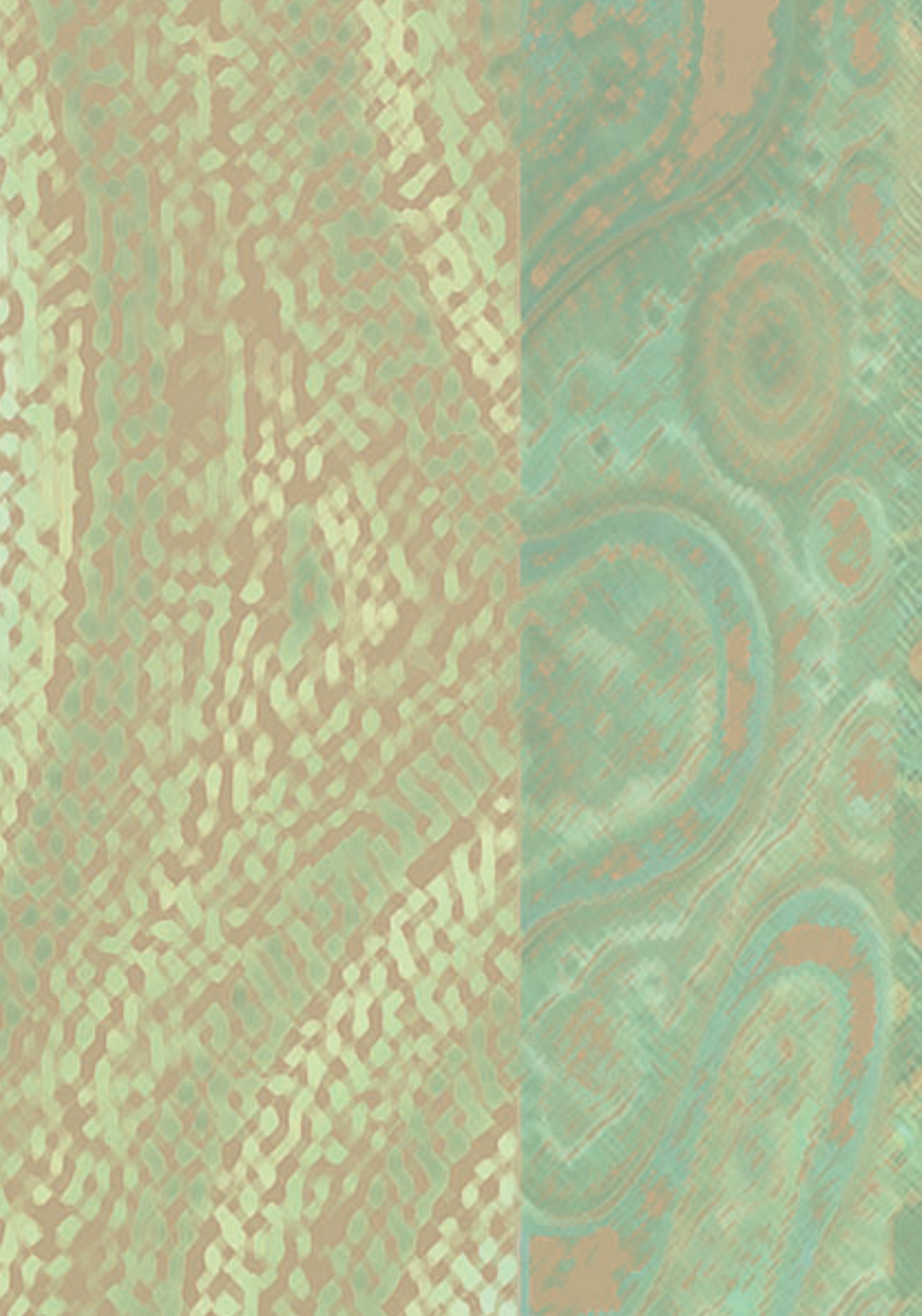




# A Decision to Discriminate

Aboriginal Disempowerment in the Northern Territory





**Warning: This book may contain photos of people who have passed into the Spirit world.**

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Aboriginal Disempowerment in the Northern Territory

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# FOREWORD

## A Decision to Discriminate

One of the saddest effects of the Howard Government's Northern Territory Emergency Response and that of its successor, the Stronger Futures Legislation, has been the disempowerment of the Aboriginal people of the Northern Territory as the content of this book elegantly testifies.

The book is an authentic summary with appropriate extracts of the views expressed across a wide range of Aboriginal people about the effects on them of these measures. Those who would seek to dismiss it as selective and partisan would be wrong. If there is one thing that is apparent, it is the wide sense of dissatisfaction felt by Aboriginal people of the Northern Territory with these measures. It is a view that has been studiously ignored by the Government and Opposition who seem hell bent on imposing these policies upon them, regardless of their views.

Those responsible do not seem to have the wit to realise that a policy of working with the Aboriginal people and including them in the decision making process is likely to produce much better and more workable outcomes than any that are imposed upon them by Government.

This is not achieved by engaging in show consultations without ever considering a possible outcome other than that already decided by Government. What we have seen from the time of the Howard led 'Intervention' is a dreary repetition of all the mistakes made by white dominated

Governments of the past in relation to Aboriginal people.  
Our leaders seem incapable of learning from history.

What I find almost equally disturbing as the policy of ignoring the participation and input of Aboriginal people into the decision making process is Government willingness to perpetuate and cloak racial discrimination against them as so called 'special measures' purporting to protect them, while at the same time abandoning any semblance of compliance with international obligations.

This book is an attempt to give all those Aboriginal people who have not been heard or listened to in this process an opportunity to have their views made public in an atmosphere where they have been suppressed by Government and mainstream media.

**Hon Alastair Nicholson AO RFD QC**

*Former Chief Justice, Family Court of Australia;  
Honorary Professorial Fellow, University of Melbourne;  
Chair Children's Rights International*

11 September 2012



# INTRODUCTION

A Decision to Discriminate aims to put on record the words of many Aboriginal people of the Northern Territory in regard to the Stronger Futures legislation that became law in June 2012. While evidence has already been recorded through the official process of a senate inquiry, the opinions that were expressed do not remain easily accessible to most of us.

The views of the people of the designated 'prescribed communities' who have experienced living through this extraordinary phase of history have been consistently articulated during the government 'consultations' of 2009 and 2011 and again during the Inquiry of 2012. Most believe the laws to be discriminatory.

Government's resistance to working in partnership with Aboriginal community leaders has led to the imposition of 'blanket measures' irrespective of the conditions or circumstances of individuals or their communities. Such an approach has removed inherent rights of Aboriginal peoples while it has badly undermined fragile but slowly emerging levels of trust.

There has been a failure to understand that rights go hand in hand with responsibilities. While Aboriginal people in the Northern Territory are demanding the return of their right to self determination, they are also demanding the right to take responsibility for change through genuine partnership with Government.

Policies of the last five years have gradually eroded the responsibilities of individuals and communities by transferring control to Government for almost every aspect of daily living.

The blanket measures approach of one-size-fits-all has resulted in the termination of many well designed and well managed community owned programmes. These are perhaps the unintended consequences of decisions made far away and without the input from local leaders.

Intrusions into areas of cultural significance have caused great offence and distress. They include the undermining of the bilingual learning programmes in schools and the restrictions placed on judges and magistrates in the NT to sentencing and bail applications for Aboriginal people where they are no longer able to take into account cultural considerations.

There were over 450 submissions to the Senate Inquiry and most were opposed to the Stronger Futures legislation. Churches in Australia, the World Council of Churches and other major institutions expressed their considerable concerns regarding the legislation believing it to be discriminatory.

Communication with the Australian Government by the United Nations High Commissioner, Navi Pillay, in March 2012 flagged concerns regarding the draft legislation. These issues **related to equality, meaningful participation of Aboriginal peoples in the drafting of the legislation, the right to self determination and the duty of free, prior and informed consent.**<sup>1</sup> These concerns were not heeded.

So determined was Government to pass the legislation without change that it chose to table it in the House just prior to the date when new legislation would require scrutiny for human rights protection by the newly formed Parliamentary Joint Committee on Human Rights (PJCHR).<sup>2</sup>

On 27 February 2012, a day when politicians were embroiled in a leadership challenge, the Bills were passed through the House by agreement with the two major parties and avoided any significant debate.

Four months later, in June when most were sleeping in the early hours of the morning, the Bill(s) passed through the Senate, once more without debate between the two major parties.

The National Congress of Australia's First Peoples has lodged a request with the PJCHR for scrutiny of the Bills to proceed and a decision is currently under consideration. Both the Minister for Indigenous Affairs and the Attorney – General believe further scrutiny to be unnecessary.

The Minister believes the Bills are compatible with human rights because *they advance some rights, and to the extent they may limit any rights, those limitations are reasonable, necessary and proportionate*.<sup>3</sup> Many strongly disagree with this assessment.

The decision to pass the Stronger Futures legislation was a decision to discriminate.



*Map of the Northern Territory showing  
the communities of Maningrida and Ntaria*

## BACKGROUND

The Stronger Futures legislation passed into law on 29 June 2012. The intention is to look at the process undertaken by Government which led to this happening.

The Howard Government's 2007 Northern Territory Emergency Response (NTER) laws, referred to as the Intervention, were set to run for a five-year period and due to end in August 2012.

The NTER laws were recognised as being discriminatory and required the suspension of the Racial Discrimination Act (1975) for their implementation. A change of Government and a review in 2008, despite the recommendations,<sup>4</sup> did nothing to change the discriminatory nature of the legislation. In 2009 the first NT Consultations on the Intervention took place across the Territory and a visit from the UN Rapporteur, James Anaya, led to more criticisms about the racist nature of the legislation.<sup>5</sup>

In 2010, changes that were made included Government's commitment to reinstate the RDA by the end of the year. While the changes made were under the advice of the Attorney - General's Department, many respected legal minds believed the changes to be merely superficial and elements of the measures still discriminatory. Compliance with the RDA remained highly questionable.

By 2011 it had become clear that Government was struggling to show great advances in its NT programmes. The regular six-monthly *Closing the Gap* reports showed

small improvements in some areas and often steps backwards in other areas, amongst them an increase in incarceration rates, and self-harm and attempted suicide rates. The spin that existed around these reports meant there was no meaningful debate or opportunity to address the ineptness of policies on the ground.

The NTER Evaluation 2011<sup>6</sup> report undertaken by a series of consultants revealed reservations of policy direction by a number of well respected researchers. Lacking the courage to acknowledge and re-assess some of the most misguided areas of policy early, created a vacuum that led to serious social disruption. For example, the decision to transitioning CDEP workers to unemployment did a great deal of harm. It led to individual humiliation and a sense of worthlessness. It was grossly disruptive to community programmes and essential services in medical clinics, night patrols and the like, and ultimately contributed to the urban drift. Some communities such as Daguragu were badly hit, many of the services closed and the community has ultimately been decimated.

Overall, policies have removed from the people their control over their lives, their input to decision-making processes and created disempowerment on a massive scale.

While Aboriginal people in the Northern Territory prescribed communities have been consistently expressing their concerns and their frustrations regarding the imposed Intervention, their voices have struggled to be heard. This is hardly surprising in lands where English is most likely to be a second or third language, where access to internet is difficult, and where road travel is impossible in the wet season and air travel extortionately expensive.



What is surprising however, is that when Government has provided opportunities for discussion, there appears to have been little genuine interest in finding out what the people really have to offer or in negotiating the most appropriate paths to achieve jointly negotiated and agreed goals. In fact, at both the 2009 and 2011 'consultations', agendas were set without input from the people and with a preoccupation on the part of Government with delivering a series of well planned messages to communities on a fixed number of topics. In general any local input to discussion appears to have been ignored. An example of this is the numerous suggestions put by communities of ways to improve school attendance, almost all of which have remained unrecorded and have made no impact on the policy which has been legislated.

