap in the legislation.

### **Australian Greens Recommendation 6**

**1.72 The Australian Greens recommend that the Government explore ways to address food costs in the NT paying particular attention to recommendations 13-20 from the inquiry into community stores in remote Aboriginal and Torres Strait Islander communities.**

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<sup>37</sup> AHRC submission para 364

<sup>38</sup> AHRC submission para 367

<sup>39</sup> APO NT submission p. 38

<sup>40</sup> AHRC submission para 371



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## Customary Law

1.73 The Australian Greens support the provisions which will allow consideration of cultural practices and customary in bail or sentencing decisions for offences related to cultural heritage. However, we believe the legislation does not go far enough. The existing provisions, implemented as part of the Intervention, remove the discretion of judges to consider of Aboriginal customary law and cultural practices, and as such are deeply discriminatory, contribute to already climbing rates of incarceration and undermine Aboriginal culture.

### *Prohibition on considering Aboriginal culture is discriminatory*

1.74 Numerous submissions and evidence point to the inherent inequality in prohibiting judges from considering Aboriginal culture, when the dominant culture is being considered all the time.

1.75 Representatives from NAAJA commented on this in their evidence:

There is an American academic, Patricia Williams she is a black woman who describes the majoritarian privilege of not noticing one's self. That is the danger with this sort of law, that we, being white fellows, do not recognise our culture and our custom as we think that is the status quo. When it is Aboriginal people it is custom and culture and it is excluded. That is why at the core of this law there is something that really should trouble us.<sup>41</sup>

1.76 This is supported by evidence from the Central Australian Aboriginal Legal Aid Service:

We strongly oppose the exclusion of cultural practice and customary law from bail and sentencing considerations. .... Basically, our position is that this puts Aboriginal people into a different position for sentencing and bail purposes than any other member of the population when they come before the courts. It is a discriminatory practice that needs to be abolished. The argument that this gives better protection to Aboriginal women and children is a fallacious argument and in some instances people will be worse off because of this particular provision. Our strong position is that that section of the bill should be deleted.<sup>42</sup>

Commentary on the discriminatory nature of these provisions is not limited to the inquiry. Chief Justice Riley of the Supreme Court of the Northern Territory has commented on the negative impact of the law.

the court is not entitled to consider why an offender has offended and pass an appropriate sentence. The court is required to ignore the actual circumstances of the offending.' This 'means that the court must sentence in partial factual vacuum... Aboriginal offenders do not enjoy the same

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<sup>41</sup> Mr Hunyor, North Australian Aboriginal Justice Agency, *hansard*, 23 February, p. 42.

<sup>42</sup> Mr O'Reilly, Central Australian Aboriginal Legal Aid Service, *hansard* 21 February p.8.

rights as offenders from other sections of the community. It seems to me this is a backwards step.<sup>43</sup>

### ***Contributing to increased in incarceration***

1.77 It is well known that the NT has the highest imprisonment rates in the country. This rate is on the rise - in 2010-2011 the NT had the highest proportionate and percentage increase in prison numbers.<sup>44</sup> Removing judicial discretion to consider mitigating factors in bail and sentencing will do nothing to address this serious issue.

1.78 As APO NT noted "A system that inhibits the discretion of the court and the power of the experience and qualified decision maker to consider and weigh up all relevant facts, can only contribute to this alarming and increasing imprisonment rate."<sup>45</sup>

1.79 The Australian Greens firmly support this statement.

### ***Measures disempower Aboriginal people***

1.80 Finally, prohibiting the consideration of customary law sends a clear message to Aboriginal people – their culture does not matter. This is a serious dismissal and stands in stark contrast to international law and best practice which shows the vital role culture plays in improving outcomes for Indigenous people.

1.81 Ms Rosas, director of NAAJA commented on this issue:

For Aboriginal people before the courts, the law still excludes our customary law and culture from bail and sentencing. This says to our people that our customs and culture do not count or that they are part of the problem. This is insulting and offensive to us as Aboriginal people. The law says to the courts that they cannot apply the ordinary principles for setting their sentences. The courts cannot take into account all relevant factors when sentencing Aboriginal people. This is unfair and unjust. These provisions must be scrapped. Instead, government should be working with elders to take responsibility for offending in their communities.<sup>46</sup>

1.82 This sentiment was echoed by APO NT:

The emphases on culture that is often observed in Government consultations with Aboriginal people must be recognised. Aboriginal and customary law and culture has the potential to be used as a means of empowering Aboriginal people to take responsibility for offending within their own communities. Its exclusion sends the wrong message: that

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<sup>43</sup> Supreme Court of the Northern Territory, Centenary Ceremonial sitting, transcript available from <[www.supremecourt.nt.gov.au/media/documents/Ceremonial\\_30052011\\_CentenarySCNT.pdf](http://www.supremecourt.nt.gov.au/media/documents/Ceremonial_30052011_CentenarySCNT.pdf)>

<sup>44</sup> APO NT submission p.34.

<sup>45</sup> APO NT submission, p. 34.

<sup>46</sup> Ms Rosas, Director, North Australian Aboriginal Justice Agency, *hansard* 23 February, p 38

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Aboriginal culture and customs are not valued; and is in direct conflict with the expressions of Aboriginal people that culture must be strengthened.<sup>47</sup>

1.83 These provisions, taken from the Intervention legislation and slightly softened, are counterproductive to the Government's own aims of improving the wellbeing of Aboriginal people in the NT - building a 'stronger future.' They undermine Aboriginal culture and are clearly discriminatory.

1.84 As such the Australian Greens strongly oppose these provisions.

### **Australian Greens Recommendation 7**

**1.85 We recommend removing Items 3 and 8 from Schedule 4 of the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011*.**

**1.86 If these measures are not removed we recommend an independent review of the impact of provisions is undertaken three years after commencement.**

### **Permits**

1.87 It is disappointing to the Australian Greens that these Bills do not address changes made to the permit system as part of the Intervention. When the Intervention legislation was introduced to Parliament in 2007 the former government went to great lengths to imply a relationship between the permit system and child sexual abuse in Aboriginal communities, without presenting either any concrete evidence linking abuse of the permit system to cases of child abuse (or other aspects of Aboriginal disadvantage), or putting forward a logical argument of how the permit system might facilitate child abuse. They failed to demonstrate either correlation or causation.

1.88 Australian Greens believe that Aboriginal people should have the power to regulate access to their land. We share the concerns of the APO NT:

APO NT remains concerned that no mention of the changes made under the NTER to the permit system for access to Aboriginal Land was included in the Stronger Futures Discussion paper. No acknowledgement of the changes to the permit system is included in the policy documents or the Stronger Futures bills. Many residents of communities on Aboriginal land in the Northern Territory continue to feel as though they have lost control over who can and cannot come onto their land and wish to see the permit system reinstated in full.<sup>48</sup>

### **Australian Greens Recommendation 8**

**1.89 We recommend that the Government pursue repealing the permit system amendments made in 2008 that gave public access to certain Aboriginal land.**

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<sup>47</sup> APO NT submission, p. 35.

<sup>48</sup> APO NT Submission p.39; see also Northern Land Council , *hansard*, 23 February p.30-31

## **Income Management**

1.90 The Australian Greens strongly oppose the continuation of compulsory income management in the NT, its expansion to five communities in other states and the broadening of referral power to State and Territory authorities – enabling the expansion of income management across Australia.

1.91 We do not support the expansion of income management and believe that the entirety of Schedule 1 should be removed.

### ***Income management not discussed in consultations***

1.92 Evidence given during the inquiry indicates that income management was not discussed during the Stronger Futures consultation – nor were communities consulted on the five new trial sites where income management is being rolled out.<sup>49</sup> Given that income management is a highly contentious measure perhaps the Government had reservations in opening it up for consultation.

1.93 The AHRC comments:

The Commission is concerned by the breadth of Minister’s discretion, which allows income management to be introduced across the country without consultation with the affected communities. Indeed, there is no evidence that the communities in the five targeted areas were consulted prior to the Budget announcement or the introduction of the Social Security Bill.<sup>50</sup>

### ***No evidence income management works***

1.94 Numerous submissions pointed to the lack of evidence that income management leads to better outcomes or improved ability to budget. Ms Cox, from Jumbunna Indigenous House of Learning, stated unequivocally: “My conclusions were that the studies and statistics available showed no valid or reliable evidence of measurable benefits of income management to individuals or communities.”<sup>51</sup>

1.95 APO made similar comments, stating:

It is disappointing that the Government is seeking to expand the operation of income management without a clear evidence base that demonstrates its success in achieving its objective of protecting vulnerable women and children and encouraging socially responsible behaviours amongst welfare recipients. To date, a thorough and independent evaluation of income management has not been completed and publicly released.<sup>52</sup>

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<sup>49</sup> See eg: ACOSS submission p. 6 & 9; AHRC submission para 156

<sup>50</sup> AHRC submission para 58

<sup>51</sup> Jumbunna submission p.5. See, also Ms Walker, Acting Chief Executive Officer, Public Health Association of Australia, *hansard* 6 mar, p.1.

<sup>52</sup> APO NT submission p. 13

1.96 Beyond having no evidence it is effective, many submissions to the inquiry suggest that compulsory income management can actually disempower the people subject to it. As Public Health Association Australia, noted: “In addition to undermining autonomy and self-determination, which are pre-requisites for good health and wellbeing, universal compulsory income management violates Australia's human rights commitments and the principles of citizenship.”<sup>53</sup>

1.97 Given the lack of evidence and the potential to negatively impact on community empowerment, it is deeply concerning to the Australian Greens that income management is being rolled out to five new locations, and the *Social Security Legislation Amendment Bill* empowers the Minister to give referral powers to State and Territory agencies— ostensibly extending income management by stealth across Australia. As APO states, “Given that income management does not have unanimous support across Australia, the inclusion of a provision which enables the executive arm of Government to extend it so significantly is troubling.”<sup>54</sup>

### ***The potential of voluntary Income management***

1.98 The Australian Greens believe that a form of income management may be useful for some people in managing their finances but it will not be effective unless people enter into it voluntarily, and the processes involved are transparent and clear.

