

**SUBMISSION TO THE SENATE COMMUNITY AFFAIRS COMMITTEE  
INQUIRY INTO THE STRONGER FUTURES IN THE NORTHERN  
TERRITORY BILL 2011 AND TWO RELATED BILLS**

1 February 2012

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## INTRODUCTION

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Education, Employment and Workplace Relations and the Attorney-General's Department make this submission in response to the Senate Community Affairs Legislation Committee's Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and related legislation.

This Submission has two main parts.

Part 1 outlines the background to the Stronger Futures in the Northern Territory legislation, the socio-economic gaps experienced by Aboriginal people in the Northern Territory, and describes the outcomes of successive rounds of community consultation in the Northern Territory since 2007 and the key findings of the Northern Territory Emergency Response evaluation.

Part 2 provides details on each of the proposed measures in the Stronger Futures in the Northern Territory legislation package and how the measures are intended to help close the gap.

An overview of the legislation, funding to support the legislation and principles underpinning the legislation is at **Attachment A**.

## **PART 1: CLOSING THE GAP IN INDIGENOUS DISADVANTAGE IN THE NORTHERN TERRITORY**

### **Background**

The Northern Territory Indigenous population experiences the widest gaps across most of the Closing the Gap indicators by a large margin compared with other jurisdictions. Closing the gap in the unique social, demographic and geographic context of the Northern Territory presents greater challenges to the Australian Government than in other jurisdictions.

Jointly, the Australian and Northern Territory Governments have been working together to strengthen approaches to tackling disadvantage experienced by Aboriginal people and communities. Service delivery in areas such as education, policing, social housing and child protection is primarily the responsibility of the Northern Territory Government.

The Northern Territory Emergency Response (NTER) was introduced by the previous Australian Government in 2007 following the release by the Northern Territory Government of the *Ampe Akelyernemane Meke Mekarle* “*Little Children are Sacred*” report.<sup>1</sup>

After the election in November 2007, the Government announced that it would review the NTER after the first year of its operation. The independent review reported in October 2008. In its response to the review, the Government said it would:

- recognise as a matter of urgent national significance the continuing need to address the unacceptably high levels of disadvantage and social dislocation experienced by remote communities and town camps in the Northern Territory;
- reset its relationship with Indigenous people based on genuine consultation, engagement and partnership; and
- respect Australia’s human rights obligations and reinstate the *Racial Discrimination Act 1975*.

From June 2009 to the end of August 2009, the Government conducted extensive consultations with Aboriginal people in the Northern Territory about how the NTER should proceed. These consultations involved people across the 73 communities affected by the NTER. The Australian Parliament passed legislation in June 2010 to:

- reinstate the operation of the *Racial Discrimination Act 1975* in relation to the NTER measures;
- introduce a new, non-racially discriminatory scheme of income management; and
- redesign the alcohol and prohibited material restrictions, five-year leases and community stores licensing measures so that they were more clearly special measures under the *Racial Discrimination Act 1975*.

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<sup>1</sup> Northern Territory Board of Inquiry into Protection of Aboriginal Children from Sexual Abuse, 2007. *Ampe Akelyernemane Meke Mekarle*, “*Little Children are Sacred*”, Northern Territory Government, Darwin.

Key legislated NTER measures are due to cease in August 2012. Funding for most measures under the Closing the Gap in the Northern Territory National Partnership Agreement will end on 30 June 2012.

Australian Government investment in the Northern Territory since November 2007 has provided new infrastructure and services and underpinned reforms in areas such as alcohol management and community stores licensing.

## **Closing the Gap in the Northern Territory**

The Commonwealth, State and Territory governments all have shared responsibility for achieving the agreed Council of Australian Governments (COAG) targets for closing the gap in Indigenous disadvantage. The COAG Reform Council has the task of assessing and publicly reporting performance against these commitments – life expectancy, child mortality, access to early childhood education, numeracy and literacy achievement, Year 12 or equivalent educational attainment, and employment.

In 2008 and 2009, the Senate Select Committee on Regional and Remote Indigenous Communities considered the challenges of closing the gap in remote areas. The Senate Select Committee recommended that commitments of five to ten years were highly desirable because achieving the targets was a long term endeavour; three year funding cycles reduced project implementation timeframes to 18 months which was insufficient to effectively tackle the problems; there needed to be more job stability and continuity of people delivering services on the ground; and a longer time frame was needed to build effective working relationships between governments, service providers and communities.<sup>2</sup> The *Little Children are Sacred* report estimated that it would take 15 years to make inroads into the problems it identified.<sup>3</sup> The magnitude of the closing the gap challenge in the Northern Territory is an additional reason for a long-term strategy. Accordingly, the Stronger Futures legislation proposes that most measures be in place for up to ten years so that there is sufficient time for outcomes to be achieved.

There are some unique features of the Northern Territory that are particularly relevant for considering the challenge presented by the Closing the Gap approach. Key features include that:

- Aboriginal and Torres Strait Islander people represent a much higher proportion of the Northern Territory population (30.4 per cent) compared to other jurisdictions with a range of 0.7 per cent to 3.8 per cent<sup>4</sup>;
- the Northern Territory Government has a very different challenge to any other jurisdiction. Unlike any other State or Territory, most Indigenous Territorians live in very remote areas:
  - 80% of the Indigenous population in the Northern Territory lives in remote or very remote areas<sup>5</sup>;
  - the Northern Territory also has by far the highest proportion of its Indigenous population living in very remote areas (56 per cent in 2006)<sup>6</sup>;

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<sup>2</sup> Senate Select Committee on Regional and Remote Indigenous Communities, 2010. *Final Report*.

<sup>3</sup> Northern Territory Board of Inquiry into Protection of Aboriginal Children from Sexual Abuse, 2007. *Op. cit.*, p. 13.

<sup>4</sup> Australian Bureau of Statistics, 2008. Experimental Estimates of Aboriginal and Torres Strait Islander Australians, June 2006, Cat. no. 3238.0.55.001; appendix, table AA.11-12.