When the Stronger Futures and related Bills were passed by the House of Representatives in February of 2012, there was a deep sense of betrayal, partly because this took place by agreement between the two major parties and because there was no genuine debate.

The recommendation by the Selection of Bills Committee to proceed to a Senate Inquiry however, gave some small glimmer of hope that the people would have just one last opportunity to explain their strong opposition to what was seen as an extension to the Intervention for a further ten years. It also gave an opportunity for the people who would be directly affected by these laws to respond to the Minister's constantly articulated claim that the legislation was based on what people had asked for during the 2011 consultations.



*Bawinanga Aboriginal Corporation:  
Mr Peter Danaja, Mr Shane Namanurki, Mr Luke Morrish and Mr Matthew Ryan*

The most important Hearings would be held in Ntaria [Hermannsburg], a ‘prescribed community’ 130 kilometres west of Alice Springs and in Maningrida a ‘prescribed community’ in Arnhem Land, over 500 kilometres east of Darwin, 250 kilometres of it on unsealed road. People of these two communities, selected by the Committee to give evidence, would be directly affected by the newly proposed laws.

In Maningrida, community leaders also gathered from other Arnhem Land communities including Yirrkala, Galiwin’ku, Milingimbi and Ramingining.


Throughout this document ‘community residents’ refers to those residents of prescribed communities who gave evidence at the Senate Hearings in Ntaria and Maningrida. Full transcripts of their evidence can be found on the website [www.concernedaustralians.com.au](http://www.concernedaustralians.com.au) or on the Senate website.

So what was it that community residents told the five senators about the consultations of 2011?

## Consultations and What Was Said by Community Residents

Mr Ryan, Chairman Bawinanga Aboriginal Corporation:  
*...when Minister Macklin came here, we were not consulted properly. There was lack of information in the community.*

Mr Morrish CEO Bawinanga Aboriginal Corporation: *The discussion paper on Stronger Futures was actually handed to members of the community minutes—literally minutes—before the minister arrived for that consultation.*



Ms Harvey, Babbarra Women's Centre: *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.*

Ms Summers, Babbarra Women's Centre: *The women's centre was not invited to the consultation. As for the original consultation, we were not invited by the minister. We did not have the notification that we had to attend that meeting. We had representatives, such as Helen [Williams], there and I believe a few of the women made it over there but there was not ample time or information given to us in time for us to attend.*

Mr Herreen, Maningrida Progress Association: *Everybody knows the problems that existed back then when Minister Macklin came out and the follow ups that were not done.*

Mr Danaja, Bawinanga Aboriginal Corporation: *We have not had any feedback from that consultation we had in the first place.*

Mr Morrish, CEO Bawinanga Aboriginal Corporation: *There were a number of clear statements made that certainly have not found their way into that report. That might just be because they have not fallen into a neat category, but it certainly has not translated into that report. It is no surprise, given that people were ill-prepared, ill-informed and unable to participate knowingly in that consultation process.*



*Ms Marie Harvey, Babbarra Women's Centre*

Mr D Kantawarra, Ntaria: *What people are saying is that not many people saw those Stronger Futures recommendations. So you can see where the people are coming from. They cannot really answer any of the questions, because nobody has really read it.*

Mr E Rontji, Ntaria: *... people are stuck in their house and not wanting to come here to meetings. You see 10 per cent of the community here but not all of the community. They are afraid that they will be saying the same thing and you will not be listening and that you are trying to control how we live our lives.*

Ms Roxanne Kenny, Ntaria: *and I am talking on behalf of the people. All they 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?*

Senator Scullion, Response: *It is clear that when we came here we made some assumptions that information had been passed to the community about what this legislation was about. The difficulty is that we have arrived here to hear what you think about that but what you are really saying is, 'Let's go back to the first stage, because we do not understand what the differences are.'*

## **What Was Said About the Consultations at the Hearings in Alice Springs and Darwin**

Hearings were also held in Darwin and Alice Springs. Individuals, community organisations and local Government gave evidence to the Senate Committee. What did they have to say about the consultations of 2011? And firstly what was said by Senator Scullion, a member of the Committee:



Senator Scullion speaking to Mr Cubillo, NT Anti-Discrimination Commissioner: *In fact, I suspect it [the consultation process] has been a monumental failure. There are a number of Indigenous organisations—your office, the Northern Land Council and the Central Land Council—that seem to be able to connect, educate and communicate much better with the mob than government can.*

Mr Cubillo, 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.*

Mr Tutty, Darwin Aboriginal Rights Coalition: *Our assessment of the consultations is that that is a grossly inadequate basis for justifying the laws in front of us now. ... It [The Little Children Are Sacred Report] talked about meaningful engagement being crucial to successful outcomes. It also talked about requiring at least majority informed consent. These new laws, with their 10-year sunset clause, are measures that on so many fronts are tighter than the NTER, and they demand best practice and consultation. I suggest that the inquiry and the report, together, define best practice. I ask the committee whether you consider that the process around Stronger Futures meets that standard. We do not think it does .... A lot of detail that we observed, noted and documented is not evident in the product that this committee is inquiring into. We worry that there is a predetermined outcome and that the bills are so close to the discussion paper.*

Mr Paterson, Aboriginal Medical Services Alliance of the NT (AMSANT): *The Stronger Futures consultation process provides an example. Our officers attended about a dozen of the consultation meetings and judged the process to be inadequate and superficial. Further, our analysis suggests that the resulting Stronger Futures bills do not adequately reflect the issues raised at the meetings. Furthermore, the Stronger Futures response does little to contribute to the essential task of rebuilding community capacity and re-establishing relationships of trust. Rather, it is indicative of a pervasive lack of trust on the part of government.*

Mr Cooper, AMSANT: *We also had concerns, because our analysis of what was said at meetings and what consequently came out in the legislation showed that they did not tally well.*

Ms McCarthy MP: *In Maningrida, there was certainly a view given to people there that certain people would come back to the community. I understand that did not take place and, as a result, there have been some people in the community who were disappointed, if not angry, that that did not take place.*

Ms Havnen, Coordinator General for Remote Services: *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 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, organizations and

societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time.

There has been wide criticism of the way in which the Government consultations were conducted in the Northern Territory. Despite this, in July 2012 the UN High Commissioner for Human Rights, Navi Pillay, was informed that there had been extensive consultation with communities in the Northern Territory, which had provided a strong base for the Stronger Futures laws.

## SELF-DETERMINATION

Just as people living in prescribed communities felt an overriding desire to inform the senators of their frustration regarding the 2011 Consultations, so were they driven to take the opportunity to again demand their right to decision making regarding their futures and the futures of their communities, in the same way that they had informed previous waves of Government officials during the consultations.



*Peter Danaja, Bawinanga Aboriginal Corporation*

## Self-Determination and What Was Said by Community Residents

Mr Danaja, Bawinanga Aboriginal Corporation: *My main concern is: what do we need to do to prove ourselves to the government? We are well-educated people. Surely we are capable of governing ourselves. How can we prove this to you?*

Dr Gondarra OAM, Dhurili Clan Nation: *We all want to see development and economic growth, but we do not like it if we are being classified apart from the society. We are part of the nation of this country. We want to live together. We want to build a better community, a better nation, but please do not let us down and say, 'This is the legislation we are going to deal with, because the Aboriginal people are naughty boys and naughty girls and so we need to look after them and we need to treat them this way.' No, we do not need that. We are not a puppet on a string. You do not play around with us. We want to be a free people. We want to determine our dignity and pride in being a people. That is the message that we are giving.*

Mr Morrish, CEO Bawinanga Aboriginal Corporation: *We want to add to the capacity of this community by undertaking big projects like that, creating the ability for people to get the skills and the ability to act as builders, plumbers, electricians—local people, not external contractors. That is the only way that this community will grow and prosper. We want to be a part of that and we want to work in partnership with government on that.*

Mr Morrish, Bawinanga Aboriginal Corporation: *Five hundred thousand dollars' worth of contracts for refurbishing schoolhouses on outstations that we service, and we do not even get a look in. We do not even get told that the contractors are going out there. Those contractors do not even come into Maningrida and spend a dollar in the store. If that is economic development, then I have read the wrong books. What we are saying is that we want to work in partnership.*

Mr Gamarania [George Gaymarani Pascoe], Traditional Owner Representative, Milingimbi: *We ask the people of the Top End to take positive consideration of the seven measures [the proposed legislation] that are almost discriminating against our rights to the continuation of self-determination, the rights to our autonomy, the rights to our economics, the right to practise our customary law, the right to make policy and control our system. It will work, but the seven measures are very discriminatory .... Would the senators take into consideration our positiveness, not the negativeness? Get rid of the seven measures imposed upon us.*

Mr E Rontji, Ntaria: *We have too much of people trying to control us and say how we should live our lives. They think they know what is best for us and that they can control us. We know how to live our lives and how we want to bring up our children. People are trying to control how we do. That is why the leaders struggle to explain to the Committee the consultation process whereby the elected Committee sit together to jointly work out the community's position on issues.*

Dr Gondarra OAM, Dhurili Clan Nation: *My introduction also served to politely acquaint the committee with the fact that we people of Arnhem Land have our own pre-existing nation's system of law and citizenship and our own*



*governments. This knowledge is central to my criticism of the Stronger Futures bill, which itself represents a continual interventions policy. Intervention by another government cannot co-exist with the primary policy of the Yolngu nation with its greater self-determination.*

## **What Was Said About Self-Determination at Hearings in Alice Springs and Darwin**

Mrs Fox, Chairperson North Australian Aboriginal Justice Agency (NAAJA): *The Stronger Futures package does not recognise the role of Aboriginal people and organisations in addressing disadvantage. It remains focused on mechanisms for the Australian government to make decisions about Aboriginal people's lives. Aboriginal people want to take responsibility for their families and communities and have to be supported to do so. The dismantling of community councils in the Northern Territory removed community leaders of the means of having a meaningful stake in decision-making processes in their communities. It is therefore disappointing that there is a limited focus on improving leadership and governance in remote communities as part of Stronger Futures.*

Mr Cubillo, NT Anti-Discrimination Commissioner: *At the moment they [Aboriginal People] do not trust people, particularly governments. There needs to be a change of view. Aboriginal people want to be involved. I hear a lot about making changes, but no-one has actually listened to how Aboriginal people want to do that. What I have heard is fairly similar. It is along the lines of alcohol and violence, but these communities are very complex and the best people to give you advice on it are the people living there*

*themselves. They do not want to have stuff bestowed on them from afar, basically. What I see, and I may be wrong, is that a lot of government agencies have wound up and there is no longer that connection, which we seem to have lost with our remote locations.*

Mr Paterson, AMSANT: *... 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.*

Walter Shaw, CEO Tangentyere Council: *Legislation, punitive measures and increased investment through third parties will not resolve the daily issues being faced by the Arrernte, Anmatyerr, Kaytjye, Warlpiri, Pitjantjatjara, Pintubi and Luritja, and other Aboriginal language speakers who are residents of Central Australia, nor can solutions be determined without appropriate negotiation or without the development of a framework supporting true self-determination and our human rights ... An organisation such as Tangentyere Council is to ensure that Aboriginal people are accorded the right to self-determination, and therefore must be party to delivering outcomes towards the overriding policy of closing the gap.*

Mr South, CEO Mungoorbada Aboriginal Corporation: *We have very few intestinal problems. We have the lowest rate of intestinal problems. We have no scabies in Robinson River. Why do we have no scabies in Robinson River?*

*Out of the rent that we collect—because we are still controlling our own houses— we issue soap, toilet paper and house-cleaning goods. We also provide householders with washing machines, refrigerators and freezers.*

Mr Cubillo, NT Anti-Discrimination Commissioner:  
*Key to reforming disadvantage in the Territory is giving responsibility and ownership to individual communities to take carriage of these issues. It is important that focus is not lost on this end goal and that Aboriginal participation and consultation informs decision making along the way to ensure this ultimate goal is achieved.*

Ms Turner, Tangantyerre Council: *I will just add that there is a pervasive sense of disempowerment of Aboriginal people in Central Australia, especially since the intervention. But I think the downward flow started under the Howard government with its first cabinet meeting in Canberra imposing the special auditor through ATSIC on every Aboriginal-funded organisation in Australia—they were all subjected to audits. Since then, there has been a systematic dismantling of infrastructure that was built up over 30 years by Aboriginal people right throughout Australia. It was reinforced with the introduction of the intervention legislation in the Northern Territory and has been further reinforced, I think, by the role of the new shires and the abolition of community-controlled decision-making bodies in remote communities. These things are all adding to urban drift, ... they (Govt) set up the Aboriginal housing reference group that totally usurped the authority of the Aboriginal housing associations on every town camp. All these measures are leading to a sense of disempowerment for our people.*



*Senate Committee  
Senators Crossin, Moore, (staff), Siewert, Boyce and Scullion*

## THE SENATE INQUIRY

Referral of the Stronger Futures legislation and related bills to a Senate Inquiry was made by the Selection of the Bills Committee on 25 November 2011 (report No. 17 of 2011).<sup>7</sup> The Reasons for Referral/Principal Issues for Consideration read as follows:

*Effect of measures and implementation plans,  
evidence of community awareness/acceptance*

*Assessment of intended and unintended  
consequences*

The make-up of the committee:

Sen. Claire Moore – Labor (Chair), Rachel Siewert – Greens (Dep. Chair), Sue Boyce – Liberal, Trish Crossin – Labor, and Nigel Scullion – Liberal.