1.99 This was supported by evidence given during the Inquiry. As Ms Moore from PHAA explained:

The Public Health Association strongly supports voluntary income management with safeguards such as clear and transparent processes that are understood by the communities and by those individuals who are directly affected. It should, for example, include clear entry and exit criteria, the opportunity for the individuals to agree to the terms of income quarantined, transparent processes of decision making and an integrated service delivery model with clear referral pathways as well as planned and articulated payment procedures and guidelines that link this to community leadership.<sup>55</sup>

The Australian Greens could only support a voluntary system of income management and reject compulsory income management

### **Australian Greens Recommendation 9**

**1.100 We recommend that Schedule 1 is removed from the *Social Security Legislation Amendment Bill 2011*.**

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<sup>53</sup> PHAA submission p.5

<sup>54</sup> APO NT submission p.13

<sup>55</sup> Ms Moore, PHAA, *hansard*, 6 March p. 1. See also, APO NT, *hansard*, 21 February, p. 13; AHRC submission p.27; National Congress of Australia's First Peoples submission p 17.

### ***Referral Powers***

1.101 If the Schedule is maintained, we share the Committee's concerns that allowing referrals from State and Territory agencies may raise access to justice issues. However, rather than ensuring agencies have a review process as the Committee recommends, we believe a better approach would be to remove the power to refer by State and Territory agencies and ensure that decision making remains with the Secretary of Department.

### **Australian Greens Recommendation 10**

**1.102 We recommend that, should Schedule 1 be maintained in the Bill, Part 1 of Schedule 1 of the Social Security Legislation Amendment Bill be removed to ensure that State and Territory authorities do not have the power referral.**

**1.103 If referral is maintained in the Bill, we recommend that a maximum of 50% of income be deductible when people are referred from State/Territory agencies.**

### **School Enrolment and Attendance through Welfare Reform Measure (SEAM )**

1.104 Evidence heard during the inquiry was very clear – SEAM is not working and there is not enough evidence to support its expansion across the NT. Furthermore, the inquiry revealed that there are numerous community-supported, effective measures that have a better prospect of improving school attendance.

1.105 The Australian Greens therefore do not support the continuation of SEAM and are deeply concerned at the Government's attempts to do so, given the lack of evidence that it is effective.

### ***No evidence SEAM is effective***

1.106 Information provided during the inquiry supports the conclusion that SEAM has not significantly improved school attendance rates in the trial sites, and witnesses expressed serious concern that it was being extended across the NT.

1.107 The APO NT note in their submission:

The official evaluation of the SEAM trials is incomplete. Nevertheless, the 2009 Evaluation Report makes clear that in 2009 there was no observable improvement in school attendance. On this basis, APO NT submits that the introduction of the Social Security Bill, seeking to continue and in fact extend SEAM, is unjustifiable. Whilst there is optimism in the 2009 Evaluation Report that changes made to SEAM in 2010 have improved its effectiveness on school attendance, this is as yet unconfirmed.... APO NT does not support the expansion of SEAM in the absence of evidence

validating its capacity to contribute to significant and long-term improvements in school attendance.<sup>56</sup>

1.108 This lack of evidence was a theme throughout the Inquiry. For example, St. Vincent de Paul Society commented:

Prior to the commencement of the 2009 SEAM program, the senate committee inquiry into the Social Security and Veteran's Legislation Amendment (School Requirements) Bill emphasised that "...the outcomes of the pilot and subsequent evaluation must provide the basis for any further roll-out of the measures proposed in the Bill". However, the expansion of SEAM was announced before the final evaluation of the 2010 model was completed. The results of the evaluation of the 2009 model concluded that SEAM did not demonstrably improve the rate of attendance among SEAM children overall, nor was any effect apparent at any stage of the attendance process in 2009. The report contained only early data of the 2010 model.

Evaluations of comparable programs internationally are mixed but the literature tends to suggest that well designed, targeted and incentive based programs work significantly better than sanction based programs.<sup>57</sup>

1.109 The potential negative impacts of SEAM were outlined by Mr Jones General Secretary, of the Uniting Church Northern Synod:

It may be noted that school attendance rates in the Northern Territory have continued to decline overall, and the SEAM trial schools evaluation has also reported failure of the SEAM measure. This negative step will only further alienate parents and decrease the levels of support within communities. We request that this aspect be deleted from the SEAM legislation.<sup>58</sup>

1.110 Another area of concern raised during the inquiry was the inability of SEAM, even if it did manage to get children to school, to address barriers to learning. As noted earlier, Dr Bath, NT Children's Commissioner noted that 46.8% of children in NT have multiple developmental vulnerabilities as measured by the Australian Early Development Index. This is compared to an 11.8% national average. If we look at the 'intervention zone' it is estimated up to 60% of children have multiple developmental vulnerabilities.<sup>59</sup> Children with these vulnerabilities are going to require special assistance or "enriched programs to deal with those areas of vulnerability."<sup>60</sup>

1.111 Measures like SEAM which focus only on attendance will never be effective because the resources are not there to help children with special needs. As Dr. Bath comments:

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<sup>56</sup> APO submission p.20

<sup>57</sup> St. Vincent de Paul Society submission, p.2; see also AHRC submission para 186; 191-194 and Ms Havnen, NT Coordinator General, *hansard*, 23 Feb p. 20

<sup>58</sup> UC Darwin 1 p.10

<sup>59</sup> Dr. Bath, NT Children's Commissioner, *hansard*, 23 February, p.48

<sup>60</sup> *Ibid* p.50

It is hard. I do not think any of these measures are going to be effective by themselves, and I think the data on AEDI would support that contention. What is the point of forcing all those kids into school if they are not able to sit in a chair and attend to the teacher?<sup>61</sup>

### ***What would work***

1.112 Evidence cited during the inquiry pointed to the effectiveness of holistic, long-term, well designed, targeted and incentive based programs that are community led and community owned.

1.113 The inclusion of conferences and school attendance plans in the Bill are a step in the right direction, but they do not go far enough to have a positive, long-term impact on school attendance.

1.114 Throughout the inquiry numerous examples of effective measures were provided, often based on independent research or community consultations.

1.115 For example, St. Vincent de Paul Society noted that numerous proactive solutions to improving attendance were provided by communities during the Stronger Futures consultations. It is deeply disappointing that these suggestions were not incorporated into the Bills. They included:

- Development of programs to get elders to help parents get kids to school
- Return of bilingual education
- More language and culture in schooling,
- Using local elders to teach culture in schools
- homework centre in community where parents could help out at the centre
- football programs
- linking excursion and incentives to attendance
- Full time parent liason officers
- More teachers and qualified youth workers to work in community to develop quality
- programs for young people
- Community activities to bring children and parents together
- Local qualified teachers given preference over teachers from elsewhere
- Recruiting local people into teaching profession

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<sup>61</sup> *Ibid.*



- Specialised teacher training to work in Indigenous communities
- Get teachers to do specific training about the community and local culture
- Have the community involved in the process of hiring teachers
- Parent support groups
- School council
- Improvements to early childhood education
- mobile preschool
- community childcare
- community bus to get little ones into early education

1.116 Other positive measures put forward in submissions and evidence included:

- Cultural appropriateness of the school setting – including through the involvement of Aboriginal teaching personnel, parents and community members in all aspects of the schooling process from initial planning to implementation and delivery of programs; recognising the importance of Indigenous discourse.<sup>62</sup>
- Supportive ‘culture’ in the school that actively addresses bullying and harassment of Indigenous students.<sup>63</sup>
- Sport and motivational techniques - for example, the Clontarf program in Alice Springs has increased attendance rates up to 92% by using sport and motivational techniques to motivate students to stay at school.<sup>64</sup>
- High quality teachers who create a stimulating learning environment in the classroom.<sup>65</sup>
- Flexible school years, which work with cultural commitments.<sup>66</sup>
- Culturally relevant intensive case management<sup>67</sup>

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<sup>62</sup> AHRC submission para 189; ACOSS submission p.11

<sup>63</sup> AHRC submission para 189

<sup>64</sup> AHRC submission para 189

<sup>65</sup> AHRC submission para 189

<sup>66</sup> Manigrita School, *hansard* 22 February and Ms Havnen, NT Coordinator General, *hansard*, 23 February, UC *handsard* 23 February

<sup>67</sup> APO NT Submission, p.77; Miss Satya Central Australian Aboriginal Legal Aid Service *hansard* 21 February p.8; MASON, Ms Andrea, Coordinator, NPY Women's Council, *hansard* 21 February

1.117 However none of these measures are possible if schools in the NT continue to be severely under funded, and if the limited resources they have are focused on the administration of SEAM rather than more effective approaches.

1.118 As Ms Havnen, NT Coordinator General said:

The other comment I would make is that it is about the capacity of the schools to cope. Even if you had 100 per cent attendance, how many of our schools out bush would have adequate space, classrooms, desks and chairs and even teachers to be able to cope with that influx of kids? Also, if you are dealing with a bunch of kids who have been disengaged from school for a long time, I would suggest that the staffing ratio—students to teachers—would need to be reviewed as well, because I suspect a lot of those kids would be very difficult to manage in a classroom if you were just using the regular class sizes of 25 or 30 students per teacher.<sup>68</sup>

1.119 This was supported by the ARHC:

For some time, though, concern has been expressed that infrastructure to deliver education in Aboriginal communities has been seriously inadequate and that the Northern Territory government has not directed sufficient funding into this purpose ... As was noted in the Social Justice Report 2008, information about the level of services and facilities of schools in remote Aboriginal communities in the Northern Territory is notoriously lacking. This mitigates against appropriate planning which would ensure that adequate resources are allocated for schooling facilities.<sup>69</sup>

1.120 The Australian Greens are very concerned that the Government intends to spend over \$110 million over 4 years on a policy that cannot be shown to be effective when that money could be spent on properly resourcing schools in the NT and putting in place programs that will actually improve school attendance.