<sup>5</sup> Australian Bureau of Statistics, 2008. Experimental Estimates of Aboriginal and Torres Strait Islander Australians, June 2006; appendix, table AA 15.

- the Northern Territory has the highest proportion of young people in the total population (median age 31.3 years compared to the national median age of 36.9; 23.1 per cent under the age of 15 years compared with the national average of 18.9 per cent)<sup>7 8</sup>;
- births account for most of the population increase, with the greatest proportion of births being in the Indigenous population<sup>9</sup>;
- the Northern Territory has 18,775 children aged zero to four years (8.2 per cent of the total population) of which 7,774 children are Indigenous (12.1 per cent of the Indigenous population). The Northern Territory has 34,326 children aged 5 to 14 years (14.9 per cent of the total population). The Australian Bureau of Statistics (ABS) estimates there were 14,658 Indigenous children aged five to 14 years in the Northern Territory at the 2006 Census (22.9 per cent of the Indigenous population)<sup>10</sup>;
- the proportion of the school aged population in the Northern Territory enrolled in Transition<sup>11</sup> to Year 12 who are identified as Indigenous is 40.6 per cent, compared with the national average of 4.6 per cent<sup>12</sup>;
- there will be strong growth in the working age population in remote areas of the Northern Territory from 2008 to 2021.<sup>13</sup> If additional jobs are not created for this group, social problems will worsen and welfare dependency will become further entrenched.

The Northern Territory has the lowest fiscal capacity of all States and Territories to meet the service needs of its constituents and relies more than any other State or Territory on Commonwealth-sourced funding to deliver programs and services. It has limited additional revenue raising capacity to fund the additional effort required to close the gap.

Land tenure arrangements in the Northern Territory are unique. Seventy per cent of the Territory's Indigenous population live on Aboriginal titled land. Around 45 per cent of the Territory land mass is Aboriginal-held land.<sup>14</sup> The *Aboriginal Land Rights (Northern Territory) Act 1976*, which is Commonwealth legislation, sets out the rules for access to, management and use of this land.

The COAG Reform Council's performance reports for 2008-09 and 2009-10 on the National Indigenous Reform Agreement provide national and jurisdictional information on the width of the gaps and progress towards the targets. An overview for the Northern Territory follows.

***Close the gap in life expectancy between Indigenous and non-Indigenous Australians within a generation***

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<sup>6</sup> Ibid.

<sup>7</sup> Australian Bureau of Statistics, 2011. Inform NT, March 2011, catalogue no. 1308.7.

<sup>8</sup> Northern Territory Department of Education and Training, 2011. *Annual Report 2010-11*, Darwin, p. 26.

<sup>9</sup> Northern Territory Treasury, 2009. *Northern Territory Population Projections*.

<sup>10</sup> Northern Territory Department of Education and Training, 2011, *Op.cit.*, p. 22.

<sup>11</sup> The first year of full-time schooling in the Northern Territory is known as Transition.

<sup>12</sup> Northern Territory Department of Education and Training, *Op.cit.*, p. 24.

<sup>13</sup> Australian Bureau of Statistics, 2011. *Op.cit.*

<sup>14</sup> Northern Territory Department of Lands and Planning, 2010, unpublished estimate.

The latest available estimates for the period 2005-07 show that Indigenous life expectancy in the Northern Territory is lower than in any other jurisdiction – 61.5 years for males and 69.2 years for females. This is well below the corresponding estimates for the Indigenous population for Australia – 67.2 for Indigenous males and 72.9 years for Indigenous females. Furthermore, differences in life expectancy at birth between non-Indigenous and Indigenous Australians were also greatest in the Northern Territory – 14.2 years for males and 11.9 years for females.<sup>15</sup> The gap nationally is 11.5 years for Indigenous men and 9.7 years for Indigenous women.<sup>16</sup>

### ***Halve the gap in mortality rates for Indigenous children under five by 2018***

For the period 2003 to 2007, the mortality rate for Indigenous children under five in the Northern Territory was 3.6 deaths per 1,000 – three times the rate for other children.<sup>17</sup>

Babies born to Indigenous mothers in the Northern Territory are more than two and a half times more likely to have low birth-weight than non-Indigenous mothers.

### ***Ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013***

In 2010, national enrolment rates in early childhood education for Indigenous four year olds in remote and very remote locations were estimated to be around 90 per cent.<sup>18</sup> Data is not available at a State and Territory level for remoteness areas as the Australian Bureau of Statistics advises there is insufficient confidence in the population data to develop small population measures.

However, the Northern Territory Department of Education and Training has reported in their 2010 Annual Progress Report on the National Partnership Agreement on Early Childhood Education (NP ECE), that in 2010, the proportion of all Indigenous children in the year before full time schooling, who were enrolled in and attending an early childhood education program in the Northern Territory, calculated as a share of the pre-school population, was 39.5 per cent. This is an increase of 0.6 per cent above the 2009 figure.<sup>19</sup>

While the national early childhood education enrolment rate for Indigenous children in remote areas is high, there is considerable evidence that the attendance rates are low. Data on how many children enrolled in preschool were absent (based on those children not present for one or more sessions during the reference week) is only available for non-government preschools and the distribution is not even across Australia.<sup>20</sup> In all jurisdictions where data were available, the proportions of Indigenous children absent from preschool were significantly higher than those of non-Indigenous children. Of all jurisdictions where data were available, the proportion of Indigenous absenteeism was highest in Northern Territory (68.9%), and was more than three times the proportion of absenteeism for non-Indigenous children (21.5%). This is, however, a very partial picture, covering around 7% of preschools in the Northern Territory.

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<sup>15</sup> Council of Australian Governments Reform Council, 2010. *National Indigenous Reform Agreement: Baseline performance report for 2008-09*, Report to the Council of Australian Governments, p. 38.

<sup>16</sup> Ibid, p. 37.

<sup>17</sup> Ibid, p. 59.

