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 substantitive 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.1

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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1 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.  

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.  

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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2 AHRC submission, p.13

3 Mr Cubillo, Anti Discrimination Commissioner *hansard* 24 February p1
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.⁴

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.⁵

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?⁶

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⁴ Mr Morrish, Chief Executive Officer, Bawinanga Aboriginal Corporation, *hansard*, 22 February p.9
⁵ Babbarra Women's Centre, *hansard*, 22 February, p. 16
⁶ Miss Shaw, Intervention Rollback Action Group, *hansard*, 21 February, p.18 & 22
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.

1.3 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.

1.4 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.7

1.5 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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7 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.8

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.9

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.

8 Jumbunna House of Learning submission, p.8.
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."10

1.19 According to the High Court,11 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.12 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."13 As the AHRC notes comments “The feelings of disempowerment affecting these communities are symptomatic of a lack of control over issues directly affecting groups.”14

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10 AHRC submission para 236-7; see also, National Congress of Australia’s First People submission p.17-19
11 *Gerhardy v. Brown* (1985) 159 CLR 70, 133 (Brennan J), sited in AHRC submission para 121
12 AHRC submission para 70-71
13 AHRC, submission para 73 citing ANTAR
14 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 acutely 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.15

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.16

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

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

16 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.  

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. 

1.26 The top-down, paternalistic, punitive nature of the Intervention from the outset 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.

17 Dr. Gondarra Oam, Dhurili Clan Nation, hansard, 22 February p.29. 
18 AHRC submission para 67-68
- 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.19

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.

19 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\(^\text{20}\) 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.\(^\text{21}\)

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.\(^\text{22}\)

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 resources 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.

\(^{20}\) AHRC submission para 253

\(^{21}\) APO NT submission p.8.

\(^{22}\) AHRC submission para 230.
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.23

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.24

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23 Dr Boffa, Public Health Medical Officer, PAAC, Hansard, 21 February, p. 34.
24 APO NT submission p.9.
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.

This conclusion was supported by numerous submissions and evidence given.

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?

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.

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.

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

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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25 Mr Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency, _hansard_, 23 February, p.40
26 AHRC submission, para 299.
27 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.\(^\text{28}\)

**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.\(^\text{29}\)

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

\(^{28}\) Ms Rosas, Director, North Australian Aboriginal Justice Agency, *hansard*, 23 February, p.38

\(^{29}\) 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.\(^{30}\) 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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\(^{30}\) See eg: CLC, NLC and APO NT submissions
unreservedly trust the executive to devise an appropriate reform agenda at
an unspecified point in time over the next 10 years.³¹

1.61 During the inquiry FaHCSIA implied they would give the NT Government
time to complete the reforms before they acted.³² 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,³³ but
there was some concern from one community store that licensing would have a
negative impact.³⁴

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”³⁵

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).³⁶

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³²  *Hansard* 1 March 37-38
³³ See, eg: APO NT and AHRC submission
³⁴ See, Mr Morrish, Bawinanga Aboriginal Corporation  *hansard* 22 February p.11
³⁵ AHRC submission para 365
³⁶ 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.37

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.38 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.”39 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.”40

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.

37 AHRC submission para 364
38 AHRC submission para 367
39 APO NT submission p. 38
40 AHRC submission para 371
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. 41

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. 42

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

41 Mr Hunyor, North Australian Aboriginal Justice Agency, hansard, 23 February, p. 42.
42 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.\textsuperscript{43}

\textit{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.\textsuperscript{44} 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."\textsuperscript{45}

1.79 The Australian Greens firmly support this statement.

\textit{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.\textsuperscript{46}

1.82 This was 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

\textsuperscript{43} Supreme Court of the Northern Territory, Centenary Ceremonial sitting, transcript available from <www.supremecourt.nt.gov.au/media/documents/Ceremonial_30052011_CentenarySCNT.pdf >
\textsuperscript{44} APO NT submission p.34.
\textsuperscript{45} APO NT submission, p. 34.
\textsuperscript{46} Ms Rosas, Director, North Australian Aboriginal Justice Agency, \textit{hansard} 23 February, p 38
Aboriginal culture and customs are not valued; and is in direct conflict with the expressions of Aboriginal people that culture must be strengthened.47

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.48

**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.**

47 APO NT submission, p. 35.

48 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.\(^{49}\) 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.\(^{50}\)

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.”\(^{51}\)

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.\(^{52}\)

\(^{49}\) See eg: ACOSS submission p. 6 & 9; AHRC submission para 156
\(^{50}\) AHRC submission para 58
\(^{51}\) Jumbunna submission p.5. See, also Ms Walker, Acting Chief Executive Officer, Public Health Association of Australia, *hansard* 6 mar, p.1.
\(^{52}\) APO NT submission p. 13
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.”

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.”

The potential of voluntary Income management

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.

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.

The Australian Greens could only support a voluntary system of income management and reject compulsory income management

Australian Greens Recommendation 9

We recommend that Schedule 1 is removed from the Social Security Legislation Amendment Bill 2011.

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53 PHAA submission p.5
54 APO NT submission p.13
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.\footnote{APO submission p.20}

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. \footnote{St. Vincent de Paul Society submission, p.2; see also AHRC submission para 186; 191-194 and Ms Havnen, NT Coordinator General, \textit{hansard}, 23 Feb p. 20}

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.\footnote{UC Darwin 1 p.10}

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.\footnote{Dr. Bath, NT Children’s Commissioner, \textit{hansard}, 23 February, p.48} Children with these vulnerabilities are going to require special assistance or “enriched programs to deal with those areas of vulnerability.”\footnote{\textit{Ibid} p.50}

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:

\begin{itemize}
\item \footnote{APO submission p.20}
\item \footnote{St. Vincent de Paul Society submission, p.2; see also AHRC submission para 186; 191-194 and Ms Havnen, NT Coordinator General, \textit{hansard}, 23 Feb p. 20}
\item \footnote{UC Darwin 1 p.10}
\item \footnote{Dr. Bath, NT Children’s Commissioner, \textit{hansard}, 23 February, p.48}
\item \footnote{\textit{Ibid} p.50}
\end{itemize}
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?61

**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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• 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.62

• Supportive ‘culture’ in the school that actively addresses bullying and harassment of Indigenous students.63

• 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.64

• High quality teachers who create a stimulating learning environment in the classroom.65

• Flexible school years, which work with cultural commitments.66

• Culturally relevant intensive case management67

62 AHRC submission para 189; ACOSS submission p.11
63 AHRC submission para 189
64 AHRC submission para 189
65 AHRC submission para 189
66 Manigrita School, hansard 22 February and Ms Havnen, NT Coordinator General, hansard, 23 February, UC hansard 23 February
67 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.\(^{68}\)

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.\(^{69}\)

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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68 Ms Havnen, NT Coordinator General, *hansard*, 23 Feb p. 26

69 AHRC submission para 188.
- 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. 70

70See 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; 71
- 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. 72

**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... 73

Community leadership, with local Aboriginal leaders focusing on establishing the institutions and processes for representing their

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71 AHRC submission para 18
72 Ibid, para 19
73 National Congress of Australia’s First Peoples submission para 64 & 66
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.”

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.

**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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74 AHRC submission para 67-68
75 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.76

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.77

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.78

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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76 AHRC submission para 91-92
77 AHRC Social Justice Report 2011, p. 150 citing The National Health and Medical Research Council
78 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

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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79 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