### **Australian Greens Recommendation 11**

**1.121 The Australian Greens recommend that schedule 2 is removed from the *Social Security Legislation Amendment Bill 2011* and that these resources are spent on the measures outlined above.**

**1.122 If the schedule is not removed, we make the following recommendations:**

- **The development of guidelines, in consultation with communities, for determining when an absence is ‘satisfactory,’ including appropriate consideration of cultural practices and obligations.**
- **School Councils to be included as ‘persons who are responsible for the operation of the school’ in their community.**

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<sup>68</sup> Ms Havnen, NT Coordinator General, *hansard*, 23 Feb p. 26

<sup>69</sup> AHRC submission para 188.

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- **Legislation must stipulate that a conference and school attendance plan must be requested prior to any consideration of cancellation of payments.**
  - **School action plans must be developed consultatively with families; they must be agreed upon and in writing and must be understood by the recipient.**
  - **School councils should be involved in the conferencing and the writing of attendance plans.**
  - **The Bill must expressly state that persons responsible for the operation of a school are officers under the social security law, in order to ensure access to appeal mechanisms.**
  - **Community education is needed to ensure Aboriginal people fully understand new SEAM.**

### **A call for a culturally competent approach which supports local governance**

1.123 The overriding message throughout the inquiry process was that the approach taken by the Federal Government is wrong. It disempowers Aboriginal people and erodes community governance. Because of this it will never be effective.

1.124 Many submissions called for a new approach - a culturally competent approach which supports communities to achieve their own development objectives through proper consultation; local governance and cultural competency. The Australian Green strongly support such an approach.

1.125 The NT Coordinator General addressed this in her evidence:

I think Aboriginal people also need to have appropriate levels of resourcing and access to independent professional and technical assistance to enable communities to make informed decisions when they are participating in those negotiations. I think it would also be helpful for government to pay much more attention to the question of capacity development. I would use the definition as set out by the UNDP, the United Nations Development Program, that states that this is:

...the process through which individuals, organisations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time.

I think if we were to use that particular definition about capacity development, engagement and decision making we might make substantial progress on the kinds of targets and initiatives that government and communities both want.<sup>70</sup>

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<sup>70</sup>See eg, Ms Havnen, NT Coordinator General, *hansard*, 23 Feb p. 19

### *Improved consultation*

1.126 The first step in such an approach is to ensure proper participation of affected communities through improving the Government's dismal consultation process.

1.127 The Australian Greens note that the Aboriginal and Torres Strait Islander Social Justice Commissioner has developed criteria for meaningful and effective consultation processes, based on international best practice.

### **Australian Greens Recommendation 12**

**1.28 The Australian Greens recommend that the Government use these criteria, present in Appendix 2 of the AHRC submission, to develop guidelines for all consultations involving Aboriginal and Torres Strait Islander Australians.**

**1.129 If the Bills proceed, the Australian Greens support the recommendations of the AHRC which propose that:**

**the objective clause of the Stronger Futures Bill be amended to include reference to the effective participation and engagement of Aboriginal and Torres Strait Islander peoples in matters affecting them;<sup>71</sup> and**

**the Bills are amended so that the definition of 'consultation' adopts the Commission's criteria for meaningful and effective consultation set out at paragraph 63 and appendix of their submission.<sup>72</sup>**

### *Supporting Community Governance*

1.130 As was outlined at the beginning of this report, the Intervention has had a significant detrimental impact on community governance in the NT. The Australian Greens firmly believe that until community governance is supported and strengthened, rather than weakened, any approach on improving the wellbeing of Aboriginal people will not be effective.

1.131 As the national Congress of First Peoples writes:

There is extensive Australian and international research which consistently concludes that active participation of Aboriginal people in decision-making on issues affecting their communities is fundamental to effective governance and a precursor to sustained development ... Furthermore, the legitimacy of governance arrangements is conditional on the structures and processes being recognised as conforming to the cultural norms within each community. As communities differ in their traditions and culture, no single model of governance will suit all communities...<sup>73</sup>

Community leadership, with local Aboriginal leaders focusing on establishing the institutions and processes for representing their

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<sup>71</sup> AHRC submission para 18

<sup>72</sup> *Ibid*, para 19

<sup>73</sup> National Congress of Australia's First Peoples submission para 64 & 66

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communities and engaging with government, is necessary for sustained development.

1.132 This is supported by the AHRC, as noted earlier:

The Commission agrees with and supports the extensive body of research and evidence that shows Aboriginal community governance is a key factor for the sustainable development of Aboriginal communities...

This is supported by research from the Harvard Project on American Indian Economic Development, which demonstrates that when Indigenous communities: “make their own decisions about what development approaches to take, they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.”<sup>74</sup>

1.133 Evidence indicates that communities must be empowered to make their own decisions.

1.134 The Australian Greens strongly support such an approach, programs which do not foster local governance are bound to fail. To do anything else would not only be counter-productive but would fly in face of years of domestic and international research. It is disappointing that the Government has not dedicated more resources to this end.

### **Australian Greens Recommendation 13**

**1.135 The Australian Greens recommend that the Federal and Northern Territory Governments must commit to appropriately resource (including financial and technical assistance), and prioritise programs that facilitate the development of community governance structures. Such measures enable and empower Aboriginal communities to engage with and control decision-making about their cultural, political, economic and social development goals .<sup>75</sup>**

### **Cultural Competency**

1.136 Finally, for efforts in the NT to be effective it is absolutely vital that Governments and their staff have the cultural competency to effectively implement programs As the AHRC explains:

The Stronger Futures engagement mechanisms and consultation processes will be ineffective unless they are supported by a skilled and culturally competent government workforce. The NTER Review Board found that new attitudes must be developed to redefine the relationship between the bureaucracy and Aboriginal and Torres Strait Islander peoples including a greater understanding of Indigenous cultures and world views.

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<sup>74</sup> AHRC submission para 67-68

<sup>75</sup> AHRC submission para 20

The capacity of government officials working with Aboriginal and Torres Strait Islander peoples must be developed to ensure engagement with local communities is effective.<sup>76</sup>

1.137 Cultural competency is defined as:

a set of congruent behaviours, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations. Cultural competence is much more than awareness of cultural differences, as it focuses on the capacity of the health system to improve health and wellbeing by integrating culture into the delivery of health services.<sup>77</sup>

1.138 Staff working with Aboriginal and Torres Strait Islander peoples need to ensure that their engagement builds and develops cultural safety within communities. To this end, external stakeholders must:

- remove the road blocks that inhibit Aboriginal and Torres Strait Islander peoples from taking control
- refrain from actions and processes that divide Aboriginal and Torres Strait Islander peoples
- create environments where Aboriginal and Torres Strait Islander peoples cultural difference is respected and nurtured
- remove the structural impediments to healthy relationships in Aboriginal and Torres Strait Islander communities.<sup>78</sup>

1.139 It is easy to see how the attitudes of Government staff, and the policies they contribute to, can either support or undermine Aboriginal and Torres Strait Islanders efforts to reach their own development goals. The Australian Greens strongly support ensuring that all staff working with Aboriginal and Torres Strait Islander people, or engaging in any relevant policy development have a very high level of cultural competency.

#### **Australian Greens Recommendation 14**

**1.140 To this end the, if the Stronger Futures legislation proceeds, Australian Greens recommend that the Australian and NT Governments implement the Stronger Futures measures in a culturally safe and competent manner. This requires the Government to ensure:**

- **the mandatory use of Identified Positions/Criteria for all positions in the public service that have any involvement with the Stronger Futures measures, and the requirement for relevant officers to have**

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<sup>76</sup> AHRC submission para 91-92

<sup>77</sup> AHRC Social Justice Report 2011, p. 150 citing The National Health and Medical Research Council

<sup>78</sup> AHRC submission para 104

- the appropriate skills and cultural competency to work with Aboriginal and Torres Strait Islander peoples and communities**
- **the development of targeted education and training programs with accredited training providers to facilitate the development of appropriate skills and cultural competency**
  - **increasing the capacity of Government Business Managers and Indigenous Engagement Officers to work with communities and build community engagement processes with a view to improving community engagement on the key issues facing communities**<sup>79</sup>

## **Conclusion**

1.141 The Australian Greens strongly oppose the passing of the three pieces of legislation in the Stronger Futures Package. Stronger Futures is nothing more than an extension of the Northern Territory Intervention. An extension embarked on without evidence that the Intervention has been or will be effective.

1.142 This extension will mean that the Intervention will ostensibly be in place for 15 years. While we welcome the commitment of resources for a further 10 years, subjecting people to an ineffective and damaging policy for 15 years is completely unacceptable. As such we do not support a 10 year sunset clause, believing it to be far too long.

### **Australian Greens Recommendation 15**

**1.143 If this legislation proceeds, the Australian Greens recommend that measures in the Stronger Futures legislation sunset after 5 years of operation.**

1.144 The Australian Greens believe that the Federal Government must re-examine the approach they are taking in the NT. International research and best practice points to the importance of empowerment and local governance in improving outcomes for Indigenous people. Stronger Futures, rather than empowering Aboriginal people, undermines their governance and devalues their culture. Until we see a change in approach, until Aboriginal people are empowered to lead their own development, efforts in the NT will not be effective.

1.145 The Government should abandon Stronger Futures.

### **Australian Greens Recommendation 16**

**1.146 The Australian Greens recommend the three Bills in the Stronger Futures Package not be passed.**

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<sup>79</sup> AHRC submission para 21

1.147 If neither the Government nor the Coalition can see the fundamental flaws in the approach of this legislation, substantial amendments are needed to mitigate the impact of these Bills.