<sup>18</sup> National Preschool Census 2010 (DEEWR unpublished). This data excludes children enrolled in preschool programs delivered in child care settings (for example, long day care services).

<sup>19</sup> Northern Territory Government, 2011. *Annual Progress Report on the National Partnership Agreement on Early Childhood Education*.

<sup>20</sup> National Preschool Census (2010), and reported in the 2012 Report on Government Services (released on 31 January 2012).

To address these issues, the Northern Territory Government is taking action, as part of their bilateral agreement under the NP ECE, to improve preschool enrolment and attendance in the Territory. A Territory wide plan with costed models of delivery for preschool children in small remote communities and town camps to improve access to participation and attendance in preschool is being implemented on a location by location basis.

Although preschool and other early childhood services are not compulsory, regular attendance can greatly improve children's school readiness. The Government is providing substantial funding for early childhood education and care services, in addition to the NP ECE, in the Northern Territory, including:

- under the NTER, establishing and now operating nine new crèches and upgraded 13 existing crèches;
- supporting the operation of around 120 Budget Based Funded (BBF) early childhood education and care services;
- funding to support approximately 1,486 Indigenous children (full time equivalent) in preschools under the *Indigenous Education (Targeted Assistance) Act*;
- providing \$59.4 million nationally over four years to improve the quality of centre-based BBF child care services, particularly improving facilities, governance and staffing.

In addition, under the Indigenous Early Childhood Development National Partnership Agreement the Northern Territory Government has also agreed to establish five Children and Family Centres (CFCs) in areas with high Indigenous populations and disadvantage. The CFCs will be established in Maningrida, Yuendumu, Ngukurr, Gunbalanya and Palmerston. Delays in the construction of the CFCs have occurred due to complex land tenure issues, however, in December 2011 the Northern Territory Government agreed on a way forward on these issues.

### ***Halve the gap in reading, writing and numeracy achievement for Indigenous children by 2018***

For this target, the gap is measured as the difference between the proportion of Indigenous and non-Indigenous students achieving at or above minimum standards defined by the National Assessment Program – Literacy and Numeracy (NAPLAN).

#### ***NAPLAN participation***

On average, around 81 per cent of Indigenous Year 3 children in the Northern Territory participated in the 2011 NAPLAN, lower than the average participation for all Australian Indigenous Year 3 children (90%). The gap between Indigenous and non-Indigenous Year 3 participation rates in the Northern Territory was between 14 to 17 percentage points across each of the 5 assessment domains (reading, writing, spelling, grammar and punctuation, and numeracy). By Year 9 that participation gap had widened to between 23 to 27 percentage points. In 2010, an average of 65 per cent of Indigenous children in Year 9 participated in NAPLAN, increasing to 71 per cent in 2011.<sup>21</sup>

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<sup>21</sup> Australian Curriculum, Assessment and Reporting Authority, 2011. *National Assessment Program, Literacy and Numeracy, National Report for 2011*.



## *Achievement*

In terms of achievement, fewer Indigenous children (40%) than non-Indigenous children (89%) had attained at least the national minimum standard or above for reading, in 2011.<sup>22</sup> The gap between Northern Territory Indigenous and non-Indigenous reading attainment at Year 3 (49 percentage points) was more than double the gap in either Western Australia (23 percentage points) or South Australia (21 percentage points). Although Indigenous Year 3 children in all states/territories performed better in the numeracy assessment domain than for reading, the gap between Indigenous and non-Indigenous children in the Northern Territory was consistent with that of reading. In the Northern Territory, the gap between the proportion of Year 3 Indigenous children and non-Indigenous children attaining the national minimum standard for numeracy was 35 percentage points, more than double the gap in either Western Australia (17 percentage points) or South Australia (16 percentage points).

NAPLAN assessment indicates that while 37 per cent of Year 9 Indigenous Northern Territory students had attained the national minimum standard or above for reading, the gap between Indigenous and non-Indigenous students is wider than at Year 3. There is a 52 percentage point difference in the reading attainment of Year 9 Indigenous and non-Indigenous students, greater than for any other state/territory (the gap in WA for instance is 29 percentage points).<sup>23</sup>

## *Location, achievement and attendance*

Across Australia, in all five assessment domains there is a consistent pattern of the highest achievement scores in metropolitan areas and the lowest scores in remote and very remote areas. These patterns are similar for Indigenous and non-Indigenous students but the differences are greater for Indigenous students and this is most evident in the Northern Territory.<sup>24</sup> The tables at **Attachment B** (Year 3 reading for all Australian jurisdictions) and **Attachment C** (Year 3 reading for Indigenous students across all Australian jurisdictions) illustrate this observation.

School attendance across preschool, primary and secondary school generally decreases with remoteness. This pattern is observed for both non-Indigenous and Indigenous students.

Information on school attendance by geolocation is available for the Northern Territory and is provided in **Attachment D**. Attachment D shows that for both non-Indigenous and Indigenous students attendance is lowest in very remote areas.

## *School attendance*

Evidence indicates that educational achievement is influenced by school attendance.<sup>25</sup> For all Australian students, attendance is relatively more regular in primary school and declines in secondary school. The decline is more pronounced for Indigenous than non-Indigenous students. Nationally, Indigenous student attendance patterns generally follow the pattern for all students, but from a lower starting base. In the Northern Territory, low attendance rates begin from Year 1 and continue throughout school. This raises particular concerns that positive school attendance patterns are not being formed during the critical years where the foundations of literacy and numeracy are laid down.

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<sup>22</sup> Ibid.