Hearings in the Northern Territory took place in February 2012. One day was spent in Ntaria [Hermannsburg] and one in Maningrida taking evidence from community members including visiting prescribed community members. A further day was spent in Alice Springs and two days in Darwin. Keeping in mind the enormous distances and the cost of travel, it was not easy for people from other communities to attend these hearings.

From the evidence it is clear that there is considerable confusion regarding terminology. The Stronger Futures legislation is generally perceived as being an extension of the NTER legislation and the term ‘Intervention’ used for both.



*Mr Wuridjal, Malabam Health Board*



Throughout the hearings, discussion focused on both pieces of legislation.

So what were the views of Aboriginal people, members of prescribed communities regarding the intervention – the NTER legislation and the proposed Stronger Futures legislation?

## Intervention and What Was Said by Community Residents

Ms Williams, Ntaria: *Everybody in every community talks about the intervention. Not just one individual but everybody was against the intervention. Think about it.*

Raelene Silverton, Ntaria: *They [the community] supported the first intervention for five years, and they found out it was working no good....*

Mr. Kenny Windley, Ntaria: *This intervention made a lot of trouble to all the families. It put us in a bad situation.*

Ms Williams, Ntaria: *More or less you can see the expression of our mob in the community that the intervention was more a problem when it was introduced into communities. More or less you can see that it created a problem. That is what Mr Kantawarra [Ntaria resident] is saying. As you all know, there is a problem with the Intervention*

Mr Wuridjal, Malabam Health Board: *We have seen what has happened for the last five years. Now we have Stronger Futures coming in and that is going to destroy Aboriginal people in this area ...*



*Mr Oliver, Malabam Health Board*

Mr Oliver, Malabam Health Board: *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.*

Mr Ryan, Bawinanga Aboriginal Corporation: *No-one has even asked for our consent to the laws that will be in the legislation. We don't want this. We don't want the intervention or the legislation. As far as I am concerned, we want to govern our own community, which we have for the last 30 years.*

Mr Danaja, Bawinanga Aboriginal Corporation: *I just want to point out that we definitely disagree with this legislation, because we were not included in the Stronger Futures.*

Mr Ryan, Bawinanga Aboriginal Corporation: *You create more social issues here [in Maningrida]. There are conflicts whereas people are pretty happy in their own homeland. What we want to see is people being happy in their homelands. You are creating a lot of issues here, like overcrowding. You can see for yourself right as we speak here it [the legislation] is a big problem. ....Since the intervention you have created heaps of trouble.*

Mr Danaja, Bawinanga Aboriginal Corporation: *What is going to happen if you bring all those people into the community? It is going create a lot of social impact.*

Ms Summers, Babbarra Women's Centre: *I am the manager of the Babbarra Women's Centre for Bawinanga. There are a plethora of issues that have not been addressed by government in the second stage of the intervention.*

*Bawinanga actually has a strong women's group in this community. We invite all members and all women ... to discuss issues that are facing women in Maningrida. I do not see any of those issues being raised in the second stage of this intervention.*

*Mr Danaja, Bawinanga Aboriginal Corporation: There has been consultation ever since the introduction of the intervention. We were not involved in the decision making. Everything was done behind closed doors. We did not have a say in the first place. I am not trying to be rude to anyone, but this policy is very racist and has to stop.*

*Dr Gondarra OAM, Dhurili Clan Nation: Creating legislation like this is changing from the Northern Territory Emergency Response into Stronger Futures, but the formula of the legislation is the same as in the Northern Territory Emergency Response. Therefore, our concern is that that needs to be considered properly. ....You know it breaches the international charter of human rights. I think we need to be sensitive enough and try to help people. 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.*

*Mr Gamarania [Mr George Gaymarani Pascoe] Traditional Owner Representative Milingimbi: Your visit to hear our concerns about the seven measures is very important. They have almost destroyed the lives of individual people, as you have heard from other panel members. It would have been better if the government had sat down diplomatically and resolved particular cases.*

Dr Gondarra OAM, Dhurili Clan Nation: *People are frustrated. People are sick and tired of being controlled. When people are sick and tired of control they just give up hope: When our lives are being threatened and taken away, we just sit and do nothing. I have already emphasised that people are dying, not just dying spiritually and emotionally but dying physically. They cannot live for the day because their lives are controlled by somebody else. They have given up hope: what is the use?*

The views expressed regarding the 'Intervention' are not simply those of dissatisfaction but rather of the belief that it has caused enormous damage to communities across the Northern Territory. These views were also dominant during the recorded consultations but have never been publicly acknowledged by Government.

## What Was Said About the Intervention at the Hearings in Alice Springs and Darwin

Evidence from those living in prescribed communities is well supported by those individuals and community organisations that gave evidence to the Committee in Alice Springs and Darwin.

Senator Scullion, a member of the Senate Committee: *When we get to most communities any observer would say that Aboriginal people more generally hate the intervention. They do not like it, it invades their rights and they feel discriminated against.*

Mr Cubillo, NT Anti-Discrimination Commissioner: ... *you see recycled policy. Aboriginal people say, 'Yeh, I've seen it before,' and that is their attitude. As I said previously, that*



*Miss Valerie Martin*



*Aboriginal people know there are issues and they want to be involved. Lately I do not think that has been real and I think the mindset from both sides need to shift, particularly from government.*

Peter Jones, General Secretary United Church Northern Synod: *...there is no partnership approach being enacted between Aboriginal people and the Australian government. What is taking place, and has been since day 1 of the intervention, is a government announcement followed by feedback through so-called consultations, the information from which is then cycled into the next government announcement. There simply is no partnership.*

Miss Valerie Martin: *We do not want the stronger futures laws. It is just more intervention. We have been telling the government since 2007 that we do not want another intervention, that it is ruining our lives and spoiling our future. We want self-control in our own communities. We used to control our own laws in the community and we had self-control.*

Mr South, Mungoorbada Aboriginal Corporation: *When they all visited they apologised to us and they said, 'We realise that if all communities were the same as Robinson River there would never have been an intervention.' They apologised, but they said, 'Sorry, it's one size fits all; you've got to fall in.' .....*

Walter Shaw, Tangentyere Council : *Tangentyere Council also wishes to note its concern with the growth of non-Indigenous NGOs being funded to deliver services to Aboriginal people at the expense of the vast knowledge and experience within the Aboriginal organisations*



*... Indigenous service provision is managed through funding relationships with around 7,000 organisations - (Indigenous organisations represented less than 8 per cent of these in 2010-11).*

- From the evidence provided, the Intervention in general is seen to have caused harm to communities
- The legislation is seen as controlling – it breaches international human rights
- The Stronger Futures legislation is generally seen as an extension of the NTER laws
- There is no obvious majority consent to the Stronger Futures legislation
- People believe they have been excluded from the decision making processes
- A ‘blanket measures’ approach to reform is regarded as an unacceptable way of achieving change

## KEY AREAS OF THE LEGISLATION

There are six areas that the Senate Inquiry focused on during the hearings. These key areas also featured in the Discussion Paper used by Government during the 2011 Consultations.

These areas are Alcohol Management, Food Security, Land Reform, Customary Law, Income Management and School Attendance.

At some point during the hearings at Maningrida they were referred to by a community member as the '*seven measures*'. This allowed separate consideration for the continuation of the powers of the Australian Crime Commission Taskforce in The Northern Territory, identified as an additional key area of the legislation.

Alcohol Management, Food Security and Land Reform are identified by Government to be 'special measures'. A special measures is essentially a differential treatment between racial groups which is identified as necessary in order to address an existing inequality<sup>8</sup>, and the issue is addressed under *The Parliamentary Process* later in this document.

## ALCOHOL MANAGEMENT

Prior to the Intervention eighty percent of Homelands were considered to be 'dry' communities.



*Maningrida Progress Association Board  
Mr Herreen, Mr Totten and Mr Jimmy Woon Tan*

## Alcohol Management and What Was Said by Community Residents

Mr Herreen, Maningrida Progress Association: *The alcohol management plan was in place a long time prior to the NTER. It was in place and it was a conscientious decision that the community made through the women's centre to be able to police what was going on out here as far as alcohol purchasing went. It was a system that worked. It was not touched when NTER came out up until such time as everybody started talking about alcohol management plans.*

Dr Gondarra OAM, Dhurili Clan Nation: ... *All communities in East Arnhem Land have been alcohol free because of negotiation and agreement with the Northern Territory government and our peoples. We have entered into agreement that this area is going to be dry of alcohol.*

Senator Crossin to Mr Herreen: *I want to pick up on what you have been saying. So you believe that under the alcohol provisions of the new legislation the penalties are too harsh for the amount of alcohol you might be caught with?*

Mr Herreen, Maningrida Progress Association: *Yes. The bottom line is they are excessive.*

Mr Tan, Maningrida Progress Association: ... *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 ....*



*Ms Raelene Silverton*

*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.*

*Ms Helen Williams, Maningrida Progress Association: How come this harsh sentence is being done? It is like you are putting us in jail. There could be some other different ways of dealing with the punishment. Maybe it is up to us as a community to punish our own people. Maybe you could think of that, of sending them out somewhere for that.*

*Ms Raelene Silverton, Ntaria: We need treatment and a rehabilitation centre for dealing with alcohol and substance abuse—not imprisonment. No Aboriginal people want to get this same treatment of imprisonment. We do not want to put our people in jail. So we need rehabilitation for all the drinkers in the Northern Territory. I am talking for all Aboriginal people.*

*Mr Oliver, Malabam Health Board: We do not have an alcohol and other drugs counselling-type service, which I think we would probably value. I just add that a majority of [alcohol] permit holders here are non-Aboriginal people. As Reggie [Mr Wuridjal] said, the community has had an alcohol management plan for quite some time, previous to the intervention.....*

*Mr Totten, Malabam Health Board: To be totally honest, the money is being wasted on these guys (Alcohol Management Plan Advisors) coming out constantly—we cannot get people to meetings because they are sick of hearing the same old thing over and over again. Money would be better spent signing off on that and moving on to the abuse of some substance other than alcohol.*

## What Was Said About Alcohol Management at the Hearings in Alice Springs and Darwin

Mr Paterson, AMSANT: ... *we support an emphasis on alcohol management plans, we oppose increasing penalties for possession of alcohol including proposed six-month jail terms for amounts less than 1,350 millilitres. This is unlikely to reduce alcohol related harm in remote communities and will serve to increase the really unacceptably high incarceration rates in the Northern Territory. On the other hand, we support evidence based population alcohol control measures such as the introduction of a floor price for alcohol, as outlined in the submission from the People's Alcohol Action Coalition.*

Mr O'Reilly, Central Australian Aboriginal Legal Aid Service (CAALAS): *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 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.*

Mr Hunyor, Northern Australian Aboriginal Justice Agency (NAAJA): *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 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.*

Olga Havnen, NT Coordinator General for Remote Services: *I think also that the access to appropriate detox and rehabilitation services is something that is sadly lacking.*

Ms Rosas, NAAJA: *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 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.*

Mr Cooper, AMSANT: *The point is that if these alcohol management plans are really going to be genuine and effective then the community has to have ownership of them. This is what happened initially when communities declared themselves dry, well prior to the intervention.*

Prescribed communities and NT organisations appear to be united in their response to the new alcohol legislation:

- Alcohol Management Plans need to be ‘owned’ by communities, as happened in Homelands before the Intervention
- Penalties are too harsh – imprisonment will not address the problems of alcohol dependence
- The approach needs to change to include the provision of culturally appropriate rehabilitation services
- Legislation addresses alcohol but omits any reference to other readily available drugs

Amendments to the Legislation:

The police will have the discretion as to whether to give an infringement notice rather than charge an individual for possession of alcohol less than 1350 mls.