Senator Rachel Siewert



# **Appendix 1**

## **Submissions received**

### **Submissions**

- 1** Australian Council of Social Service
- 2** Mr Peter Sainsbury
- 3** Ms Jepke Goudsmit
- 4** Name Withheld
- 5** Dr Rosie Scott
- 6** Remote Retail Services
- 7** Ms Nikki Brooker
- 8** Ms Deni Langman
- 9** Ms Liz Thornton
- 10** Ms Angeline Ferdinand
- 11** Indigenous Social Justice Association - Melbourne
- 12** Mr Rob Inder-Smith
- 13** Ms Christine Morris
- 14** Ms Emily Barker
- 15** Ms Christina Dwyer
- 16** Name Withheld
- 17** Revd Alex Adam
- 18** Name Withheld

- 19 Mr Peter Skilbeck
- 20 Mr Chris Daly
- 21 Mr/Ms B. Wilson
- 22 Ms Rebecca Nash
- 23 Mr Trevor Stockley
- 24 St Vincent de Paul Society
- 25 Mr Howard Tankey
- 26 Dr Vacy Vlazna
- 27 Dr Stefania Siedlecky
- 28 Name Withheld
- 29 Elders and Community of Ramingining
- 30 Confidential
- 31 Ms Lois Denham
- 32 Ms Gwyn Roberts
- 33 Ms Emma Lynch
- 34 Women's International League for Peace and Freedom - Australia
- 35 Ms Cally Hughes
- 36 Mr Jacob Kavunkal
- 37 Dr Hanna Middleton Mr Denis Doherty
- 38 Ms Christobel Mattingley
- 39 Ms Therese Quinn
- 40 statement NT leaders, read by Rev. Gondarra; Ms Kunoth-Monks OAM

- 41 Sr Christine Burke IBVM
- 42 Australian Yearly Meeting First Nations People Concerns Committee (YMFNPCC) of the Religious Society of Friends (Quakers) in Australia
- 43 Ms Kay McPadden
- 44 Sr Alma Cabassi rsj
- 45 Ms Virginia Burns
- 46 Ms Margaret Tonkin
- 47 Ms Patricia Radman
- 48 Ms Ruth Bence
- 49 Ms Jenny Smith
- 50 Ms Krystle Beauchamp
- 51 Mr Lou Hollis
- 52 Avila College Reconciliation Group
- 53 Ms Joan Lynn OAM
- 54 ESSQ Community Services Consultancy
- 55 Mr Roger Keyes
- 56 Mr David Matters
- 57 Ms Amanda Midlam
- 58 Rev. Gavin Blakemore
- 59 Ms Nicolette Boaz
- 60 Dr Anthea Nicholls
- 61 Dr Shefali Rovik

- 62 Name Withheld
- 63 Ian Thorpe's Fountain for Youth
- 64 Ms Jane Paterson
- 65 Mr Murray and Tina Vogt
- 66 Mr John Dexter
- 67 Ms Maureen Smith
- 68 Ms Sherry Thompson
- 69 Name Withheld
- 70 Ms Maureen McGuire
- 71 Ms Jabby Stewart
- 72 Ms Rose Read
- 73 Ms Emmanuelle Convert
- 74 Ms Katrina Prokhovnik
- 75 Women's Web Inc
- 76 Miss Jessica Phillips
- 77 Ms Aquillion Venables
- 78 Mrs Gedda Fortey
- 79 Mr Chester Graham
- 80 Mr Digby Habel
- 81 Ms Robyn Lucienne
- 82 Nilva Egana
- 83 Mr Bruce Hanna

- 84** Ms Josephine Joore
- 85** Ms Christine Jacques-Doolan
- 86** Ms Verity Santy
- 87** concerned Australians
- 88** Ms Janet Grevillea
- 89** Ms Jenny Dowling
- 90** Indigenous Consulting Group
- 91** Ms Grace McCaughey
- 92** Ms Elizabeth Bodkin-Moore
- 93** Ms Carol Rose
- 94** Mr David Russell
- 95** Dr Sherrie Cross
- 96** Mr David Blackman
- 97** Mr Chris Woodland
- 98** Sr Esmev Herscovitch
- 99** Mr Brian Loffler
- 100** Dr John Tomlinson
- 101** Mr Bruce Brown
- 102** Dr John Bardsley and Wendy Radford
- 103** Ms Julie Cunningham
- 104** M Luca Moutafian
- 105** Ms Klari Gidofalvy

- 106** Ms Gisela Gaflig
- 107** Ms Ruth Varenica
- 108** Mr Freddy Drabble
- 109** Ms Ella Ryan
- 110** Ms Rebekah Copas
- 111** Mr Ned Iceton
- 112** Mr Trevor Fear
- 113** M A. Vyas
- 114** Ms Christine Jacques-Doolan
- 115** Council of Single Mothers and their Children Victoria, Inc
- 116** Mr Lynden Baxter
- 117** Ms Michelle Troop
- 118** Ms Merron Selenitsc
- 119** Ms Celestine Pooley
- 120** Mr Shane Nelson
- 121** Associate Professor Michael Adams
- 122** Professor Karen Malone
- 123** Sr Marianne Zeinstra rsj
- 124** Ms Anna Gibson
- 125** Mr Michael Harrison
- 126** Ms Nicole Gale
- 127** M Penca Rafiqi

- 128** Ms Heather Herbert
- 129** Mr Michael Diplock
- 130** M Viesha Lewand
- 131** Ms Eva Havas
- 132** Ms Genevieve Ryan
- 133** Ms Grace Drahm
- 134** Fr Peter Maher
- 135** Sisters of St Joseph Victorian Province Justice Peace and Social Issues Group
- 136** Ms Russell Shields
- 137** Mr Robert Brocksopp
- 138** Friends of Bilingual Learning
- 139** Mr Richard Morrow
- 140** Ms Lorraine Julie Williams
- 141** Mr Joseph Annetts
- 142** AWD Aboriginal Justice Support Group
- 143** Aboriginal Support Group “ Manly Warringah Pittwater
- 144** Mr Gary Burdett
- 145** Dr M Bastable
- 146** Dr Sheila Collingwood-Whittick
- 147** Ms Kim Hoggard
- 148** Mr Sean Simpson
- 149** Ms Mary Ashton

- 150** Mr Gary Lang
- 151** Ms Heather Reed
- 152** Mr John Buckskin
- 153** Ms Lucy Ridsdale
- 154** Mr David Price
- 155** Mr Daniel Jackson
- 156** Ms Jan Brahe
- 157** Ms Bindi Isis
- 158** Mr William Peter Callender
- 159** Public Health Association of Australia (PHAA)
- 160** Ms Anna Bridle and J M Owens
- 161** Ms Keelah Lam
- 162** Ms Monika Genau
- 163** Revd Paul Arnott
- 164** Ms Carrie White
- 165** Mr Stanislaw Pelczynski, and Ms Barbara Pelczynska
- 166** Mr Graeme Taylor
- 167** Mss Gabrielle Smith
- 168** Art Central, Moruya
- 169** Darwin Aboriginal Rights Coalition
- 170** Sr Elizabeth Young
- 171** Ms Patsy Worledge



- 172 Confidential
- 173 Ms Jacinta McEwen
- 174 Rev Basil Schild
- 175 Social Justice Committee of the Uniting Church Electra Street Williamstown
- 176 Josephite SA Reconciliation Circle
- 177 Ms Jean Giese
- 178 Ms Erica Jolly
- 179 Ms Carmen Robinson
- 180 Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU)
- 181 Ms Judy Janssen
- 182 Ms Barbara Cliff
- 183 Ms Norma Andrews
- 184 Mr Richard Winzor
- 185 Ms Hilda Buckley
- 186 Confidential
- 187 Mr Ian Kilminster
- 188 Mr Daniel Hickson
- 189 Confidential
- 190 Australian Hotels Association (NT Branch)
- 191 Mr Tony Cox
- 192 Julalikari Council Aboriginal Corporation
- 193 Mr Kevin Conway

- 194** Ms Anne Holder
- 195** Women's International League for Peace and Freedom - Australian Section
- 196** Ms Caroline Davis
- 197** Mr Graham Carter
- 198** Ms Anne and Mr Bill Byrne
- 199** Ms Sue Williamson
- 200** Mr Greg Marks
- 201** Ms Colleen Keating
- 202** Ethnic Child Care Family and Community Services Cooperative Ltd
- 203** Ms Marion Caris and Co.
- 204** Alcohol and Other Drugs Tribunal, Department of Justice, Northern Territory Government
- 205** Ms Rachel O'Shea
- 206** Ms Sue Gilbey, Dr Alitya Rigney and Ms Pilawuk White
- 207** Mr Peter Fensham
- 208** Ms Vina Duplock
- 209** Dr H.C. Cairns
- 210** Ms Helen Huszar-Welton
- 211** Reconciliation for Western Sydney
- 212** Sr Marie Williams
- 213** Ms Megan James
- 214** Ms Anne Green

- 215** Ms Anita Davis
- 216** Mr Damien Curtis and Ms Sinem Saban
- 217** Indigenous Concerns Group, Victoria Regional Meeting, Religious Society of Friends (Quakers)
- 218** Ms Janet Jones
- 219** Mr Arthur and Natascha Yandell
- 220** Ms Kristal Yee
- 221** Mr Jim Morris
- 222** Ms Ann Miranda
- 223** Ms Marlene Hodder
- 224** National Congress of Australia's First Peoples
- 225** Ms Leonie Nampajinpa Chester
- 226** Dr Graham Bond
- 227** UnitingJustice Australia, Uniting Church in Australia National Assembly
- 228** Ms Michaela McCarthy
- 229** Ms Inga Lie
- 230** Mr Bill Armstrong
- 231** Sr Carmel Hanson rsj OAM
- 233** Birmingham International Film Society
- 234** Brother Moy Hitchen cfc
- 235** Mr Tony Riches
- 236** Ms Susan Andrus Olson