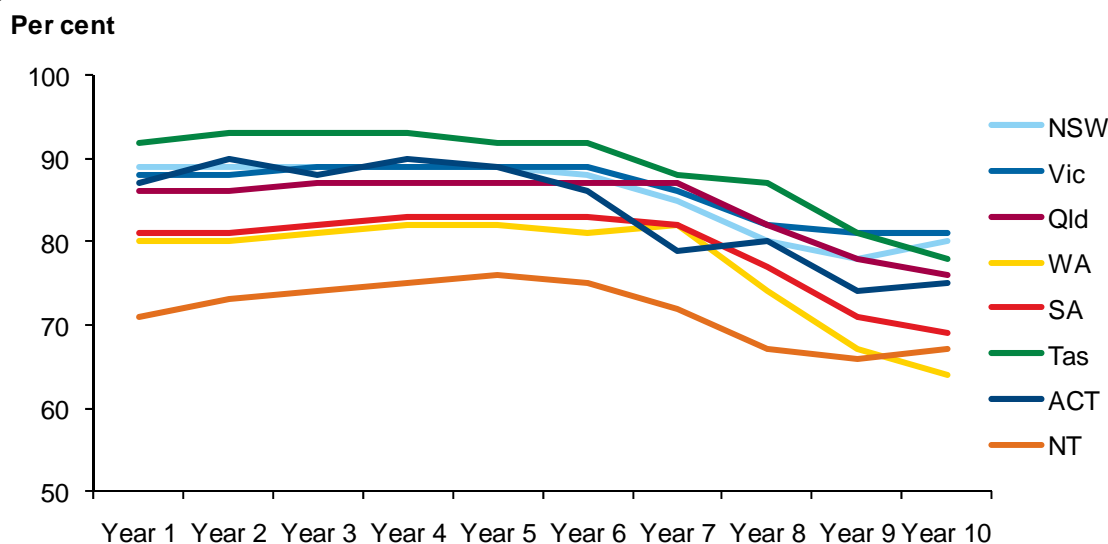
<sup>23</sup> Ibid.

<sup>24</sup> Ibid, p. 64.

<sup>25</sup> Miller, P., & Voon, D., 2011. 'Lessons from My School', *The Australian Economic Review*, Melbourne Institute of Applied Economic and Social Research, volume 44, issue 4, pp. 366-386.

The COAG Reform Council 2009-10 report indicated that Indigenous attendance rates in the Northern Territory are low across Years 1, 5 and 10 for all three years 2007, 2008, 2009. The figure below from the COAG report shows how the Northern Territory compares with other jurisdictions on Indigenous school attendance.<sup>26</sup>

Figure 1 Attendance rates for Indigenous students, government schools, by State and Territory, 2009, per cent



Source: COAG Reform Council National Indigenous Reform Council Agreement: Performance report 2009-10

In their consideration of contextual factors that influence the educational achievement of Indigenous children, De Bortoli and Thomson have suggested the following explanation for how poor attendance affects Indigenous student achievement:

“Throughout their school lives these problems compound, as Indigenous students are more likely to be late to school on a regular basis, to miss consecutive months of schooling and to change school several times. In national tests in the early years of primary schooling, Indigenous students consistently achieve at lower levels than their non-Indigenous peers, and as schooling continues, the gaps that are there at the beginning of primary school gradually widen as poor attendance compounds a poor start to school. Lower achievement and discontinuity of schooling can lead to lower levels of self-confidence and self-efficacy, which in turn further hinder academic achievement.”<sup>27</sup>

Attendance rates for Northern Territory schools to which the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) is being extended are at **Attachment E**. Attachment E shows schools with a range of attendance levels within areas and that there are some schools with very low attendance within those areas.

It has been suggested that there is a high level of mobility among Indigenous school students and that this affects school attendance levels. Recent research suggests that Indigenous students tend to stay

<sup>26</sup> COAG Reform Council, 2011. *National Indigenous Reform Agreement: Performance report for 2009-10*, COAG Reform Council, Sydney, p. 53.

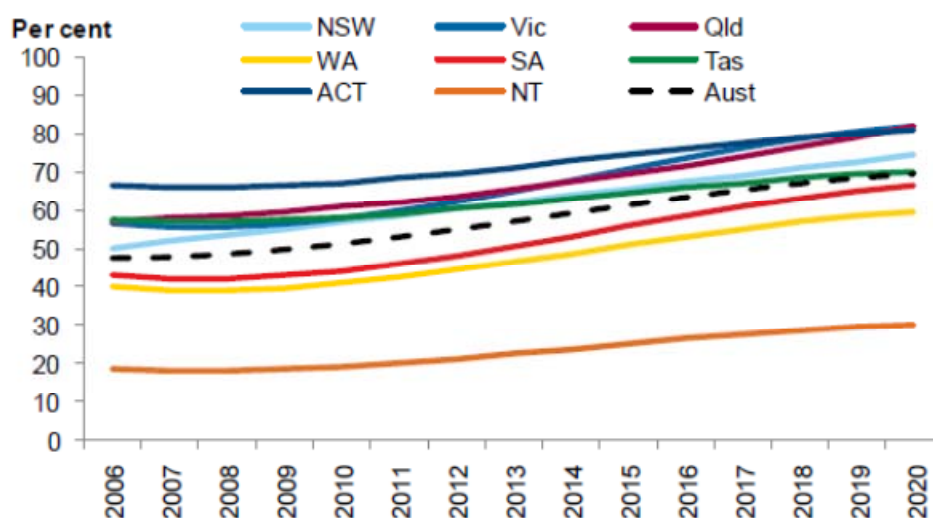
<sup>27</sup> De Bortoli, L., & Thomson, S., 2010. *Contextual factors that influence the achievement of Australia’s Indigenous students: Results from PISA 2000-2006*, Australian Council for Educational Research Limited, pp. iii.

within their school area and that mobility may not explain low attendance levels.<sup>28</sup> This research has raised the question about whether movement of students could be a consequence of low attendance.

### *Halve the gap for Indigenous students in Year 12 or equivalent attainment rates by 2020*

Across jurisdictions, the Northern Territory had the lowest Year 12 or equivalent attainment rate (18.3 per cent) and the largest gap between Indigenous and non-Indigenous attainment rates, with non-Indigenous people being four times more likely to have attained at least Year 12 than Indigenous Australians.<sup>29</sup> Trajectories for jurisdictions in Figure 2 below give an indication of the challenge in the Northern Territory context.