Change the word ‘liquor’ in the legislation to ‘ethyl alcohol’.

The Minister must consult with the NT Minister when making determinations on liquor licences and permits.

## FOOD SECURITY

The World Health Organisation<sup>9</sup> defines food security as having three facets: food availability, food access, and food use. Food availability is having available sufficient quantities of food on a consistent basis. Food access is having sufficient resources, both economic and physical, to obtain appropriate foods for a nutritious diet. Food use is the appropriate use based on knowledge of basic nutrition and care, as well as adequate water and sanitation.

All stores in 'designated food security areas' 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>10</sup>

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>11</sup>

### Food Security and What Was Said by Community Residents

Mr Morrish, Bawinanga Aboriginal Corporation: ... *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 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.*

*Mr Totten, Maningrida Progress Association: I think at the end of the day with the amount of restrictions and given what is involved in maintaining them, there is obviously going to be an on-cost. It is going to flow straight through. It is like I said. We are managed by our committee and they point us in the right direction. We also work with Health as well to promote healthy eating. I think money could be further spent on more education towards healthy eating and stuff like that.*

*Mr Morrish, Bawinanga Aboriginal Corporation: ... 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.*

*Dr Gondarra OAM, Dhurili Clan Nation: The stronger future bills address fraud security by once again creating more powers for the Minister for Indigenous Affairs and her department. We object to this on the basis that it is again a backward step from self-determination. Nor does it address*

*underlying problems to people eating well, like cost and other things, and it is the same with education. In Arnhem Land, in places like Milingimbi, Galiwinku and Gapuwiyak, the Arnhem Land Progress Association have run the stores for the last 40 years. They have been controlled by the people. ....We know how to run the stores ourselves and there are 300 local people working there. The Arnhem Land Progress Association is a non-profit non-government store which is run by us. We do not depend on government. What profit we make we use to employ our people. If we are talking about self-determination that is how we go about doing it. We do not need government money. We generate what we get, and we always give the money back to the people for different purposes and different reasons.*

## **What Was Said About Food Security at the Hearings in Alice Springs and Darwin**

There was little encouragement from the Committee for discussion around food security.

*Mr South, Mungoorbada Aboriginal Corporation: The Stronger Futures policy on shops is about licensing. It talks about food security. That means nothing to the people. The problem is the cost.. ... That is something that I think you guys need to take up—not just the security of food but also the price of food. Unless people can buy healthy food they cannot eat healthily. If they are not eating healthily then they are not going to be healthy.*

*Mr Ross, Director Central Land Council: Aboriginal communities in the Northern Territory continue to be greatly disadvantaged in their inability to access*

*affordable, fresh and varied produce, so we would like to see attention paid to affordable living in the future. We are broadly supportive of the altered licensing procedures under futures bill and we are concerned that, in some instances, the penalties and injunctive powers are excessive.*

- Legislation does not attempt to address the high cost of food (food accessibility remains a major problem)
- The cost incurred in licensing stores may ultimately increase the cost of food
- Imposition of licensing will further undermine trust between Government and stores that have been successfully and compliantly managing stores for many years.
- Legislation transfers ultimate control from communities to Government

## LAND REFORM

According to the Senate Standing Committee for the Scrutiny of Bills, 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>12</sup>

Should the Northern Territory Government not progress amendments, the Commonwealth will, through the use of its regulatory powers as set out in clauses 35(4) and 35(5). While the requirement for the Commonwealth Minister for Indigenous Affairs to consult with stakeholders is clear, the legislation goes on to say:

***Subclause 35(4)** It is intended that a public notification will be made to enable owners of community living areas to request to be consulted.*

***Subclause 35(5)** provides that a failure to consult as required under subclause 35(4) will not affect the validity of the regulations.*

Former Chief Justice of the Family Court of Australia, Alastair Nicholson, writes:

*The effect of this legislation is to give the Minister almost unlimited control over the uses of town camps and community living areas and in particular to enable their development for private purposes, presumably for profit. This is characterised as a special measure for the benefit of the Aboriginal people. It is true that the objects of the legislation are stated to enable measures to be taken for the benefit of the Aboriginal people, but the power conferred by the legislation rests entirely with the Minister and not with the people or their representatives ....<sup>13</sup>*

Community Living Areas (CLAs) have not yet been engaged in formal consultations regarding the Land Reform legislation.



## Land Reform and What Was Said by Community Residents

None of the communities participating in the Senate Hearings are classified as Community Living Areas or Town Camps and are not directly affected by this section of the legislation. The committee did not invite community residents to provide their views on this element of the legislation and it remains unclear as to whether they are in fact aware of the extent or meaning of the legislation. One participant at Ntaria however, did make the following comment,

Mavis Malbunka, Ntaria: *... there is not much support we get from the Central Land Council, I can tell you. They are only looking at the big community. We are going to lose our outstation because of what is happening with mining. The land council wants to talk to all the traditional owners if they could give the land away.*

## What Was Said About Land Reform at the Hearings in Alice Springs and Darwin

Mr Hill, CEO Northern Land Council: *The rule of thumb is that, no matter what government title is granted to an area or parcel of land in the NLC region, the Aboriginal people who are the traditional owners will always see it as their lands. What we tend to do is involve the traditional owners along with the other groups who assist the traditional owners in making sure that there is good governance and peace and harmony within that community, inviting other groups such as the grandmother people and the long-term*

*residents who should have a say with regard to development of their communities. However, we will go back to the traditional owners and ask them.*

*Mr Henderson, Chief Minister NT: So leases have to be negotiated. This is not going to happen overnight; it has to be considered within all the other priorities. The land councils have to negotiate with the traditional owners.*

*David Ross, Director Central Land Council: On the land reforms: the Central Land Council supports the Australian and Northern Territory government efforts to formalise land tenure in Aboriginal communities through voluntary agreements with Aboriginal landowners, and I must stress 'voluntary' ... We support a comprehensive reform of the legislation that affects CLA and title in order to overcome current constraints.*

*Olga Havnen, NT Coordinator General for Remote Services: On the land reform measures, .... the encouraging of voluntary negotiations over leases on Aboriginal land are absolutely welcomed. I would have to say, though, that any proposals about land-tenure reform really have to be premised on the basis that land-owning groups need to be properly resourced and provided with the necessary financial, professional and technical expertise in order to make free, prior and informed decisions about their land.*

*Mr South, CEO Mungoorbada Aboriginal Corporation: We have a few over 2,000 [head of cattle]. Because we have this problem with the land use agreement and the land council, we have leased part of Greenbank Station next door. So we are leasing private property to run*

*cattle on private property when we have 1½ million acres surrounding us that we cannot use. .... We have been trying to put in place that interim land use agreement for over a two-year period while we have been negotiating a land use agreement over the whole lot.*

*Senator Scullion to Mr South: Can you tell us again quickly why you cannot use the 1½ million acres.*

*Mr South: Because the Northern Land Council has got the right to say no, we cannot.*

*Senator Crossin to the Chief Minister, Mr Henderson: Division 3 allows the Commonwealth regulation-making power. It allows regulations to be modified to the extent that the laws apply to community living areas. Both land councils, particularly the Central Land Council, have expressed the very strong view that they would be extremely worried about what regulations might be produced in Canberra, particularly without consultation or local knowledge input. Would you share that view?*

*Mr Henderson: Very much so.*

*Senator Boyce to Mr Hill, Northern Land Council: ... you do not think we need a legislative mechanism.*

*Mr Hill: No.*

*Senator Siewert to Mr Ross, Central Land Council: So the NT government either does it now or the Commonwealth does, but your recommended approach is not through this legislation but through a separate piece of legislation?*

*Mr Ross: Yes*

Ms Newell, Leasing Coordinator Central Land Council (CLC): *There are two options. 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.*

Ms Newell, CLC: *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.*

- The legislation allows for the right of land owners to be overridden in making decisions about development on their land
- The Land Reform legislation is being progressed in advance of agreement between the Commonwealth and NT governments as to the manner in which restrictions to development in town camps and CLAs will be removed, and before determining which jurisdiction will ultimately have responsibility for this.

Amendment to the legislation:

That the phrase, “at the Land Council’s expense” be omitted.



*Dr Djiniyini Gondarra OAM  
Golumala Tribe Djirrikaymirr, and Dhurili Clan Nation,  
with Mrs Djapirri Mununggirritj Gumatj Tribe  
and Yirrkala Community Representative*

## CUSTOMARY LAW

Section 3.82 of the Senate Report reads: 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>14</sup>

At the same time however, it also states in Section 3.83 that many submitters gave evidence to the committee calling for amendments to ensure consideration of customary law and cultural practice in all sentencing and bail applications.<sup>15</sup>

### Customary Law and What Was Said by Community Residents

Dr Gondarra OAM, Dhurili Clan Nation: *The Stronger Futures bills extend section 91 of the current NTA law. This means that a judge will not consider our laws and our culture in court. Not only do I consider this as racist since all other citizens of Australia have their culture considered in a court, but I also consider it to be an attack upon my people's dignity and sovereignty.*

Dr Gondarra OAM Dhurili Clan Nation: *When the Northern Territory Emergency Response legislation was established, do you know what the government has done? You took away our traditional customary law, which is very key and important because it emphasises the rule of law, not the rule of man. In customary law, you have three basic elements: peace, order and good government. There is consistency in the law and people are sent into the law.*





*Mr George Gaymarani Pascoe  
Warrawarra Tribe Dalkarramirr, Milingimbi Traditional Owner*

*Mr Matthew Dhulumburrk Gaykamangu  
Gupapuyungu Tribe Dalkarramirr, and Raminginging Community Representative*



*You just did away with something that was very important. The reason why that was done away with was so that the government could go ahead and do what they liked, so they can play around with our lives and our people. I think you need to consider that very seriously.*

Mr Gamarania [Mr George Gaymarani Pascoe], Traditional Owner Representative Milingimbi: *In the Australian Constitution it says Australians have the right to practise religion and tradition. We practise religious law, once handed down by our ancestors.....*

## What Was Said About Customary Law at the Hearings in Alice Springs and Darwin

Ms Rosas, NAAJA: *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.*

Mr Hunyor, NAAJA: *That latter point you make, about elders feeling undermined and not valued, is absolutely the message that we are getting from the communities. That was reflected in the opening comments that Colleen made. What this law says to Aboriginal people is: 'Your*

*laws don't count or, in fact, are part of the problem.' That really is deeply undermining. It really goes to the heart of one of our fundamental concerns with intervention as an approach to solving problems for Indigenous communities, in that interventions come in on top of communities and are doing things to people rather than with them, which really undermines them. The sorts of things that we think there are real value in include working with elders in things like community courts or law and justice groups, to engage them in the process so they can be involved in taking responsibility for offending behaviour. Also, there is the offender having to face up to the community and having to take responsibility for their offending in terms of its effect on the community. They are the sorts of things that we would like to see properly resourced and properly supported, rather than more punitive approaches, which we do not think work.*

*Mr Paterson, AMSANT: Continuation of the ban on customary law being taken into account in bail and sentencing perpetuates a measure that is racist in its targeted denial of consideration of the full circumstances of Aboriginal people, and only Aboriginal people, before the courts and signals a lack of respect and recognition for our traditional cultures.*

*Mr O'Reilly, Central Australian Aboriginal legal Aid Services (CAALAS): One of the specific issues mentioned there was the issue of customary law in sentencing and bail. That is one of the issues that we touched on in our submission. Our position is that sections 3 and 8 of schedule 4 of the bill should be deleted. We strongly oppose the exclusion of cultural practice and customary law*

*from bail and sentencing considerations. That has been referred to in other submissions, including that of the Law Council of Australia. 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.*

- There is no evidence of support for legislation that continues to deny customary law and cultural practice in all sentencing and bail applications.