- 237 Mr Gary Oraniuk
- 238 Ms Victoria Whelan
- 239 Ms Wendy Webster
- 240 Ms Hayley Bruce-Gordon
- 241 Ngoonbi Co-Operative Society Limited
- 242 Ms Daphne Naden
- 243 Ms Raelene Silverton and family
- 244 Human Rights Law Centre
- 245 Ms Monique Bond
- 246 Ms Barb McLean
- 247 Ms Joyce Dodge
- 248 Ms Alison Stevens
- 249 Dr Brenda Dobia
- 251 Ms Sharon Campbell
- 252 Dr Ingrid Slotte
- 253 People's Alcohol Action Coalition (PAAC)
- 254 Ms Vivienne Duncan
- 255 Ms Penelope Hill
- 256 Mr Dean Martin
- 257 Ms Pat Adams
- 258 Mr Nikko Raffin
- 259 Ms Jasmine Graham

- 
- 260** Ms Lindsay Holmes
- 261** Victorian Council of Social Service (VCOSS)
- 262** Aunty Janet Turpie-Johnstone
- 263** Intervention Rollback Action Group
- 264** Woodville Community Services Inc.
- 265** Burdon Torzillo and Associates Pty Ltd
- 266** Metro Migrant Resource Centre
- 267** Justice Empowerment Mission Inc
- 268** Committee on Racial Equality
- 269** Mr Leon Terrill
- 270** Darwin Community Legal Service
- 271** Amnesty International Australia
- 272** St John's Social Justice Group
- 273** Ms Anne McNamara
- 274** Ms Kris Keogh
- 275** Ms Lyndal Walker
- 276** Ms Barbara Rachel Shaw
- 277** Mr Alan Hockey
- 278** National Council of Single Mothers and their Children
- 279** M Ras Roni
- 280** Youth Affairs Network of Qld
- 281** Ms Bernadette McPhee

- 282** Mrs Suzanne Gillett and Mrs Daphne Lake
- 283** Ms Alma Dawe
- 284** Good Shepherd Youth and Family Service
- 285** Las Casas Dominican Centre for Justice, Peace and Care of Creation
- 286** Ms Sabine Kacha
- 287** Bennelong and Surrounds Residents for Reconciliation
- 288** Secretariat of National Aboriginal and Islander Child Care (SNAICC)
- 289** Rev Jack Goodluck
- 290** Tangentyere Council
- 291** Mr Phil Bradley and Ms Annie Nielsen
- 292** Mr Michael Mansell
- 293** Mr Ian Viner
- 294** Ms Rosa McKenna
- 295** Ms Ashley Byrnes
- 296** Miss Penny Smallacombe
- 297** Miss Odette Nightsky
- 298** Ms Jessica Kilby
- 299** Ms Audrey Guy
- 300** Councillor Irene Doutney
- 301** Name Withheld
- 302** Name Withheld
- 303** Name Withheld

- 
- 304** Name Withheld
- 305** Mr Jeff Randles
- 306** Ms Rhiannon Hall
- 307** Ms Linda Seaborn
- 308** Dr Catherine De Lorenzo
- 309** Miss Donna Smit
- 310** Mr Michael Gravener
- 311** Ms Margaret Spong
- 312** Ms Barbara Hadkinson
- 313** Mr J. Reuben Silverbird
- 314** Mr David Haines M.B.,B.S
- 315** Ms Toni Malamoo
- 316** Jumbunna, Indigenous House of Learning
- 317** Central Australian Women's Legal Service
- 318** Mr Rob OBrien
- 319** Australian Lawyers Alliance
- 320** Ms Michelle Flaskas
- 321** Ms Elizabeth Rice
- 322** Ms Lesley Reilly
- 323** Name Withheld
- 324** Ms Regina Camilleri
- 325** Aboriginal and Torres Strait Islander Legal Service (Qld) Limited
- 326** Ms Tobiah Amery

- 327** The Office for Justice and Peace, Catholic Archdiocese of Melbourne
- 328** Ms Diane Johnson
- 329** Ms Judy Lewis
- 330** Aboriginal Peak Organisations Northern Territory
- 331** Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council
- 332** Indigenous Social Justice Association
- 333** Mr Tauto Sansbury
- 334** Mr Nigel Mannock
- 335** Ms Elaine Peckham
- 336** Victorian Aboriginal Legal Service Co-operative Limited (VALS)
- 337** Ms Susan Shore
- 338** Mr Carlo Canteri
- 339** Ms Laura Diete
- 340** NT Shelter
- 341** Northern Territory Legal Aid Commission
- 342** Mr Sam Elliott
- 343** Department of Families, Housing, Community Services and Indigenous Affairs
- 344** Ms Ruth Lipscombe
- 345** Ms Donna Jackson
- 346** Reconciliation Australia
- 347** Central Land Council



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- 348** Oxfam Australia
- 349** Goulburn Valley Community Legal Centre Pilot
- 350** ACM Sydney
- 351** Australian Human Rights Commission
- 352** Mr Bob Durnan
- 353** Ms Dawn Teague
- 354** Ms Margaret Evans
- 355** Mr Anthony Martin
- 356** Mr John Fraser
- 357** Ms Alexia Wishart
- 358** Ms Dawn Gordon
- 359** NSW Women's Refuge Movement
- 360** Professor Jon Altman
- 361** Northern Land Council
- 362** Ms Donessia McDonald
- 363** Mr Jack Andrew Wilkie-Jans
- 364** Rev Deacon Katharine Davies
- 365** Law Council of Australia
- 366** National Aboriginal and Torres Strait Islander Catholic Council
- 367** Eastern Suburbs Organisation for Reconciling Australia
- 368** Ms Margaret McIntyre
- 369** Ms Hannah-Clare Johnson

- 370** Ms Michelle Hoog
- 371** Ms Maureen Magee
- 372** Ms Catherine Hutchison
- 373** remoteFOCUS Project, Desert Knowledge Australia
- 374** Stop the Intervention Collective Sydney (STICS)
- 375** Mr Paul Howorth
- 376** Ms Wendy Salter
- 377** Mr Harry Nelson, Mr Frank Baarda and Ms Valerie Martin
- 378** Warlpiri people of Yuendumu
- 379** Ms Leonie Harrison
- 380** Ms Kathy H
- 381** Tasmanian Aboriginal Centre Inc
- 382** Ms Wendy Baarda, and Ms Yasmine Musharbash
- 383** Northern Territory Licensing Commission
- 384** Mr Stephen Langford
- 385** Mr Tas Jurs
- 386** Waltja Tjutangku Palyapayi
- 387** Queensland Council of Unions
- 388** National Welfare Rights Network
- 389** Mr Jeremy Drew
- 390** Name Withheld
- 391** Ms Rebecca Taylor

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- 392** The Salvation Army (AUS)
- 393** Ms Rebecca Hooper
- 394** Name Withheld
- 395** Rev Basil Schild
- 396** Name Withheld
- 397** Mr Bramwell Morton
- 398** Ms Cecilia Homerlein
- 399** Sr Carmel Heagerty rsm
- 400** Ms Cammi Marshall
- 401** Mrs Carmel Cowan
- 402** Name Withheld
- 403** Department of the Chief Minister, Northern Territory Government
- 404** Name Withheld
- 405** Ms Cheryl Howard
- 406** Name Withheld
- 407** Name Withheld
- 408** Mr C Smyrnis
- 409** Mr/Ms M Smyrnis
- 410** Ms Linda Oke
- 411** Miss Kristina Olsen
- 412** Name Withheld
- 414** Ms Julie Bain

- 415 Mr John Baxter
- 416 Miss Jillian Kramer
- 417 Mr Jesse Mitchell
- 418 Mr Jamie Edgerton
- 419 Mr James Sturtz
- 420 Mr James Morris
- 421 Miss Hayley Sestokas
- 422 Mr Hans-Josef Mauve
- 423 Mr Frank Kennedy
- 424 Mr Steven Mitchell
- 425 Miss Sharon Wright
- 426 Ms Semra Guler
- 427 Ms Sarah Ryan
- 428 Ms Renuka Potter
- 429 Ms Sarah Colgan
- 430 Name Withheld
- 431 Mr Graeme Taylor
- 432 Ms Susan Chalcroft
- 433 Ms Rosemary Drabsch
- 434 Dr Michael Mullerworth
- 435 Ms Cristel Chambers
- 436 Mr Robert O Makinson

- 439 Mr Richard Green
- 440 Dr Liselott Muhlen-Schulte
- 441 Mr Gary Bennell
- 442 Mr John J Martin
- 443 Mr David Hewitt
- 444 Mr Rowan Foley, Australian Labor Party
- 445 Committee on Racial Equality (CORE)
- 446 Office of the NT Coordinator General Remote Services
- 447 National Legal Aid
- 448 Dr Louise Samways
- 449 Mr Hal Duell
- 450 M. Fatmata Bangura
- 451 Australians for Native Title and Reconciliation
- 452 NT Indigenous Affairs Advisory Council

### **Form Letters**

Form Letter Style 1, received from approximately 527 individuals.

Form Letter Style 2, received from approximately 33 individuals.