Figure 2 Indicative trajectories to halve the gap in Year 12 or equivalent, 2006-2020, by State and Territory



**Notes:**

1. Jurisdictional trajectories have been prepared using an S-curve formula, as set out in the National Partnership on Youth Attainment and Transitions, except for NSW which uses a straight line trajectory.
2. The trajectories are a guide to anticipated progress from current attainment to target Indigenous attainment rates and are not intended to present actual progress at any point.

Source: ABS 2006 Census—for 2006 baseline.

Source: COAG Reform Council National Indigenous Reform Council Agreement: Performance report 2009-10<sup>30</sup>

The lowest attainment rate for Indigenous people across locations is also in the Northern Territory – only 23.9% of Indigenous people in remote areas and 9.4% in very remote areas had attained at least a Year 12 or equivalent qualification. The gap in the Year 12 attainment rate between Indigenous and non-Indigenous Australians in the Northern Territory is substantial – from 30 percentage points in regional areas to 69 percentage points in very remote areas.

The evidence shows young Australians who do not complete Year 12 or equivalent are less likely to have the same opportunities as those who do. Successful education is the means to employment and economic independence and can form the basis for intergenerational change by providing individuals with the skills to participate fully in society and work and determining their own futures. The

<sup>28</sup> Taylor, J., 2011. 'Indigenous mobility and school attendance in remote Australia: Cause or effect?', *International Journal of Educational Research*, forthcoming.

<sup>29</sup> COAG Reform Council, 2010. *Op. cit.*, p. 87.

<sup>30</sup> COAG Reform Council, 2011. *National Indigenous Reform Agreement: Performance report for 2009-10, Report to the Council of Australian Governments*, COAG Reform Council, Sydney, p. 158.

incidence of unemployment among 20-24 year olds who have not completed upper secondary education or its equivalent is more than double those who have.<sup>31</sup>

### ***Halve the gap in employment outcomes between Indigenous and non-Indigenous Australians by 2018***

Fewer Indigenous people in the Northern Territory are employed and the unemployment rate is many times higher for Indigenous Australians. Just over 50 per cent of Indigenous Territorians aged 15-64 were employed in 2008 and the gap between the Indigenous and non-Indigenous employment rate was 34 percentage points – the largest of any jurisdiction.

If Community Development Employment Projects (CDEP) program participants are not counted as being employed then the proportion of Indigenous people aged 15-64 employed in 2008 in the Northern Territory decreases from 50.8 per cent to 33.3 per cent - a difference of 18 percentage points.<sup>32</sup>

### **Child protection in the Northern Territory**

The NTER was directed to the protection of women and children from violence and abuse. In the Northern Territory, all of the main child protection indicators for Indigenous children have increased substantially between 2006-07 and 2010-11 in terms of the rate per 1,000 children. The biggest increase has occurred in the rate of substantiation for notifications of abuse or neglect which has increased by two and a half times from 16.8 per 1,000 children in 2006-07 to 43.3 by 2010-11. There was a large increase just within the last year from a substantiation rate of 31.9 recorded for 2009-10. In 2010-11 more than half (54 per cent) of the total substantiations for Indigenous children in the Northern Territory were for neglect. This is a much higher share of neglect cases in total substantiations for Indigenous children than in all other jurisdictions, except South Australia. The child protection substantiation rate for Indigenous children aged 0-17 in the Northern Territory in 2010-11 was 6.6 times higher than for non-Indigenous children in the Northern Territory and it was 7.1 times higher than for all Australian children aged 0-17.<sup>33</sup>

Some of the increases are likely due to the wider coverage and expansion of child protection services in the Northern Territory following the NTER and the provision of additional child protection workers by the Northern Territory Government.

### **Consultations, monitoring and evaluation**

The Stronger Futures in the Northern Territory legislation has been informed by successive consultations with Aboriginal communities and stakeholders since 2007, consultations with the Northern Territory Government, and by monitoring and evaluation of the Northern Territory Emergency Response measures.

### ***Community Consultations***

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<sup>31</sup> Sweet, R., 2006. 'Education, Training and Employment in an International Perspective'. *Paper presented at New Transitions: Challenges Facing Australia's Youth*, 18 August 2006. Handshake EA 2004, Some Simple Analytics of School Quality. National Bureau of Economic Research, Massachusetts.

<sup>32</sup> COAG Reform Council, 2010. *Op.cit.*, p. 104.

<sup>33</sup> Australian Institute of Health and Welfare, 2012. *Child Protection Australia 2010-11*. Child Welfare series no. 53. Cat. No. CWS 41, Canberra.

To successfully address disadvantage in the Northern Territory, Aboriginal people and the Northern Territory Government must be involved and work together with the Australian Government in the development and implementation of future approaches.

Since 2007, there have been three successive, extensive consultations with Aboriginal people in remote communities in the Northern Territory across a range of measures including measures addressed by the proposed legislation such as school attendance, income management, alcohol and prohibited material restrictions, food security, and land reform and leasing.

These consultations have involved an unprecedented number of communities and individuals who have participated in meetings, had their say and influenced the policy proposals.

In 2008, the NTER Review Board visited 35 remote communities and met with representatives from 25 other remote communities. In 2009, the NTER Redesign consultations were undertaken in some 108 remote communities and town camps. More than 500 meetings were held in communities, attended by several thousand people. In 2011, the Stronger Futures in the Northern Territory consultations involved around 100 remote communities and town camps. It is estimated that several thousand people participated in the Stronger Futures consultations.

The feedback from these consultations was systematically recorded, analysed and summarised in a series of published reports. These reports are:

- the Report of the Northern Territory Emergency Response (NTER) Review Board, 2008. These consultations are summarised at Appendix 7 of the report - Major themes from community consultations;
- Report on the Northern Territory Emergency Response Redesign Consultations, 2009; and
- the Stronger Futures in the Northern Territory Report on Consultations, October 2011.