#### AUSTRALIAN CRIME COMMISSION (ACC)

And on the decision to continue to engage the Australian Crime Commission Taskforce in the Northern Territory as a part of the Stronger Futures legislation the following comments were made:

Olga Havnen, NT Coordinator General for Remote Services: *there are some concerns around the role of the Australian Crime Commission, and I think that needs to be reviewed. I would have to ask the question: what useful role have those powers played to date under the period of the intervention.*

Senator Crossin to Mr. Cooper, AMSANT: *There is a dot point in your submission about the continuation of the extraordinary 'star chamber' powers of the Australian Crime Commission.*

Mr Cooper AMSANT: *They include removal of the right to silence and coercive powers on people to provide information to them. Also, people are prohibited from conveying the fact that they have been approached, or any details of that sort of questioning of them. They are extraordinary powers. Our point is that these are not powers that should be applied selectively to Indigenous communities.*

Dr Gondarra OAM, Dhurili Clan Nation: *The Stronger Futures bills will also continue the powers for police to take people away from our town without telling anyone and to integrate our citizens without representation. Once again, I consider this racist as it does not apply to any other Australian citizens. It is also a major disrespect to the jurisdiction of the Yolngu nation while at the same time limiting my people's individual rights.*

## INCOME MANAGEMENT

The most significant change to the existing Income Management regime in the Northern Territory is operational.

The legislation makes provision for the broadening of the referral power contained in Clause 123UFAA of the Social Security Legislation Amendment Bill 2011 to be transferred to other Territory agencies, in order for them to be able to undertake complex and confidential assessments.<sup>16</sup>

It is unclear as to whether community residents are aware of these changes.

## Income Management and What Was Said by Community Residents

Mr Oliver, CEO Malabam Health Board: *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.*

Dr Gondarra OAM, Dhurili Clan Nation: *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.*

Mr Wuridjal, Malabam Health Board : ... *People are getting sick of BasicsCards. We want something else. Working together, we need to come up with something that is suitable for Aboriginal people—something that allows them to walk around better, rather than just being shamed by all these things.*

## What Was Said About Income Management at the Hearings in Alice Springs and Darwin

Mr Jones, Uniting Church Northern Synod: *'building mutual respect' with Aboriginal people, does not stack up when compared with government actions on the ground.*



*Joy White, Darwin Aboriginal Rights Coalition*

*For example, as our earlier submission states on page 4, the blanket application of income management means that individuals who are not responsible for the care of children, do not gamble and do not abuse alcohol or other substances may still have their income managed. These are punitive measures that do not speak of respect, mutual or otherwise.*

*Joy White, Darwin Aboriginal Rights Collective: We did not have any vehicles in Bagot to take old people to the shops to teach them to buy food from the shops [shops that would accept Basicscards] and buy meat at the butcher shops. We used to take them on the ordinary buses. But on the buses we were abused by European people calling us child abusers and so forth.....but now it is simple because these days taxi drivers do take the BasicsCard, which is really good in a way because it helps us to save a little bit of money..... It is just too hard for us. So there were the views of all the white people that were there and were swearing at us and spitting on us as if we were just another being from another race that was out of this world. I just could not understand why they were doing that to us but never mind.*

*Andrea Mason, Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council: As the committee would be well aware, the NPY Women's Council overall supports income management and we have provided that detail in previous reports and submissions. ... have supported income management because families are living in our region and generally the women have said that it provides some certainty around access to income if there are issues of risk, vulnerable people, children.....*



*As such, we do not collect data specifically across the programs on income management. We will now, obviously, with this new project, the intensive parenting support program, do so because those referrals are coming through the department.*

*Ms Robertson, Central Australian Aboriginal Legal Aid Service (CAALAS): 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.*

*Mr Clunies-Ross, North Australian Aboriginal Justice Agency (NAAJA): The proposed changes also undermine the work that we have been doing in the NT to educate our clients on their rights to access an independent and fair review and appeal mechanism. We urge the committee to recommend that this power of referral for income management be removed or modified to ensure that there is appropriate access to review those decisions to place people on income management.*

*Ms Robertson, CAALAS: 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. As detailed in our submission, we have many concerns about the proposed changes to income management, including referrals able to be made based on unwritten law and the exercise of executive power .... 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.*

Miss Barbara Shaw, Intervention Roll Back Action Group (IRAG): *I have actually taken women into Centrelink, older women that were wanting to get off income management, because they were non-drinkers, they were Christian people and they had no dependent children, no grandkids. I sat there in front of the Centrelink officer and they were like, 'We have got \$250 we can offer you for six months, every six months, if you want to stay on income management.*

- From evidence provided to the Senators, Compulsory Income Management does not appear to be widely supported although it is noted that some choose to give it support because it provides certainty, especially at times of crisis
- There does not appear to be support for the transfer of the power of referral to Income Management to other Agencies
- Assurance of access to an independent fair review and appeal mechanism is considered critical

- Government offers a regular additional payment to those who choose to remain on Income Management

Amendments to the legislation:

When consideration is being made as to whether an agency or other body should be given power to make referrals to Income Management, the Minister must be satisfied that there is an appropriate process for review and that the officers making decisions for referral should have *'functions, powers, duties in relation to the care, protection, welfare or safety of adults, children or families.'*

## SCHOOL ATTENDANCE

According to the Senate Report, under the amended arrangements, a parent may be requested 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>17</sup> The programme is known as SEAM (School Enrolment and Attendance through Welfare Reform Measures).

In 2009, SEAM was trialled in six locations across the Northern Territory. The final evaluation of these trials has not yet been completed. Under the new legislation, the programme will now be extended to a further sixteen schools in the Northern Territory.

## SEAM and What Was Said by Community Residents:

Ms Williams, Ntaria: *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.*

Ms Williams, Babbarra Women's Centre: *And then, why is the government also cutting off the income? How would they survive with food, clothes, electricity, power, fridges—a \$20 or \$30 power cut or whatever? At the end, how much money will they have?*

Mr Oliver, Malabam Health Board: *To tell you the honest truth, there have not been that many people approaching us to say their children are not going to school because of this or that. I can only assume that some of the kids feel uncomfortable. As we all know, bullying does go on. The kids might turn up to school, as I said, but then they may go out the back gate. That does happen.*

Mrs Williams, Babbarra Women's Centre: *But also the government has to understand that we have two seasons, the dry season and the wet season. In the dry season we have ceremonies where we send our children with their families out in the bush for six months, wet and dry, and the government should understand that that is part of our culture to attend. It is a kind of education too, to educate our kids. I know it is very important to send our kids every day.*

Mr Dwyer, Principal Maningrida School: *...our attendance*



*Ms Helen Williams, Babbarra Women's Centre*

*has doubled. That is due to a number of reasons and a number of strong partnerships with the other agencies across Maningrida. It is due to a lot of work by our attendance officers at the school, building those partnerships with the parents and the families and helping each of the parents and families work out ways to get their children to school on a regular basis. That hard work is reflected in these results.*

Mr Dwyer, Principal Maningrida School: *On any day we have got 620 students enrolled in the school. Today we had roughly 350 of those students at school. If you had driven around the community I would say there would have been only maybe 20 students in the community not at school. The rest of the students are most likely not in the community. They are either on country or in a neighbouring community or in Darwin.*

Ms Williams, Babbarra Women's Centre: *So, whether I send my kids every day and that family do not send their kids every day, we have to encourage each other, get communities together and talk about it through our reference group or whatever, with the leadership mob—talking to them, not just push but talk amongst each other about children and tell them all the reasons, like why is this new law coming that government people are pushing?*

Dr Gondarra OAM, Dhurili Clan Nation: *Why is the government doing this, saying 'If you don't send your children to school you are going to be punished'? Who is going to be affected more? Not the parents, but it is going to affect the children.*

Mr Kantawarra, Ntaria: *I am the ex-chairman of the school here, and I was chairman for many years. Before the intervention came to Ntaria, all the kids used to go to school every day. Then when Mal Brough came and puts his big foot here, putting intervention here, that has made big trouble.*

Ms Williams, Ntaria: *I am a community elder of Hermannsburg. On school attendance, people are frightened now because as the intervention came in, and now you have got the Strong Futures or whatever it is—another name for the intervention, isn't it—people are frightened because of the money they have to pay to the government when the kids don't come to school ..... The only thing they do not have at home is probably food because there is not enough food to go around the kids. But they have food at the school. It is good to see kids come to school because they know they have got food here and they get fed three times a day..... When kids come to school it is good to see parents get awarded for those things instead of being put down all the time because they don't send their kids to school. We would like to see more excursions. That makes the kids come to school, because they know they are having good things coming to them after they had been attending school.*



## What Was Said About SEAM at the Hearings in Alice Springs and Darwin

Mr Paterson, Aboriginal Medical Services Alliance of the NT: *We oppose the expansion of the SEAM measure in the absence of sufficient evidence. Its coercive and punitive approach fails to address the systematic problems with remote Aboriginal education and the complex reasons for low school attendance rates.*

Mr Jones, Uniting Church Northern Synod: *It is our view that the punitive suspension of income support payments of parents who do not meet their part of the attendance plans will not receive a positive response from parents. Punishing the most disadvantaged people in the land for not participating in a system that has not delivered the outcomes they desire is heaping punishment on punishment.*

Olga Havnen, NT Coordinator General for Remote Services: *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.*



*Barbara Shaw and her private grandfather,  
Tommy Jungala Walkabout*

Howard Bath, NT Children's Commissioner: *I also have to say that, talking to Indigenous folk around the Territory, I got the message that sometimes they are keeping their kids back from school because they are frightened of playground bullying and issues like that in the school environment. I guess what I am saying is that I do not think any one measure, like ensuring that all the kids are suddenly in school, is in and of itself going to make a huge difference.*

Miss Barbara Shaw, Intervention Rollback Action Group: *When you look at the SEAM program ... on this outstation - .... if there is no transport provided to and from home and school then these parents get cut off because their children are not attending the school. If they have private vehicles that are run down—no fuel, no petrol, no oil, whatever—these children cannot get to school.*

Olga Havnen, NT Coordinator General for Remote Services: *The other thing that needs to be noted is that Aboriginal kids, particularly youths, have a high level of personal autonomy. It would be unfortunate for parents or carers to be penalised when you have teenagers who are making their own decisions, whether you like them or not, about whether they are going to go to school. Parents can, I think, be making their best endeavours to get kids to school, and under those sorts of circumstances you would have to ask: why would you penalise a parent? ... the focus tends to be on parents and children as though somehow they are the only part of the equation, but I think a much bigger emphasis needs to be placed on the school and the broader community. If education is not valued, you would have to*

*ask the question: ‘Why that is so? What kind of conversation might we need to be having with plans and communities about why education is important?’ But simply taking a punitive approach and not engaging people in those conversations I do not think would be particularly helpful.*