## **Appendix 2**

### **Public hearings**

*Monday, 20 February 2012 – Hermannsburg*

**Witnesses:**

Mr Garrard Anderson

Conrad

Mr Mark Inkamala

Mr Daryl Kantawarra

Mr Rex Kantawarra

Ms Roxanne Kenny

Mr Selwyn Kloeden

Ms Ada Lechleitner

Ms Robby Leyden

Ms Mavis Malbunka

Mr Alan Nash

Mr Patrick Oliver

Mr Joseph Rontji

Ms Raelene Silverton

Ms Cassandra Williams

Ms Serena

Mr Windley

*Tuesday, 21 February 2012 – Alice Springs*

**Witnesses:**

**Central Land Council**

Mr Julian Cleary

Ms Virginia Newell, Leasing Coordinator

Mr David Ross, Director

Ms Jayne Weeper, Senior Policy Officer

**Central Australian Aboriginal Legal Aid Service**

Mrs Mary Le Rossignol

Mr Mark O'Reilly

Ms Katie Robertson

Miss Shanna Satya

**NPY Women's Council**

Ms Andrea Mason, Coordinator

**Mr Tommy Jungala, Private capacity**

**Intervention Rollback Action Group**

Miss Barbara Shaw

**Tangentyere Council**

Mr Michael Klerck, Policy Officer

Mr Walter Shaw, Chief Executive Officer

Ms Patricia Turner, Manager, Early Childhood, Youth and Family Service Division

**People's Alcohol Action Coalition**

Ms Vicki Gillick, Policy Coordinator

Dr John Boffa, Spokesperson



**Central Australian Aboriginal Congress**

Dr John Boffa, Public Health Medical Officer

Ms Leshay Maidment, Deputy Chief Executive Officer

**Mt Nancy and Bazzo Town Camps**

Ms Eileen Hoosan, Secretary, Central Australian Aboriginal Alcohol Programs Unit; AMP

Miss Barbara Shaw, AMP

**Northern Territory Council of Social Services**

Ms Christa Bartjen-Westermann, Acting Coordinator

Ms Prue Gell, Policy Officer

**Central Australian Aboriginal Strong Women's Alliance**

Mrs Elaine Peckham, Director

**Ms Eva Briscoe, Private capacity**

**Mr David Hewitt, Private capacity**

**Miss Valerie Martin, Private capacity**

*Wednesday, 22 February 2012 – Maningrida*

**Witnesses:**

**Malabam Health Board**

Mr Cyril Oliver, Acting Chief Executive Officer

Mr Reggie Wuridjal, Treasurer

**Bawinanga Aboriginal Corporation**

Mr Peter Danaja, Deputy Chairman

Mr Luke Morrish, Chief Executive Officer

Mr Shane Namanurki, Board Member

Mr Matthew Ryan, Chairman

**Babbarra Women's Centre**

Ms Maria Harvey

Ms Mildred Kalakala

Ms Janet Marawarr

Ms Claire Summers

Ms Helen Williams

**Maningrida Progress Association**

Mr Dene Herreen, Committee Member

Mr Jimmy Tan, General Manager

Mr Robert Totten, Manager

Ms Helen William, Chairperson

**Maningrida School**

Ms Mavis Bangguna

Mr Andrew Dowadi

Mr Stuart Dwyer, Principal

Ms Robyn Rankin

Ms Heleana Wauchope

Ms Helen Williams

**Aboriginal Leaders Group**

**Milingimbi Community**

Mr Georg Gamarania, Traditional Owner Representative

**Dalkarra, Ramingining and Guyapuyju Tribe**

Mr Matthew Gaykamayu

**Dhurili Clan Nation**

Dr Djiniyini Gondarra OAM

**Yirrkala and Gumatj Communities**

Mrs Djapirri Mununggirritj, Spokesperson

**Forum**

Mr Peter Danaja, Deputy Chairman, Bawinanga Aboriginal Corporation

Mr Matthew Ryan, Chairman, Bawinanga Aboriginal Corporation

Mr Reggie Wuridjal, Treasurer, Malabam Health Board

**Thursday, 23 February 2012 – Darwin****Witnesses:****Catholic Education**

Mr Michael Avery, Director

**Somerville Community Services**

Ms Marilyn Roberts, Family Services Manager

**Uniting Church Northern Synod**

Mr Peter Jones, General Secretary

Ms Siobhan Marren, Uniting Church Northern Synod

**Northern Territory Coordinator General for Remote Services**

Ms Olga Haven, Director General

Mr Peter Holt, Research Officer

**Northern Land Council**

Mr Kim Hill, Chief Executive Officer

Mr Ron Levy, Principal Legal Officer

**North Australian Aboriginal Justice Agency**

Mr Alexander Clunies-Ross, Solicitor, Civil Law Section

Ms Priscilla Collins, Chief Executive Officer

Mrs Dorothy Fox, Chairperson

Mr Jonathon Hunyor, Principal Legal Officer

Mr George Norman, Deputy Chairperson

Ms Colleen Rosas, Director

Mr Jared Sharp, Advocacy Manager

**Office of the Northern Territory Children's Commissioner**

Dr Howard Bath, Northern Territory Children's Commissioner

Mr Adam Harwood, Senior Policy Officer

**Indigenous Affairs Advisory Council**

Ms Pat Brahim, Chair

Ms Priscilla Collins, Community Member

**Forum**

Mr Rodney Hoffman, Private capacity

Mr David Jan, Policy Development Manager, Local Government Association of the Northern Territory

Mr David Timber, Private capacity

*Friday, 24 February 2012 – Darwin*

**Witnesses:**

**Northern Territory Anti-Discriminator Commission**

Mr Eddie Cubillo, Commissioner

**Northern Territory Government**

The Hon. Mr Paul Henderson, MLA, Chief Minister

The Hon. Ms Malarndirri McCarthy, MLA, Minister for Indigenous Development

Mr Gary Barnes, Chief Executive, Northern Territory Department of Education

Mr Micheile Brodie, Executive Director, Licensing, Regulation and Alcohol Strategy, Northern Territory Licensing Commission

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Mr Ken Davies, Chief Executive, Northern Territory Department of Housing  
Local Government and Regional Services

Mr John McRoberts, Police Commissioner, Northern Territory Police

Mr Jeffrey Moffet, Chief Executive, Northern Territory Department of Health

**Mr Maurie Ryan, Private capacity**

**Mungoorbada Aboriginal Corporation**

Mr Tony Jack, Council Director

Ms Kirsty Kelly, Accountant

Mr Bill South, Chief Executive Officer

**Aboriginal Rights Coalition**

Ms Samantha Chalmers

Ms Patsy Rose

Mr Justin Tutty

Ms Joy White

Ms Sheila White

**Aboriginal Medical Services Alliance of the Northern Territory**

Mr David Cooper, Senior Policy Officer

Mr John Paterson, Chief Executive Officer

***Thursday, 1 March 2012 – Canberra***

**Witnesses:**

Australian Human Rights Commission

Mr Michael Gooda, Aboriginal and Torres Strait Islander Social Justice  
Commissioner

Dr Helen Szoke, Race Discrimination Commissioner

**National Congress of Australia's First Peoples**

Ms Jody Broun, Co-Chair

Mr Les Malezer, Co-Chair

**Jumbiunna Indigenous House of Learning**

Ms Eva Cox, Adjunct Professorial Fellow

**Australian Government Department Representatives****Department of Education, Employment and Workplace Relations**

Mr Matt Davies, Acting Group Manager, Engagement and Wellbeing Group

Ms Wenda Donaldson, Branch Manager, Smarter Schools Partnerships

Mr Robert Kominek, Director, School Enrolment and Attendance Measure

Ms Sandra Dandie, Director, Evaluation

Mr Rob Mason, Principal Government Lawyer

**Department of Families, Housing, Community Services and Indigenous Affairs**

Mr Michael Dillon, Deputy Secretary

Mr Brian Stacey, Group Manager, Stronger Futures in the Northern Territory

Mr Michael Lye, Group Manager, Families

Ms Elizabeth Hefren-Webb, Branch Manager, Welfare Payments Reform Branch

Mr Matthew James, Branch Manager, Performance Evaluation Branch

Ms Caroline Edwards, Branch Manager, Indigenous Policy

Ms Sally Moyle, Branch Manager, Land Reform

Ms Marian Moss, Branch Manager, Commercial and Indigenous Law

**Attorney-General's Department**

Ms Sarah Chidgey, Assistant Secretary, Criminal Law and Law Enforcement Branch

Ms Tara Inverarity, Director, Criminal Law Reform Section, Criminal Law and Law Enforcement Branch

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*Tuesday, 6 March 2012 – Canberra*

**Witnesses:**

**Public Health Association of Australia**

Ms Vanessa Lee, Vice-President (Aboriginal and Torres Strait Islander Health)

Ms Gabriel Moore, President, New South Wales Branch

Ms Melanie Walker, Acting Chief Executive Officer

**Bankstown Aboriginal and Torres Strait Islander Advisory Committee**

Miss Carol Carter, Deputy Chairperson

Mrs Suzanne Gillett, Community Member

Mrs Margaret Goneis, Chairperson

**St Vincent de Paul Society National Council of Australia**

Dr John Falzon, Chief Executive Officer

**Queensland Council of Unions**

Ms Amanda Richards, Assistant General Secretary

Ms Gwendoline Taylor, Indigenous Industrial Officer

**National Welfare Rights Network**

Ms Maree O'Halloran, President

Mr Gerard Thomas, Policy and Media Officer, Welfare Rights Centre, Sydney

**Australian Council of Social Service**

Dr Cassandra Goldie, Chief Executive Officer

Mr Simon Schrapel, President





## **Appendix 3**

### **Tabled documents, additional information and answers to questions taken on notice**

#### **Tabled documents**

GP recruitment and retention and Aboriginal primary health, provided by Dr John Boffa, Central Australian Aboriginal Congress, (at public hearing, 21 February 2012, Alice Springs).

2010/11 Congress Business Report Plan, provided by Dr John Boffa, Central Australian Aboriginal Congress (at public hearing, 21 February 2012, Alice Springs.)

Photographs of wine casks collected in the river bed after Christmas Eve, provided by the People's Alcohol Action Coalition (at public hearing, 21 February 2012, Alice Springs).

Presentation from the Yuendumu Community, provided by Miss Barbara Shaw (at public hearing, 21 February 2012, Alice Springs).

Presentation from the Intervention Rollback Action Group (at public hearing, 21 February 2012, Alice Springs).

Discussion paper - Youth Development in Central Australia beyond 2012, provided by Ms Susie Low, Chief Executive Officer, Mt Theo Program, Warlpiri Youth Development Aboriginal Corporation (at public hearing, 21 February 2012, Alice Springs).

Diagram, provided by Central Australian Aboriginal Alcohol Programs Unit (at public hearing, 21 February 2012, Alice Springs).

Introductory statement, provided by the Central Land Council (at public hearing, 21 February 2012, Alice Springs).