Common themes across the consultations, relevant to measures in the Bills are summarised briefly in the table below. While a wide range of views have been expressed in the consultations, school attendance and alcohol-related harm have been persistent concerns.

The presence of Government Business Managers and Indigenous Engagement Officers in communities and the relationships they build over time by working directly with communities, made these successive and comprehensive consultations feasible. Since the Stronger Futures consultations ended in August 2011, Government Business Managers and Indigenous Engagement Officers have provided further information and received feedback from communities about the proposed Stronger Futures legislation. At the time of writing this Submission, over 1,000 separate engagements with residents and local stakeholders in remote communities and town camps had occurred through this information and feedback process. While this process is ongoing, the feedback indicates that people in the communities appreciate the further information and consultation about the legislation. There is wide-ranging interest in the new SEAM and some concern that it will only be operating in selected communities and that some families and children will miss out on the benefit of this measure.

Table 1 Major themes from community consultations 2007-2011

Major themes from consultation comments	2008 NTER Review <sup>34</sup>	2009 NTER Redesign <sup>35</sup>	2011 Stronger Futures <sup>36</sup>
School attendance	<p>“People told of desperation about education and the role of schools.”</p> <p>Many representatives from the communities consulted said that the NTER had not had a noticeable impact on raising school attendance.</p>	<p>While school attendance was not a focus of the NTER Redesign consultations there were comments and concerns expressed that more children needed to be attending school regularly.</p> <p>There was a strong view expressed at the regional and community leadership workshops that voluntary and trigger-based models of income management should be adopted for those people who failed to send their children to school or are affected by alcohol and drugs.</p> <p>Poor school attendance was attributed to a variety of factors including alcohol and drug use by parents, the need for better facilities in remote schools, and families not getting a good night’s sleep because of alcohol related noise and violence in communities.</p>	<p>“Overall, there was a strong sense of the importance of education, with people in a large number of consultation meetings saying that parents should take responsibility for getting their children to school.”</p> <p>“There was considerable discussion about how to get children and young people in remote communities to go to school. A relatively frequently expressed comment was that parents often lack the capacity to ensure their children’s regular school attendance because of personal alcohol, drug or gambling problems or a loss of control of their children’s behaviour.”</p>
Alcohol misuse and harms	<p>“In many communities people thought that the NTER had reduced alcohol abuse although many also said that cannabis use had increased.”</p> <p>“In most communities people supported alcohol management plans.”</p>	<p>“The main benefits of the NTER alcohol restrictions identified in the consultations were less violence and quieter communities. Women identified these benefits slightly more than men.”</p> <p>There was mixed support for a community-based approach to setting alcohol restrictions, with many seeing this as providing an opportunity to foster a responsible approach to alcohol consumption,</p>	<p>“Respondents talked about the harm caused by alcohol.”</p> <p>“There was a strong call for communities to maintain their dry status where alcohol restrictions are in place.”</p> <p>More discretion at the local level to solve alcohol problems was called for.</p>

<sup>34</sup> Yu, P., Ella Duncan, M., & Gray, B., 2008. *Northern Territory Emergency Response (NTER), Report of the NTER Review Board.* pp. 85-86.

<sup>35</sup> Australian Government, 2008. *Report on the Northern Territory Emergency Response Redesign Consultations.*

<sup>36</sup> Australian Government, 2011. *Stronger Futures in the Northern Territory Report on Consultations, 2011.*

		including through negotiation of alcohol management plans. Aboriginal leaders and community representatives indicated that local responses were needed to address alcohol misuse, which was acknowledged as one of the most serious issues facing Aboriginal people in the Northern Territory.	
Community safety	“Strongly urged that the wording of the (alcohol and pornography restrictions) signs be changed in consultation with communities.”	“The most frequent comment was that people do not want pornography in their communities and want the NTER anti-pornography restrictions to continue.”	“Few respondents commented on the prohibitions on customary law considerations in bail and sentencing decisions, Australian Crime Commission, Australian Federal police powers or the publicly funded computer measure. Where respondents commented on the pornography restrictions, most wanted them to continue.”
Food security/ community stores licensing	Poor standards and disparities between stores.	“There was strong overall support for continuation of the stores licensing scheme.”  “most significant problem raised was with the price of food.”	“Respondents were generally happy with their local stores.”  “Comments about high prices.”
Housing and land reform	Some communities did not support the compulsory five-year leases and expressed concern that they might lose control over their land. People were unhappy that this could happen without consultation.”	“Few people identified benefits from the five-year leases. Some people said they were prepared to acknowledge that five-year leases would be viewed as beneficial when housing upgrades and renovations are delivered.”	“More new houses were being asked for, as respondents felt the impact of a growing population on already overcrowded houses.”  “Across the consultations there were suggestions about how to overcome specific barriers to economic development. These suggestions included ... continuing land reform and expanding the use of township leases”. <sup>37</sup>

### ***Consultations with the Northern Territory Government***

In developing the Bills, there has been consultation with the Northern Territory Government at ministerial and senior official levels.

On the introduction of the Stronger Futures in the Northern Territory legislation in the Australian Parliament, the Chief Minister of the Northern Territory, the Hon Paul Henderson MLA, indicated “the Northern Territory Government welcomed the Federal Government’s Stronger Futures package

<sup>37</sup> Australian Government, 2011. *Stronger Futures in the Northern Territory Report on Consultations, October 2011*, p. 31.

which restructures the Northern Territory Emergency Response legislation and offers a real partnership with Territorians.”<sup>38</sup>

In the same media release, the Chief Minister identified that the following areas required urgent attention to Close the Gap on Indigenous disadvantage in the Northern Territory:

- getting children to school to get a decent education;
- tackling alcohol misuse;
- providing decent housing; and
- building strong local economies and increasing job opportunities.

The Northern Territory Minister for Education and Training, the Hon Chris Burns MLA, has commented that the re-engagement of parents with schools being delivered through SEAM is a positive aspect of the measure.<sup>39</sup> Mr Burns has also indicated support for the Australian Government’s strong commitments to improving school attendance for Indigenous children through implementation of the proposed SEAM measure.