*Maurie Ryan, Darwin: Education is the key to all races, and it has been detrimental in both the Northern Territory and federal governments in their drip-feeding service delivery of curriculum resources and buildings. My building is full of asbestos .... The federal government’s reply is to punish by fines and suspension of payment. It does not support the many that are doing the right thing in attending school. Those children should be rewarded.*

*Mr Gary Barnes, NT Department of Education: But the big issue we in Every Child, Every Day are dealing with is the kids who are out of community—those who are visiting another community and cannot get back, those on sorry business—and miss big chunks of time. Schools in communities are shut over the period of the wet season. When the dry season comes they all go ..... We need to be innovative around working with Indigenous people to make sure that we solve the issue of school attendance and fit around the things that are important to them from a cultural perspective, as well.*

*Mr Tutty, Darwin Aboriginal Rights Collective: I did not see any recognition of this advice in the process that happened at Knuckeyes. In particular, on the question of education, there was a really detailed response. I was really*

*surprised and impressed with the good ideas which started flowing around. I do not see them reflected in the new bills.*

*Ms McCarthy MP: One hundred and eighty days is 90 per cent attendance. If you go to Angurugu now, under their partnership agreement, if kids miss out during the week they run school on Saturday mornings for the kids. Other communities, negotiated through the communities, are running longer sessions each day on Monday to Thursday because they know the community people need to drive into Katherine to get things happening. We are negotiating with people in the desert who every year go to the Mt Isa rodeo. They are not going to stop doing that. If they are going to do that every year—and it is very important for them to do it—then we can close the school at that time and reopen it at another time.*

*Ms Gell NT Council of Social Services (NTCOSS): From consultations with our members, research and evaluation of a range of successful community driven school projects around the country, rather than punitive measures like SEAM, the goal of improved attendance can be better achieved by the introduction of strategies—and I am guessing that this list is not anything new to the senators—such as programs to bring Aboriginal community, especially elders, into schools; breakfast and lunch programs; Aboriginal teacher aides and Aboriginal teachers; curriculum that engages Aboriginal children; and programs that blend the development of self-esteem and confidence through engaging with culture with programs that focus on academic excellence. In addition, NTCOSS*

*advocates wraparound services for families with complex intergenerational issues to be addressed. ... The average cost of SEAM, that being \$200,000 per school, could be spent on intensive wraparound case management for families whose children do not attend school regularly and on improving the quality of schooling.*

- While the value of school attendance is not questioned, there is virtually no evidence of support for SEAM as an appropriate way of addressing the problem of absenteeism.

## EVIDENCE PROVIDED TO THE COMMITTEE AT THE CANBERRA HEARINGS

Ms Walker, CEO Public Health Association of Australia (PHAA): *We note that the object of the act in the Stronger Futures in the Northern Territory Bill 2011 is to support Aboriginal people in the Northern Territory to live strong and independent lives, however, we are concerned that some aspects of the bill are likely to entrench discrimination and to undermine the self determination that so many Aboriginal and non-Indigenous people have worked very hard to achieve, and which solid evidence suggests is vital to good health.*

Ms Lee, Public Health Association of Australia: *Sound governance structures allow Indigenous people to make their own decisions about their long-term goals and objectives for their own communities as those affected, whether Aboriginal or non-Indigenous people, know their problems and are better placed to address these. Sound governance mechanisms include support and continual community engagement in the design and delivery of programs as well as participation in the decision-making processes.*

John Falzon, St Vincent de Paul: *These are policies that have been shamelessly trialled on the Aboriginal people of the Northern Territory and they are now to be not only deepened in those communities but also broadened to include other areas of so-called disadvantage across*



*Australia. The degrading trail of internal colonisation continues discriminating at one moment on the basis of race and the next moment on the basis of class or gender. The Stronger Futures legislation will not strengthen when it is so inherently disempowering. ... The injustice of the policies that we of the St Vincent de Paul society are taking a stand against today is that they treat people as if they are nothing. We are on the side of people who are treated as if they are nothing. I urge this Senate committee to have the courage to recommend that this legislation be scrapped. How many people need to come here to tell you that this is the deepening and broadening of a wound that a future Prime Minister will need to apologise for? You have an opportunity to start again, to listen to the people instead of manufacturing consent. That would be a way to make a strong future.*

*Ms O'Halloran, National Welfare Rights Network: Of course, you would know from our submission that it is our view that we did not need the draconian legislation and certainly the income management processes to have that type of legitimate government intervention in the Northern Territory to provide the resources and the infrastructure [housing] that people need. ... The position of the National Welfare Rights Network has been and continues to be opposition to compulsory income management in all its form—whether it be blanket based or place based but still where the person is targeted in a compulsory income management process.*

*Mr Thomas, Welfare Rights Centre, Sydney: At welfare rights we have been highly critical of essentially funding a mini bureaucracy, and an expanding one at that, to micromanage the finances of people who are deemed to*

*be incapable of managing their financial affairs, when we all know that at the heart of it the real problem is not the managed finances but the adequacy of the payments in the first place. ... Certainly we see income management as a further waste of resources. We saw that recently in the extension of income management to the five areas, where it was revealed through the Senate estimates process that \$182,000 was spent on seminars to attract 40 people basically to sell the Basics Card. We are not sure at the moment whether any one of those groups have signed up, but, again, at \$7,000 per person that is a magnificent waste of money. ...*

**Mr Thomas, Welfare Rights:** *We are extremely concerned that if the legislation is passed the minister will have, essentially, unprecedented powers to give decision-making authority over a person's income support payments to another party. ... By conferring the power for a person to be put on income management the person will no longer have a right to challenge the decision under social security law through the Social Security Appeals Tribunal.*

**Dr Cassandra Goldie, Australian Council of Social Services:** *In relation to the extension of the decision making powers through to state agencies, we think this is deeply troubling. We do not know where this will go. In the way that the bill has been designed, it will leave the extension of this further into state authorities at the discretion of the minister—and, as we know, without any clarity about what kind of appeal rights would be attracted to that. We think this is a seriously slippery slope when it comes to ensuring that people who need to have social security have that in a fair and equitable way.*

*In relation to SEAM, we fully support, of course, the important investments that are going into the Northern Territory when it comes to providing better supports for families and parents to encourage better educational outcomes. Everybody supports that, but we do not think that we should be treating people who are on social security in a different way to parents generally when it comes to obligations on parents to enable children to go to school. There are already penalty systems in place for that which apply equally to people, whether or not you are on social security. We would oppose using the social security system as a compliance tool, when we should be working positively with parents.*

*Mr Thomas, Welfare Rights Centre, Sydney: ... just nine per cent of the income managed population in the Northern Territory are non-Indigenous, yet they are granted more than three-quarters of the exemptions available. ... So while they are saying this is non-discriminatory and operates within the bounds of the Racial Discrimination Act, this may be so but Welfare Rights' analysis of the exemptions data strongly suggests that at its core the exemptions policy appears to be discriminatory in its application.*

*Helen Szoke, Australians Race Discrimination Commissioner : As part of the 2010 amendments these provisions that had suspended the operation of the RDA were repealed with effect from 31 December 2010. ... However, as we have outlined in our submission there does remain the potential for other measures to be discriminatory in their impact inconsistent with the indirect discrimination provisions of the RDA. ... The commission continues to urge the government to include a legislative*

*provision in the bills that makes it unequivocal that all measures in the bills must be implemented in a non-discriminatory manner.*

Mick Gooda, Australian Human Rights Commissioner:

*I am on record expressing concern that there has been a significant reduction in community capacity resulting from the Northern Territory Emergency Response and other actions that have occurred around the same time, such as the disbanding of community councils and their replacement with super shires. This is not a sustainable solution. Communities must be engaged in developing solutions and in their implementation. Simply applying measures to communities will not make them work in the longer term.*

Ms Broun, Co-Chair National Congress of Australia's

First Peoples: *I want to speak a little about the legislation.*

*By any objective standards, the punitive measures in the stronger futures bills and amendments to the Social Security Act cannot be shown to benefit the original people it is intended to assist. Testimony provided to the Northern Territory told of the emotional and psychological hurt the intervention measures have placed upon people in the Northern Territory. To subject people already experiencing disadvantage to further punitive measures is a violation of these human rights principles and we wish to reinforce this point to the committee.*

Les Malezer, Co-Chair National Congress of Australia's

First Peoples: *Congress recommends that the Senate*

*Community Affairs Legislation Committee in preparing its report on the Stronger Futures in the Northern Territory*

*bill and two related bills: (1) report on the compatibility of the new bills in accordance with the human rights obligations of Australia and consistent with the human rights framework which has been a commitment made by government; (2) affirm that the bills are intended as special measures within the meaning of the international convention and describe the characteristics of these bills that define them as special measures; (3) provide guiding commentary on the meaning and/or relevance of prior informed consent in the context of development of legislative measures that may affect Aboriginal and Torres Strait Islander people, including whether and in what way a duty to consult with Aboriginal and Torres Strait Islander peoples exists; (4) take of the commitment by the government to the UN Declaration on the Rights of Indigenous Peoples and the undertaking to the United Nations Human Rights Council to promote the right of self-determination of the Aboriginal and Torres Strait Islander peoples and, as appropriate, promote the achievement of self-governance and greater autonomy for the townships and homeland communities of Aboriginal and Torres Strait Islander peoples*

*Eva Cox, Jumbunna Indigenous House of Learning: One of the most concerning aspects of the Stronger Futures legislation is that, to all intents and purposes, whatever was drafted before the consultations was what was finally in the bills, and there is no evidence that the process of consultation did anything more than act as a ticking box to say, 'We've done it,' rather than seriously testing out ideas and looking at whether or not the particular measures and so on were acceptable to the communities.*

# THE DECISION TO DISCRIMINATE

## THE COMMITTEE

From evidence provided to the Senate Committee it is clear that all five senators were made fully aware that there remains strong opposition to the NTER legislation and even stronger opposition to the proposed Stronger Futures legislation which is in general considered by prescribed community members and by some local organisations as an extension to the original legislation with a few changes. No members of the Committee can be working under any illusions with regard to the lack of support for the legislation, the failure of the consultation process and the aspirations of the communities.

Following evidence from Matthew Dillon of Family and Housing, Community Services and Indigenous Affairs (FaHCSIA) in Canberra regarding the consultations, Senator Siewert responded,

*Mr Dillon, with all due respect, listening to your comments about consultation, one would have thought the consultation that we heard about last week in the Northern Territory was carried out in a completely different territory. Every witness except one said how bad the consultation process was. They did not feel listened to and they were not given sufficient time. You have probably seen some of the vision from Maningrida. To say that people absolutely reject that the consultation process was carried out properly would probably not be too strong.*



*Ceremonial Dancer at the Maningrida Hearing*



And,

*So you will acknowledge that all we got was very strong negative feedback about the process, particularly from Maningrida, for example. ... And Hermannsburg, that is right, where they did not actually think they had any [consultation].*

Again, a comment from Senator Sue Boyce to Mr Dillon, *It [the consultation process] was described by Mr Gooda tonight as 'a rubbish consultation'.*

The degree of confusion and lack of understanding regarding the Stronger Futures legislation in communities was made starkly obvious to all the senators who found themselves forced into positions of seeking to provide basic information about the legislation while at the same time seeking opinion on it.

Committee members were asked about the difference between the Intervention and the new Stronger Futures legislation which was clearly not understood. Committee members sought to explain the differences and promised to send additional information to assist the communities.