Maningrida Attendance – Term 1, 2009 to 2011, provided by Stuart Dwyer, Maningrida School (at public hearing, 22 February 2012, Maningrida).

Introductory statement, provided by Dr Howard Bath, Northern Territory Children's Commissioner (at public hearing, 23 February 2012, Darwin).

Opening statement, provided by Mr John Paterson, Chief Executive Officer, Aboriginal Medical Services Alliance of the NT (AMSANT) (at public hearing, 23 February 2012, Darwin).

Tabled statement, provided by Mr Eddie Cubillo, Anti-Discrimination Commissioner (NT) (at public hearing, 24 February 2012, Darwin)

Table on Fruit and Vegetable Targets December 2011 and Fruit and Vegetable Targets: F&V out of Total Food sales, provided by Mr Bill South, Chief Executive Officer, Mungoorbada Aboriginal Corporation (at public hearing, 24 February 2012, Darwin).

Contextual recommendations, provided by the National Congress of Australia's First People (at public hearing, 1 March 2012, Canberra).

Opening statement, provided by Mr Matt Dillon, Deputy Secretary, Department of Families, Housing and Community Services and Indigenous Affairs (at public hearing, 6 March 2012, Canberra).

Proposed support for people needing assistance (Case Coordination), provided by the Bankstown City Council (Aboriginal and Torres Strait Islander Advisory Committee) (at public hearing, 6 March 2012, Canberra).

Income Management – Quarantining Centrelink Payments is coming to Bankstown, provided by the Bankstown City Council (Aboriginal and Torres Strait Islander Advisory Committee) (at public hearing, 6 March 2012, Canberra).

Article on Cooperation not intervention: a call for a new direction in the Northern Territory, provided by ACOSS (at public hearing, 6 March 2012, Canberra).

### **Additional information**

Promoting the mental health and wellbeing of Indigenous children in Australian primary schools, Brenda Dobia & Virginia O'Rourke, provided on 1 February 2012

Address by The Rev. Dr Djiniyini Gondarra OAM on behalf of combined Yolnu Nations Representatives, given at public hearing, 22 February 2012, Maningrida.

### **Answers to questions taken on notice**

Northern Territory Council of Social Services – answers to questions taken on notice (from public hearing, Alice Springs, 21 February 2012).

Mungoorbada Aboriginal Corporation – answers to questions taken on notice (from public hearing, Darwin, 24 February 2012).

Northern Territory Government – answers to questions taken on notice (from public hearing, Darwin, 24 February 2012).

Central Australian Aboriginal Legal Aid Service (CAALAS) – answers to questions taken on notice (from public hearing, Alice Springs, 21 February 2012).

Somerville Community Services – answer to question taken on notice (from public hearing, Darwin, 23 February 2012).

Department of Education, Employment and Workplace Relations – answers to questions taken on notice (from public hearing, Canberra, 1 March 2012).

Attorney-General's Department – answers to questions taken on notice (from public hearing, Canberra, 1 March 2012).

Department of Families, Housing, Community Services and Indigenous Affairs – answers to questions taken on notice (from public hearing, Canberra, 1 March 2012).



# Appendix 4

## FaHCSIA answers to Questions on Notice #6

Senate Community Affairs Legislation Committee

Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills

Canberra Hearing, Thursday 1 March 2012

### Question No: FaHCSIA 6

**Topic:** Stronger Futures legislative measures

**Hansard Page:** 33

**Senator Crossin** asked:

What I am asking you to provide for me is what is not in this legislation. I know we have repealed 2007, but I do not hear people saying, 'Compulsory leases are not there; that's a good thing.' Everyone is concentrating on what is there, and I think there is not any focus at all on what was there in 2007 and what, as a government, we are not taking forward beyond 1 July. We have changed it. We have listened to people's concerns, and therefore it is not in the legislation.

**Mr Dillon:** Absolutely. For example, the original legislation had requirements for quite overwhelming or quite robust signs, and there was a lot of push-back from communities. That requirement has gone, but there are now provisions generally in the NTER for much more respectful signage, and we are actively working with communities and engaging with them about signage in their communities. Secondly, there are a range of other, more minor provisions that are no longer there. Perhaps I should just take it on notice and give you a list of the most significant ones.

**Answer:**

The *Northern Territory National Emergency Response Act 2007* will be repealed in full.

The following Northern Territory Emergency Response key measures will not be continued under the Stronger Futures legislation:

- Five-year leases;
- The Statutory Rights provisions under the ALRA that provide a mechanism for Government to retain certain rights and interests in buildings and infrastructure constructed or upgraded on Aboriginal land with government funds;
- The requirement to install filters and conduct audits of publicly funded computers;
- The power enabling Police to enter a private residence as if it were a public place to apprehend an intoxicated person; and
- The 'business management areas' powers.



## Appendix 5

### SEAM location information in the Northern Territory

SEAM was trialled in six Northern Territory sites situated in remote and very remote areas comprising more than 80 communities.<sup>i</sup>

*Northern Territory SEAM sites:*

- Katherine Township<sup>ii</sup>
- Katherine Town Camps
- Hermannsburg
- Wallace Rockhole
- Tiwi Islands
- Wadeye

*Participating NT schools:*

- *Hermannsburg* Ntaria School
- *Katherine Township* Casuarina Street Primary  
Clyde Fenton Primary School  
Katherine High School  
Katherine South Primary School  
MacFarlane Primary School  
St Joseph's School
- *Tiwi Islands* Milikipati School  
Murrupurtiyanuwu  
Pularumpi School  
Tiwi College  
Xavier Community Education Centre
- *Wadeye* Our Lady Of the Sacred Heart Port Keats
- *Wallace Rockhole* Wallace Rockhole School

*Additional sites for SEAM (announced 2011):*

- Yirkkala
- Maningrida
- Galiwin'ku
- Ngukurr
- Numbulwar
- Umbakumba
- Angurugu
- Gapuwiyak
- Gunbalanya
- Milingimbi
- Lajamanu
- Yuendumu
- Alyangula
- Nhulunbuy
- Alice Springs
- Tennant Creek
- *Remaining schools in Katherine*

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<sup>i</sup> All sites except Katherine Township were prescribed communities under the Northern Territory Emergency Response (NTER). SEAM is not specific to remote Indigenous communities or associated with the NTER.

<sup>ii</sup> Katherine Township and Katherine Town Camps are classified as remote areas under the Australian Standard Geographical Classification used by the ABS. The remaining four sites are all classified as very remote areas.





## Appendix 6

### FaHCSIA answers to Question on Notice regarding Stronger Futures Consultations

Senate Community Affairs Legislation Committee

Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills

Canberra Hearing, Thursday 1 March 2012

**Question No: FaHCSIA 1**

**Topic:** Stronger Futures consultations

**Hansard Page:** 29-30

**Senator Siewert** asked:

Whose decision was it to immediately go to separate men's and women's meetings in Maningrida?

...

I asked both the men and women if they were consulted about splitting the meeting and they said no. I ask again: whose decision was it when the community just last week said they were not consulted, they did not want to be split into men and women and they made that point really strongly, I understand, during the consultation. So who made that decision?

...

I think perhaps the best thing to do would be for you to look at the Hansard and respond. What we heard last week was very different from what you have just said—polar opposites, in fact. Instead of pursuing it, I think the best thing is if you could look at it and take it on record and get back to us.

**Answer:**

The Department has reviewed the transcript of the Committee's hearings in Maningrida and consulted with the senior departmental facilitator for the Tier 2 meeting at Maningrida on 12 July 2011. Early in the meeting the facilitator formed the view, having regard to the size of the meeting, that the large meeting format was unlikely to allow for open dialogue by all, and suggested that the meeting be separated into men's and women's sessions. This was supported by Minister Macklin who indicated this to the meeting.

It should be noted that following the separate meetings, Minister Macklin joined the men's meeting and this enabled the men to discuss with her a range of issues they had

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canvassed in their meeting, in which Minister Snowdon participated.

It should be noted also that the senior facilitator who handled the initial consultation on 12 July returned to Maningrida on 22-23 August 2011 for two days of intensive follow-up discussions, as agreed at the 12 July meeting. He was joined by a senior female colleague and the Indigenous Engagement Officer from Maningrida. They met with key organisations including the Bawinanga Aboriginal Corporation, two health services, the school, the Shire and Women's Centre, and had full day of discussions with people in a number of outstations.

The Department also wishes to place on record the following comments about the practice of having separate gender-based consultation meetings.

Understanding gender perspectives is fundamental to effectively addressing many complex policy issues.

Aboriginal women are a vulnerable group in the Northern Territory and good consultation practice is to provide an opportunity for women to safely make their input into the process.

Experience has shown that Indigenous women are more likely to express their views openly in discussions involving other women than they would in open public forums.

Experience has also shown that on some issues, people are unwilling to discuss their views openly in the company of the opposite sex. For example, the 2009 NTER Redesign consultations highlighted that people frequently felt uncomfortable about discussing issues around pornography and the pornography restrictions in open meetings.

One of the observations made by the Cultural and Indigenous Research Centre Australia (CIRCA) in their report of the 2009 NTER Redesign consultations was that smaller, separate gender groups were most effective and that it was "important, where possible, to separate into smaller male and female groups, to limit the dominance of men in the discussion". The 2011 Stronger Futures consultations sought to improve on the 2009 consultations.

Despite the objections of some men to this approach, separate men's and women's meetings are a critical and legitimate component of the consultation process given community protocols that often determine who has the authority to speak at larger, public meetings on behalf of the community, and the Australian Government's aim of gathering feedback from a wide cross-section of the community in order to understand the diversity of views.

The CIRCA report on the 2011 Stronger Futures consultations continued to express concern that the large community meetings, while providing a forum for senior community members to speak on behalf of the community, "limit the participation of young people and (in some cases) women".

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Given that the intention with the Stronger Futures consultations was to provide maximum opportunity for all interested people to express their views frankly and openly, FaHCSIA made every effort to ensure that people could still provide their views to the Government if they might otherwise feel constrained from, or hesitant about, speaking up in public meetings.