### **Monitoring and evaluation**

From 2008, monitoring reports have been prepared every six months to gauge progress on the implementation of NTER measures and to understand whether and how the living environment of children in NTER communities is changing. Information on progress as measured by key indicators and on the difficulties of implementation has been presented in these reports.

Individual measure evaluations have also been undertaken for a range of NTER measures, for example, the evaluation of stores licensing.<sup>40</sup> The measure evaluations have been a key source of information for the whole-of-government evaluation of the NTER and input to Stronger Futures in the Northern Territory policy considerations.

The independent NTER Evaluation Report 2011 (the evaluation report) was drawn from the monitoring reports, individual measure evaluations, research reports, and administrative and outcome data.

In regard to the proposed legislation, the evaluation report indicated key areas where progress has been made and where further improvement is needed:

- the NTER and other Australian Government and Northern Territory Government programs have contributed to a substantial increase in resources allocated to schools serving remote communities. There is evidence of improvement in literacy and numeracy already occurring among Year 3 students in schools in NTER communities. This improvement is greater than the improvement among Year 3 students in all Northern Territory schools and all Australian schools. There has been no observable improvement, however, in school attendance between 2006, before the NTER was introduced, and 2010<sup>41</sup>;

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<sup>38</sup> Henderson, P., 2011. NT Government Welcomes Federal Government’s Stronger Futures Package, Northern Territory Government Media Release, 23 November 2011.

<sup>39</sup> *Parents to be penalised for truant children*, 2011. Lateline, Australian Broadcasting Corporation, 14 November 2011.

<sup>40</sup> Cultural & Indigenous Research Centre Australia, 2011. *Evaluation of the Community Stores Licensing Program*, Leichhardt, p. 36.

<sup>41</sup> Australian Government, 2011. *Northern Territory Emergency Response Evaluation Report 2011*, Canberra, pp. 326-327.



- the NTER employment measures, particularly the conversion of CDEP jobs, resulted in some gains in employment but more needs to be done to expand economic development opportunities<sup>42</sup>;
- the greater levels of recorded alcohol-related offences following the NTER suggest that the increased policing presence and uniform laws applied over a broader area through the NTER have led to restrictions being more effectively enforced than previously. The demonstrated success of alcohol management plans (AMPs) on Groote Eylandt and Bickerton Island highlight the importance of community ownership and engagement in reducing alcohol misuse problems and the importance of providing treatment and support. This suggests that sustaining and better integrating these approaches should be the next step in effort towards reducing alcohol related harm<sup>43</sup>;
- the evaluation of stores licensing found that overall stores licensing has had a positive impact on food security, in terms of ongoing access to food that is safe and of sufficient quality and quantity to meet household needs. However there were also concerns among community members about the high costs of food in remote community stores and about the quality of food by takeaway stores<sup>44</sup>;
- compulsory five-year leases allowed the Australian Government to provide much needed services for the duration of the NTER, provided the necessary secure tenure to underpin investments in repairs and upgrades to community housing and related infrastructure, and enabled the formalising of government obligations as the landlord of public housing.<sup>45</sup>

The monitoring and evaluation reports are public documents and are available from the Department of Families, Housing, Community Services and Indigenous Affairs website.

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<sup>42</sup> Ibid, pp. 363-364.

<sup>43</sup> Ibid, pp. 183-184.

<sup>44</sup> Cultural & Indigenous Research Centre Australia, 2011. *Op. cit.*, p. 36.

<sup>45</sup> Australian Government, 2011. *Northern Territory Emergency Response Evaluation Report 2011*, pp. 36-37.

## **PART 2: STRONGER FUTURES MEASURES AND HOW THEY WILL HELP TO CLOSE THE GAP**

The proposed legislated measures across the three Bills include improving school attendance and enrolment, tackling alcohol abuse, food security, land reform, and community safety.

This part of the Submission explains why each proposed measure is needed and how it is intended to help to close the gap.

### **School attendance and education achievement**

A good education is critical to the future of young people, providing them with the skills and knowledge that will help them realise their full potential, obtain work and make a positive contribution to the broader community. To get a good education, children need to go to school regularly, as even the best teachers and the best classrooms cannot give them a good education if children are not attending school.

The aim of the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) is to improve educational attainment by increasing school enrolment and attendance. SEAM has been applied in areas of Queensland and the Northern Territory where school attendance is low.

Additional SEAM sites have been chosen in the Northern Territory because attendance is particularly poor in many of these sites and more is needed to be done to encourage and support parents to ensure their children attend school.

The Government recognises that the additional sites selected have a high Indigenous population. As indicated in the discussion of the Closing the Gap targets in Part 1, school attendance declines with remoteness. There is a high proportion of Indigenous people living in remote communities and a significant number of Indigenous children are enrolled at the SEAM trial sites in remote communities in the Northern Territory. However, SEAM will apply to all families who receive a schooling requirement income support payment in the specified SEAM sites, if their children have attendance issues, irrespective of whether they are Indigenous and non-Indigenous.

Under the National Partnership Agreement on Youth Attainment and Transitions all governments agreed to implement a mandatory requirement for all young people to participate in schooling (meaning in school or an approved equivalent) until they complete Year 10. The Northern Territory Government's *Every Child, Every Day* strategy includes a range of measures including a frequent attenders program, family responsibility agreements, attendance infringement notices, integrated child and family services, scholarships for Indigenous students and school community partnership agreements.<sup>46</sup>

Through the NTER and mainstream education programs the Australian Government has invested to significantly improve the quality of education in the Northern Territory. On top of base funding provided to government and non-government education authorities, additional Commonwealth investment in the Northern Territory includes:

- \$16 million to expand pre-school services;
- \$70 million in funding for Northern Territory schools in disadvantaged communities;
- \$50 million for teacher quality and literacy and numeracy initiatives;

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<sup>46</sup> Northern Territory Department of Education and Training, 2012. *Every Child, Every Day* website.