Senator Scullion struggled to provide an adequate overview of the changes, ending with:

*You are able to look at what will start in August of 2012. There will be two pieces of information and you can make your own mind up about that, but they are considerably different. That might not make you happy. It will be useful for you to look at both of those. You are still able to make submissions, and perhaps, given the circumstances, we*

*might even be able to arrange for a spokesperson to take further evidence at a later stage through a teleconference, or some mechanism. In any event, we will do our best to be able to take further submissions, given that you do not seem to have the information that you should have had.*

The Chair, Claire Moore, also attempted to assist:

*... alcohol management, income management, leases and food security. They are the four big issues. We would also like to hear from you, particularly from the school, about the program that is trying to keep kids at school. They are the big issues. We would really like people to talk to us about how they feel about those five things because that is what is in the legislation.*

The Inquiry process in communities was often difficult for the senators. At times those providing evidence felt threatened by discussion of further punitive measures and responded accordingly. The confusion and distress of some led Senator Moore to declare, “*I am at a loss as to how to handle this section.*”

## THE REPORT

Throughout the report there is a sense of disconnect that is disconcerting. The majority of the concerns that have been expressed by community members and NT organisations are recorded but responses to them are often superficial.

### **Food Security**

With regard to food security the Committee view is to agree with evidence that the issues of freight and delivery

charges associated with getting food into communities requires work and states,

*Ensuring healthy food is available in communities at an affordable cost is essential and should remain on the agenda for future action.*<sup>18</sup>

In fact the legislation does not address the cost of food or the cost of freight, but focuses on increasing regulation in the operation of stores selling food in communities, an exercise that is claimed by some to ultimately increase the cost of food.

The Committee makes no recommendation of any kind regarding the proposed legislation and while agreeing that it is essential to ensure there is affordable food in communities, takes no initiative to recommend any mechanism whereby further consideration becomes an urgent requirement.

## **Land Reform**

Again on land reform, while there was general agreement on the need to address the existing legislative development constraints for Community Living Areas (CLAs) and Town Camps, there is clearly no common view as to the better way of proceeding towards this. The evidence show that there would be different approaches taken by the Commonwealth to that taken by the Northern Territory Government. For example, the NT Government discusses the need for lengthy consultation with the communities affected while the Commonwealth makes provision for the Minister to override the power of the owners, and to consult with them only 'on request'.

These are weighty matters. The Committee however decides to hedge its bets on the basis that the legislated provisions for action by the Commonwealth may not be used.

*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.*<sup>19</sup>

Whether they will be addressed or not, the Committee has simply evaded providing any recommendation to further explore the implication of a provision which will remove the rights of land owners to make the final decisions regarding development on their land.

The only recommendation made by the committee in regard to Land Reform is to ensure that work undertaken by the Land Councils will be recoverable – in testimony from Mr Dillon of FaHCSIA, this will be from the Aboriginal Benefit Account.

### **Customary Law**

The continuation of the prohibition laws on considering customary bail and sentencing decisions of Aboriginal peoples in the NT by magistrates and judges has received considerable attention throughout the Inquiry and seen by many legal organisations and by communities to be discriminatory. A re-evaluation of the law to explore non-discriminatory solutions was not called for. Though recognising the problem, the Committee made no

recommendations for immediate action but recommends that it is included in engagement programmes so as to increase the understanding of communities regarding customary law provisions.

Where the report captures at most levels the issues raised and the concerns regarding them, it seems that the recommendations are not focused on the current legislation and the impact it will have over the next ten years, but rather focuses on how best to rectify the issues ‘going forwards’ and into the future.

### **The Consultation Process**

The committee reported upon the consultation process. It acknowledged the high levels of confusion and lack of understanding surrounding the Stronger Futures legislation as well as the inability by many to recognise the difference between this and the earlier NTER legislation. In recognition of this the Committee make several recommendations in the hope of addressing these problems during future consultations. These recommendations involve working more closely with both the Australian Human Rights Commission and the Land Councils.

However, while such recommendations address the future, there is no focus provided to the current introduction of legislation to communities that neither fully understand, nor appear to agree with, the parts that are understood.

The glaring gap in this report lies between the well reported evidence and the recommendations that accompany it. This is where lies the disconnect. In Canberra John Falzon, CEO of St Vincent de Paul, finished his opening statement with the following request:

*I urge this Senate committee to have the courage to recommend that this legislation be scrapped. How many people need to come here to tell you that this is the deepening and broadening of a wound that a future Prime Minister will need to apologise for? You have an opportunity to start again, to listen to the people instead of manufacturing consent. That would be a way to make a strong future.<sup>20</sup>*

The greatest failing of the Senate report is to have ignored the recommendation to directly address the *reasons for referral/principal issues for consideration*<sup>21</sup> as set out in the proposal to refer the bills to the Committee. If evidence had been reported in such a manner, all members of the Senate would have been required to vote for this legislation in the knowledge that the people living in the affected communities neither accepted it nor consented to it.

## TERMS OF REFERENCE

(reasons for referral/principal issues for consideration)

- Effect of measures and implementation plans, evidence of community awareness/acceptance
- Assessment of intended and unintended consequences

The overview from evidence taken makes it abundantly clear that the **EFFECT** of the legislation overall continues to disempower members of prescribed communities, there is no majority **ACCEPTANCE** of the legislation and in many instances no **AWARENESS** of its full meaning. On this basis alone, a review of the legislation should have been called for.

### Effect

The legislation continues to disempower the communities whilst ignoring almost all the changes leading to self-determination that were called for through the community consultation process..

Although there is agreement between communities and Government on a number of issues that need to be addressed, there is a significant difference in the manner of approach to achieving the desired outcomes. Many communities choose to be alcohol free and they see the importance of investment in culturally sensitive rehabilitation programmes. Government on the other hand is described as being heavily biased to the law and order approaches.



**SELECTION OF BILLS COMMITTEE**

**Proposal to refer a bill to a committee**

**Name of bill:** Stronger Futures in the Northern Territory Bill 2011  
Stronger Futures in the Northern Territory (Consequential and  
Transitional Provisions) Bill 2011

**Reasons for referral/principal issues for consideration:**

Effect of measures and implementation plans, evidence of community  
awareness/ acceptance. Assessment of intended and unintended consequences.

**Possible submissions or evidence from:**

Northern Territory Government, FaHCSIA, Northern Land Council, Central Land  
council, NT Shire Councils, NT Indigenous Advisory Group, Aboriginal Legal Aid,  
Concerned Australians, Stop The Intervention group, effected individuals.

**Committee to which bill is to be referred:**

Community Affairs - Legislation Committee

**Possible hearing date(s):**

TBA

**Possible reporting date:**

29 Feb 2012

Senator Fifield

(signed)

Whip / Selection of Bills Committee member

Appendix 8 – Committee of Bills Referral to the Senate showing  
reasons for referral/principal issues for consideration

Again communities are committed to their children's education but there is no evidence that suggests that they are supportive of cuts to welfare support payments as a way of achieving this. Community members have put forward many different community-based suggestions of how change might come about but these appear to have made no impact on the legislation. Communities have highlighted some of the barriers to school attendance<sup>22</sup>, like the lack of transport, but no policies to address such problems have so far emerged.

While communities will have increased input to the development of alcohol management plans, the ultimate decision regarding their use will lie with the Minister.

The Land Reform legislation makes provision for the removal from owners on Community Living Areas (CLA's) of their right to make decisions regarding development on their land.

Again changes to Aboriginal community store licensing will transfer control from communities to Government, and is therefore a further step along the disempowerment continuum.

The Government states the effect of the legislation will be to secure funding for the next ten years. This was not referred to by communities throughout the Inquiry. Although secure funding is essential to the development of sustainable service delivery, the price of losing the right to self determination would appear to be too high a price to pay.

## **Community Awareness and Acceptance of the Legislation**

From the evidence, as has been documented throughout the Inquiry, it is clear that there is considerable confusion about the Stronger Futures legislation and especially about differences between it and the NTER legislation of the previous five years.

From the evidence provided to the Committee, there is no majority acceptance of the legislation. During evidence-giving, communities have made it clear that NTER legislation overall has been bad for communities and that the new legislation is even more unacceptable. Prior to the Senate Inquiry several communities made public statements expressing their concern. A number of them can be found at the end of this document.

Communities were not asked to comment on land reform issues and it is not clear whether there is any awareness of the proposed changes.

Communities were not asked about the transfer of 'referral to Income management' powers from Centrelink to other agencies.

Communities do not accept the licensing arrangements for community stores as set out in the legislation which again transfers power from communities to Government.

Communities believe strongly in the importance of returning to judges and magistrates the power to consider Aboriginal culture in making decisions regarding sentencing and bail applications. The legislation does not allow for this.

The evidence does not show community majority support for cuts to welfare support payments in situations of school absenteeism.

### **Unintended Consequences**

Harsh penalties for alcohol possession will lead to unacceptably high levels of Aboriginal incarceration in the NT.

The costs incurred in the excessive licensing of stores are likely to lead to increase prices of food.

Store licensing alone fails to address the high cost of food.

Addressing alcohol dependence, fails to incorporate the problems of dependence on other easily obtainable and illegal drugs.

Legislated land reform changes are being made in advance of the decision or details as to how that change will be progressed.

## **REVIEW OF THE LEGISLATION**

By amendment the review period has been reduced from seven years to three years, and to be completed by the fourth year.



*House of Representatives during the 'Debate' on the Stronger Futures Legislation*

## THE PARLIAMENTARY PROCESS

The legislation was tabled in the Lower House on 23 November 2011. The Bills therefore escaped discrete human rights scrutiny.

The Human Rights (Parliamentary Scrutiny) Act 2011 passed through Parliament on 25 November and will operate to protect and promote human rights across all Australian legislation as of 4 January 2012. This, however, will not automatically apply to the Stronger Futures and Related Bills because they were tabled in advance of the passage of the Scrutiny Act.

Government was so determined to pass this legislation, however, that it had little or no interest in what the Aboriginal people of the Northern Territory believed or understood about the legislation. Without waiting for the Inquiry to be completed, Government moved to a vote in the House of Representatives where the Stronger Futures legislation was passed on 27 February 2012 by agreement with the two major parties and without awaiting the report of the Senate Committee.

The passage of this legislation captured little attention. Many believe that this was the intention. At the time of the 'debate', the chamber was virtually empty with the focus of most politicians and the media diverted towards a leadership challenge.

That disregard for the people who had provided evidence, that disregard for the work of the Senate Committee and the tax payers who had funded the Inquiry was also extended to Australia's commitment to international law which was treated with the same disdain.

Senator John Madigan DLP, made the following observations while speaking in the Senate, and while voting against the bills, ... *this legislation was rushed through the other place without giving members an adequate opportunity to debate it.*

*I would like to bring the Senate's attention to the fact that there were only nine sitting days between the legislation being brought before the parliament and its third reading, only one of which was occupied with debate. I am also concerned that members failed to properly listen to constituents. The fact that the Community Affairs Legislation Committee released its report on 14 March this year, two weeks after the bill passed the lower house, speaks volumes of the complete disregard the government has had for addressing constituent concerns within the legislation.*

*... For this place to be prepared to inflict such punitive measures on the communities of the Northern Territory, especially considering the fact that the majority of us are not elected by those whom this legislation will be affecting, is unfair and unjust.<sup>23</sup>*

The legislation is said to include 'special measures'. These require compliance under Australian and International law with a set of understandings, general recommendations.<sup>24</sup> These include the prior and informed consent from those who will be affected by them. From evidence collected by the Committee, this does not exist and so the special measures do not exist. 'Special Measures' also require the meaningful participation of Aboriginal peoples in the drafting of the legislation. This would require a genuine partnership, something else which does not exist.

Alastair Nicholson, former Chief Justice of the Family Court



of Australia writes, *“If the Stronger Futures measures are not special measures then it follows that if they otherwise offend the Racial Discrimination Act (and this appears to be obvious in respect of most of the measures), then they have no legal effect. It is curious that the Committee did not address this issue given its findings.”*<sup>25</sup>

Government has proceeded by publicly articulating the failings in the manner by which the NTER legislation was introduced by the Howard Government in 2007 but has been blinded to its own inability to work with Aboriginal people in any form of respectful partnership.