For this reason, people were offered the chance to provide their views, either as individuals or in small groups, to Government Business Managers or Indigenous Engagement Officers in communities. A total of 378 of these small (Tier 1) consultation meetings were undertaken. In addition, the option to conduct separate men's and women's meetings was adopted for a number of whole-of-community (Tier 2) meetings; this occurred in thirteen communities.

In practical terms, the normal FaHCSIA practice in determining whether separate meetings should be conducted is to gauge the views of members of the community beforehand. This could involve the Government Business Manager and Indigenous Engagement Officers having preliminary discussions prior to the date of the community meeting. It could also involve the facilitator for the Tier 2 meeting discussing this option prior to the commencement of the meeting.

In instances where it is clear that men and women in a community have quite different perspectives on a range of issues, a decision may be made – on the basis of best practice indicated above, and possibly contrary to opinion from some parts of the community – that the consultation should be conducted through separate meetings.

It is also possible that during a Tier 2 meeting, the facilitator, having regard to the mood and the progress of the meeting, could suggest that it would be beneficial for the meeting to split into separate (and smaller) groups in order to enable a wider range of views to be put forward.

In order to facilitate the conduct of separate meetings, or to be prepared for the possibility that the meeting may decide to split into separate sessions, FaHCSIA sought to make bookings for both female and male interpreters for Tier 2 meetings wherever possible.

In relation to Maningrida, background and community profile work done by the Department over the past few years indicated that men and women in the community had different perspectives on a range of issues. An example of a gendered response to local issues in Maningrida is the Strong Women's Night Patrol Service, which has been established to address the level of violence experienced by women and children.

The approach adopted at the 12 July 2011 Stronger Futures in the Northern Territory consultations followed the approach adopted in the 2009 NTER Redesign consultations at Maningrida. This involved a large community meeting breaking into separate men's and women's meetings to discuss specific issues.

**Question No: FaHCSIA 2****Topic:** Stronger Futures consultations**Hansard Page:** 31**Senator Siewert asked:**

You took a question on notice from me earlier about whether there were any materials produced in language. One of your answers was:

*... research indicates that if people are literate in their own languages they are likely to be literate in English.*

Could you take on notice the research behind that statement please?

**Answer:**

The Department of Families, Housing, Community Services and Indigenous Affairs does not usually translate written materials into Indigenous languages. Evidence to support this approach comes from both formal research and other more anecdotal feedback, including advice from the Northern Territory Aboriginal Interpreter Service and feedback from Government Business Managers.

The Department does, however, make every attempt to translate audio presentations into Indigenous languages. During the Stronger Futures consultations this included the use of interpreters at community meetings and the translation of radio advertisements notifying residents of consultations in their community (13 languages as well as English).

More recently the Department has produced a DVD outlining the main points of the Stronger Futures legislation in simple English, and voiced also in 15 Indigenous languages. This resource is available online and has been provided in disc form to Government Business Managers and Indigenous Engagement Officers to pass on to individuals or groups or for use in information sessions.

In 2008, the Department and Centrelink commissioned a communications research project on the first phase of communications for the Northern Territory Emergency Response. Some of the key findings from this research were:

- “Due to cultural preferences for oral information, reinforced by variable rates of literacy, verbal communication is the clear preference for the way people in communities want to obtain government information.
- Literacy levels in remote Indigenous communities are much lower than in the general community.
  - In general, if people can read local language material they are usually able to read English as well.

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- Written English material should be kept to a ‘single message’ and kept simple.
  - Local language material is not a key solution — literacy problems are often in both English and local languages”.

The researchers commented generally on the ‘limitations inherent in written communications products’ and reiterated in the more detailed discussion that ‘written local language material is unlikely to be particularly effective at raising or reinforcing awareness’.

These research findings are consistent with other research including recent developmental research undertaken by the Department of Health and Ageing to inform the social marketing campaigns arising from the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes. The ear health research report undertaken by CIRCA in June 2010 found that:

- “... the overwhelming majority noted that face-to-face information delivery was the most appropriate, as sharing information in this way is considered culturally relevant and overcomes potential literacy issues associated with written material.
- “...the resources that generated the most positive comment were those that were highly visual, such as graphic posters, flipcharts and a DVD. Participants were less engaged with resources that were ‘text heavy’ or featured complicated pictures and language.”

### **Question No: FaHCSIA 3**

**Topic:** Stronger Futures consultations

**Hansard Page:** 31

**Senator Siewert** asked:

Did you do any discussion papers in more easily understandable English or provide any materials or an overhead or something?

Could you provide us with a copy of that?

**Answer:**

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Hard copy versions of the following materials have been provided separately to the Committee Secretariat:

1. A simpler English version of the discussion paper, which was produced for use in communities. This became known colloquially as the ‘consultation paper’.
2. Four A3 size colour posters used to notify the time and place of the Tier 2 community meetings;
3. Two double-sided A4 flyers that were used in communities to provide general information about the Stronger Futures consultation process.
4. A flip-chart that was provided to assist in the conduct of local meetings;
5. A double-sided flyer that was circulated after the consultations were completed, thanking people for their input to the consultations, summarizing the feedback and briefly explaining the next steps;
6. A double-sided flyer that was released in communities in November 2011 to provide a summary of the measures in the Stronger Futures legislation, and explain the opportunities for input to the Senate Committee inquiry; and
7. A DVD that was provided to communities in early 2012, outlining the measures in the legislation; the voice-over text is translated into 15 Indigenous languages.

In its independent review of the Stronger Futures consultations, the Cultural and Indigenous Research Centre Australia (CIRCA) had generally positive comments about the communication products, in particular the ‘consultation paper’ (item 1 above).

The ‘consultation paper’ was the most commonly used product and was made available at the majority of consultations attended by CIRCA. Many community members picked up the consultation paper and appeared interested in the content; the illustrative photographs appeared to assist understanding and encourage discussion of the specific issues.

The ‘consultation paper’ was used consistently by facilitators throughout the Tier 2 consultations. The benefits of this communication tool were:

- It provided details on the purpose of the consultation, the three key areas for future work and prompts for discussion on each of the eight themes;
- The photographs clearly illustrated the themes to be discussed and were useful for people with low literacy or who had difficulty reading; and

- It provided sufficiently detailed information that could be accessed easily by those with good English literacy skills.

**Question No: FaHCSIA 4****Topic:** Stronger Futures consultations**Hansard Page:** 31**Senator Boyce asked:**

**Mr Dillon:** I am advised that we do have some materials on engagement and the engagement framework that we do apply—they are principles.

**Senator BOYCE:** Could we have a copy of that please?

**Mr Dillon:** Yes. It is a public document. I am happy to give you a copy.

**Senator BOYCE:** Thank you.

**Answer:**

A copy of the Government's Engagement Framework "*Engaging Today, Building Tomorrow*" has been provided separately to the Committee Secretariat.

**Question No: FaHCSIA 4****Topic:** Stronger Futures consultations**Hansard Page:** 31**Senator Boyce asked:**

**Mr Dillon:** I am advised that we do have some materials on engagement and the engagement framework that we do apply—they are principles.

**Senator BOYCE:** Could we have a copy of that please?

**Mr Dillon:** Yes. It is a public document. I am happy to give you a copy.

**Senator BOYCE:** Thank you.

**Answer:**

A copy of the Government's Engagement Framework "*Engaging Today, Building Tomorrow*" has been provided separately to the Committee Secretariat.

**Question No: FaHCSIA 5****Topic:** Stronger Futures consultations**Hansard Page:** 32**Senator Siewert** asked:

Can I ask a supplementary question? How many of those eight [meetings] that the Minister attended did the audit people attend?

**Answer:**

During the Stronger Futures consultation period, Minister Macklin led community consultation meetings at Tennant Creek, Lajamanu, Maningrida, Ngukurr, Angurugu, Kaltukatjara (Docker River) and Engawala.

None of these meetings was observed by Cultural and Indigenous Research Centre Australia (CIRCA) as part of its quality assurance of the consultations. The communities where CIRCA observed the consultation meetings are listed in the CIRCA report.

CIRCA was required to observe a representative sample of meetings and made its own decision as to which meetings it would attend.

It should be noted that at most, if not all, of the meetings attended by the Minister, members of stakeholder organisations, community leaders and the media were present.

**Question No: FaHCSIA 9****Topic:** Stronger Futures consultations**Hansard Page:** 35**Senator Boyce** asked:

On notice, could you tell me why the period of six weeks was chosen? What is the research behind picking six weeks for doing it? I am happy to put that on notice, but I would like a fairly full answer to that question.

**Answer:**

It is important to note that the Government has been engaging actively with Aboriginal people in the Northern Territory for a number of years, including through the 2008 consultations conducted by the NTER Review Board and the comprehensive



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2009 NTER Redesign consultations. In addition Government Business Managers and Indigenous Engagement Officers have been working on the ground in communities for the last four years. These have helped create a more effective mechanism for engagement between communities and government.

The Stronger Futures consultation process was an intensive period of consultation but needs to be seen in the context of this ongoing engagement activity. A primary purpose of the Stronger Futures consultations was to hear what people had to say - about what works, what needs to be improved, and what more needs to be done – before the Government made any decisions about proposed legislative and funding measures.

The timing of the Stronger Futures consultations was determined by practical considerations relating to the lead time required for preparation of legislation and its consideration by the Parliament well ahead of the cessation of the Northern Territory Emergency Response legislation.

To provide optimum opportunity for Parliamentary consideration of the legislation, including the potential for referral to a Senate Committee, it was felt necessary to have the legislation tabled in the Parliament before the end of the 2011 sittings.

To meet this timeline, it was necessary to complete the consultations by mid-August 2011 so that the feedback from consultations could be considered in the development of policy and preparation of detailed legislation.

The commencement date of the consultation period was determined largely on the basis of the lead time required to prepare the discussion paper.