For Government to become a ‘partner’ with Aboriginal people there must be trust. In many instances the Stronger Futures legislation has undermined whatever trust there may have been. It has shown great disrespect for community leaders who have never been formally consulted. It has removed from them and their communities’ basic rights and responsibilities. It has threatened culture and language. The legislation has highlighted the inequality that exists between NT Aboriginal communities and all other Australians.

Genuine partnerships are based on respect for the rights of the other and most importantly the ability to actively listen to and understand those things that are central to the cultural beliefs of the other.

As John Falzon said in Canberra to the Committee, *“You do not build the community up by putting its people down”*.<sup>26</sup>

Many organisations that gave evidence to the Committee in Darwin, Alice Springs and in Canberra carried this message. The messages were well reported in the Senate Report and one might assume they were understood. But

just as Alastair Nicholson commented with regard to special measures, "*It is curious that the Committee did not address this issue given its findings,*" so too is it curious that the Committee made no attempt to address the overall findings of the report, even though clear reasons for referral had been set out in the proposal from the Selection of Bills Committee.

One can only conclude that the decision had already been made. The concerns of the UN Human Rights Commissioner had been disregarded, as had the appeals made by Aboriginal men and women of the Northern Territory. The decision already taken was to discriminate against Aboriginal people in the Territory by the implementation of flawed legislation that, for the next ten years, will remove the rights of the people to self-determination.

## APPENDIX 1

MEDIA RELEASE

27 June 2012

### **Yolngu Nations Assembly and the Alyawarr Nation**

Should this Stronger Futures legislation pass through the Senate and become law, it will be a day of mourning for all Aboriginal peoples. This legislation will be the cause of great suffering in our hearts.

For those of us living in the Northern Territory the anguish of the past five years of Intervention has been almost unbearable. Many have simply given up hope. We have been burying people who can no longer live with the pain and despair.

We had believed that we were moving to a time of security, where we would no longer live from day to day in a state of fear but would be supported to find our own destiny in the security of our law and our culture. We little expected to be thrown into such turmoil by a Government determined to remove from us control over everything that we most value.

Money alone can never be the answer. Government has never understood and still fails to understand, that badly needed funds must be accompanied by the willingness to allow us to determine the direction of our lives. There must be respect and genuine partnership, not the top-down approach which undermines and devalues us as a people.

How is it that so many from across Australia – from small organisations, from churches and national institutions

- understand the value and importance of our people determining their own futures, whereas Government does not?

If this legislation should pass the senate, one thing that Government needs to know is that Aboriginal people will fight. We will never accept this racist legislation that separates us from other Australians and creates its own Apartheid in our country. Furthermore those thousands of people who have given us their statements of support will be with us. We will fight together for real justice.

**Dr. Djiniyini Gondarra OAM**

**Rosalie Kunoth-Monks OAM**

## APPENDIX 2

### **A letter to the Politicians of Australia who will Debate the Stronger Futures Legislation, June 2012**

*Palya Everyone,*

I never thought I would be so affected by this statement from Rosalie and Djiniyini. It is like having everything I dreamed of disappearing from my sight. (see their media release that is also attached).

I am so upset at this happening to us and after all the hard work we have put into trying to stop the Stolen Futures Legislation getting passed in Parliament and becoming Law.

I don't know yet if it has been voted on in the Senate, but when I think of politicians in Canberra, who never bothered to get to know First Nations People or understand our Culture and simply don't care that we are human beings as they are, it makes me very sad and my heart aches for all those who have never known freedom in their lives and the deaths of the children who saw nothing but despair in their future lives and ended it with a rope or other form of suicide, I can only cry from the pain they felt and the hopelessness they looked forward to.

I can only ask those politicians who don't care for their fellow human beings; "Do you feel good about what you are doing to the First Nations People today?"

"Does this power you have over our lives make you a better person?"

But most importantly, “Will you tell your grandchildren, what you did to the First Nations People this day and how you destroyed the lives of so many First Nations People and caused their deaths prematurely?”

“Will you have the guts to admit what you have done, to your grandchildren, or will you hide this truth from them when they ask you, that question of curiosity”.

“Who were the First Australians in this Land?”“Will you feel the shame of Generations of First Nations People being trampled underfoot by your political policy of Racism and Discrimination and greed and how you used your power to keep them forcibly shackled to a yard or fenced in area away from their Country and Communities, all because you wanted their wealth in their Land ownership?”

That wealth you will never know!

I wonder how you will tell your grandchildren these atrocities you did to the First Nations People. If you will tell the truth to them. If you will finally say you are sorry for what you did and mean it. If you will shed a tear for the People who only wanted to live their old age in freedom on their Traditional Lands and teach THEIR grandchildren the wealth of knowledge they had.

These beautiful People are no longer with us now. They died of broken hearts and Stolen Dreams by politicians who never cared to treat us like human beings.

You will have to look into your grandchild’s eyes and see the emptiness they feel of losing such a wonderful Heritage and Culture forever, for your greed.

**DENI Langman, Traditional Owner of Uluru**

June, 2012

## APPENDIX 3

### **To the Leaders of the Australian Federal and Northern Territory Parliaments:**

1. The Yolngu Nations reject the Stronger Futures Bill (and those associated) and call on the Senate to discard these Bills in full. We have clearly informed you that we do not support the legislation.

The Australian Federal Government can achieve all its aims through partnership in our communities. They have no need to grant themselves the continued and new powers contained within these Bills.

2. Until the Stronger Futures Bill (and those associated) are thrown out of the Australian Federal Parliament, the Yolngu Nations call on all traditional owners across the Northern Territory to refuse:
  - a) participation in land lease negotiations with the Australian Federal Government, and
  - b) approval for any exploration licenses
3. The traditional owners (T.Os) of prescribed community lands have been placed under extreme pressure from the Australian Federal Government to grant them head leases over these communities. T.Os want independently facilitated negotiations that can result in enhancing the interests of both the T.Os and the Australian Federal Government.
4. The Land Councils are increasingly being pressured by Government to act outside their roles and become agencies of Government. We want our Land Councils to advocate for our needs and not have their independence



curtailed by Government funding arrangements and political interference.

The Yolngu Nations call on the Australian Federal Parliament to ask the Auditor General for a review of the relationship between the Australian Federal Government and the Land Councils of the Northern Territory.

5. The Yolngu Nations call on both the Australian Federal and Northern Territory Governments to end their interventionist policies and agendas, and return to a mindset of partnership based on the principles of Self-Determination.
6. The Yolngu Nations call on the Northern Territory Government to reform the structures of local government (the Shires) to better reflect Yolngu and 1st People's government structures which will provide a more locally based and accessible form of local government.
7. The Yolngu Nations call for an end to the Northern Territory Government's Working Futures policy. For the sustainable social and economic development of our society Homelands need to be considered equal to communities that were former mission and government settlements.
8. The Yolngu Nations call for an end to the Northern Territory Government's Compulsory Teaching in English for the First Four Hours of Each School Day policy. To be successful we need education with instruction in our Yolngu languages through all levels of schooling.

**Djirrkaymirr Rev. Dr. Djiniyini Gondarra**  
**(Spokesman Yolngu Makarr Dhuni)**

## APPENDIX 4

28 May 2012

### **Media Release from the Alyawarr People of the NT**

Statement regarding Australian Federal Government  
Stronger Futures Bills and Northern Territory policies,

To the Leaders of the Australian Federal and Northern  
Territory Parliaments: Prime Minister Julia Gillard,  
Opposition Leader Tony Abbott, Leader of the Australian  
Greens Christine Milne, Northern Territory Chief Minister  
Paul Henderson and Northern Territory Opposition Leader  
Terry Mills, with a copy to the Federal Minister for Family,  
Housing, Community Services and Indigenous Affairs Jenny  
Macklin

**We the Leaders and Custodians from Ampilatwatja  
Community Australia give our full support to:**

### **Yolngu Makarr Dhuni (Yolngu Nations Assembly)**

To our brothers and sisters of 8 nations in the Western,  
Central and East Arnhem Land areas of the Northern  
Territory: We say to you, we are with you and we will stand  
with you as one peoples against the *Australian Federal  
Government Stronger Futures Bills and Northern Territory  
Policies*.

We call on the Federal Government to scrap the Stronger  
Futures laws and return to full consultation, negotiations and  
agreements with our leaders and custodians in the Eastern  
Alyawarr Region to discuss a way forward in partnership,  
and that our peoples be involved at all levels of government  
in setting policies, programs on health, education,  
employment and training.

We as the true custodians, land owners and leaders now demand that the Federal, State and Territory governments must respect all human rights, and recognise and acknowledge our peoples rights as first Australians to make all decisions to determine our own future directions, to work and walk with us towards a better future for our peoples.

- **We call for full return of our land rights. We do not want native title in its present form.** We did not give our free and prior consent or agree to have this imposed onto our peoples who did not to give our sacred objects in exchange. These objects hold our country, our peoples nations together.
- **Native title does not provide first Indigenous Australian peoples with ownership of the land or the power to stop development by others out side the community lease areas.** Under the Native Title legislation our peoples' rights to land can be extinguished and our inheritance extinguished. For example our lands can be taken for mining from which our people receive little or no benefit while the real benefit goes to others and the land is destroyed.
- We call on our people to reject any meetings or discussions with government appointed bureaucrats, or representatives of government agencies on Stronger Futures laws.
- We urge other Indigenous and traditional Aboriginal leaders and custodians to stand strong to fight for our inheritance and rights as first peoples of this country.
- **We call on International UN bodies to review the Australian Federal government's Stronger Futures laws under the human rights charter. And a full scrutiny be carried out against its human rights obligations.**

- **We advise our people to fully withdraw any support for the Stronger Futures laws until the UN reviews have been carried out.**
- We seek a public apology from the Federal Government for the way we have been treated and effectively stigmatised as child sexual abusers, drug traffickers, rapist, and murderers under the NTER which treatment continues today under the Stronger Futures laws.
- We reject being forced to grant Government community leases as a price for the provision of housing and community services such as health and education.
- We call on the Federal Minister to return control of Aboriginal Benefit Account (Mining Royalties) to the peoples of the Northern Territory and to stop using this account **to establish and pay for the leasing arrangements** on our community lands.
- We say no to further mining exploration, and we withdraw support of all new mines.
- We fully support our brothers and sisters who are standing strong against the government proposed Muckerty waste dump north of Tennant Creek.
- Our people have been made outcast in our own country, under the NTER and the Stronger Future laws to the point where everything has been taken away from our people.
- The gap is widening and not closing.

**Richard Downs**

**Alyawarr Spokesperson Eastern Region**

## APPENDIX 5

11 June, 2012

### **Statement by the Gurindji People of Daguragu and Kalkaringi**

The Gurindji people at Daguragu and Kalkaringi are today calling on the government to get rid of the 'Stronger Futures' laws.

This Intervention must be abolished, not extended for another 10 years. It is racist and has caused so much suffering in our community. We have lost everything and have no control. We are supporting the statement of the Yolngu nations calling for an end to the Intervention, the Shires and the policies which deny funding to Aboriginal homelands. Like the Yolngu we are strongly demanding self-determination and proper funding our communities.

We can not sign any leases with government over Daguragu. This is Aboriginal land, handed back by Gough Whitlam to Vincent Lingiari forever. Not to be taken away again by leases. We say no to the bribe being offered for a 40-year lease. We want control of our land. The Government Business Manager (GBM) put in by the Intervention must leave Daguragu.

Since CDEP and the Daguragu Council were taken away from us, there are hardly any jobs. And so many of the jobs like Night Patrol are being done now by white people.

We do not want to work for the dole and BasicsCard. We are the people who went on strike for equal wages and for land rights. We are still fighting strongly. It clear the government wants us to leave our lands in search of work

but we will keep fighting until we get the message through  
– our land is our life and we will not leave.

We call on the unions who have helped us in the past and all supporters of Aboriginal rights around the country to keep fighting to get rid of the Stronger Futures laws and to win self-determination for our people.

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