- \$46 million for 200 additional teachers;
- \$256 million under the Building the Education Revolution program for school infrastructure;
- a further \$10 million for classrooms in remote schools; and
- \$12 million to build trades training centres.

There are a range of factors that contribute to school attendance. Some factors go beyond the need to better infrastructure, teachers and technology and are beyond the control of schools. The home environment and parents play an important role in attendance patterns of children.

### *Community consultations*

Educational achievement and school attendance were discussed by Aboriginal people and stakeholders in each of the rounds of community consultation in the Northern Territory since 2007. Concerns about the need to improve school attendance have been persistently raised. A great deal of discussion was recorded on this topic in the Stronger Futures consultations. Overall, there was a strong sense of the importance of education, with people in a large number of consultation meetings saying that parents should take responsibility for getting their children to school.

There was considerable discussion during the consultations about how to improve school attendance. A frequent comment was that parents often lack the capacity to ensure their children's regular school attendance because of personal alcohol, drug or gambling problems, a loss of control of their children's behaviour and, in some communities, a lack of educational experience among parents themselves.

A frequent comment was that where parents were receiving income from welfare payments, payment arrangements should give parents an incentive to make the effort to get their children to school regularly. Suggestions included withholding part of welfare income or fining parents if they do not send their children to school on a regular basis.<sup>47 48</sup>

### *NTER Evaluation Report*

The NTER Evaluation Report found that some 57 per cent of people surveyed as part of the Community Safety and Wellbeing Research Survey strongly agreed that the school in their community was better now than it was three years ago. There has been a substantial increase in resources allocated to NTER schools, teacher professional support, preschool programs and student wellbeing support. There has been some improvement in Year 3 reading. There has been no observable improvement in school attendance between 2006 and 2010.<sup>49</sup>

**Attachment B** shows comparative achievement of students in remote and very remote schools across Australia regardless of Indigeneity. **Attachment C** shows Indigenous results<sup>50</sup>. **Attachment D** shows school attendance by geolocation in the Northern Territory.

### *SEAM trials and evaluation*

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<sup>47</sup> Australian Government, 2011. *Stronger Futures in the Northern Territory, Report on Consultations*, pp. 20-29.

<sup>48</sup> O'Brien Rich Research Group 2011. *Stronger Futures Quantitative Analysis Report*.

<sup>49</sup> Australian Government, 2011. Op. cit., pp. 326-327.

<sup>50</sup> The NTER Evaluation Report used 2010 data as it was full year data and when the evaluation was completed the full year data for 2011 was not available. Attachments B and C provide 2011 NAPLAN results.

SEAM trials have been underway in fourteen schools in six Northern Territory communities since January 2009. The communities are Hermannsburg, Katherine, the Katherine town camps, Tiwi Islands, Wadeye and Wallace Rockhole. The Department of Education, Employment and Workplace Relations released an early 2009 evaluation report for the Northern Territory in mid-December 2011 and a subsequent 2010 evaluation report. A copy of the 2010 evaluation report is at **Attachment F**.

The 2010 evaluation of SEAM showed that SEAM is having a positive effect on both enrolment and attendance. During 2010, the SEAM trial was successful in ensuring that all compulsory school aged children in families to which the income support schooling requirement applied, were enrolled in school or had an eligible education alternative such as registered home schooling. There is evidence that receiving an enrolment notice or experiencing a suspension of payment contributes to parents enrolling their children at school.

From 2009 to 2010, students who were involved in the SEAM trial improved their attendance rates more than other children attending the same schools. Importantly this improvement was mostly a result of a decrease in unauthorised absences – those directly targeted by SEAM.

Social worker contact provided by Centrelink has shown to be vital in helping to improve the absence rates of referred students during the compliance period. This is particularly the case for students with higher absence rates, where assistance was provided to address attendance issues, helping to limit a relapse in absence rates.

Importantly, SEAM is helping parents to focus on the importance of their children attending school regularly.

These evaluations also outlined a number of areas in which SEAM could be improved, and the Government has acted on these recommendations by increasing the frequency of enrolment checks to address the issue of children's enrolment being ceased during the year. Other steps to address the evaluation findings include expanding real-time exchange of data between education authorities in the Northern Territory and Centrelink, to reduce delays that reduce SEAM's effectiveness. The proposed amendments in the Social Security Legislation Amendment Bill 2011 allow SEAM to be better integrated with the Northern Territory's *Every Child, Every Day* strategy to ensure parents are clear about what is required of them. Parents are supported with tailored case management.

It is proposed now to expand SEAM to the following sites: Yirrkala, Maningrida, Galiwin'ku, Ngukurr, Numbulwar, Umbakumba, Angurugu, Gapuwiyak, Gunbalanya, Milingimbi, Lajamanu, Yuendumu, Alyangula, Nhulunbuy, Alice Springs, Tennant Creek and the remaining schools in Katherine that do not yet have SEAM. Further information on school attendance levels in these school areas is at **Attachment E**.

A final evaluation of the SEAM trial will be conducted in 2012 and further evaluations have been planned to monitor the effectiveness of improving and integrating SEAM with the Northern Territory's *Every Child, Every Day* strategy.

### ***New SEAM and integration with Every Child, Every Day procedures***

Aligning SEAM with *Every Child, Every Day* will ensure that there is a clear and consistent set of processes, support and consequences for parents whose children do not attend school regularly. It will help ensure greater engagement between schools and families and link families with the support they need to help their children to attend school every day.

Consistent with the existing SEAM arrangements, the proposed legislation and policies have been designed to ensure that parents and families whose children regularly attend school are not adversely affected and that parents not meeting their responsibilities are offered support to do so.

Parents who are meeting their basic parental responsibilities by ensuring their children are enrolled in school and who are doing their best to encourage their children to attend regularly are complying with the measure. Parents who need help to do this will be offered a range of assistance.

The new SEAM arrangements take account of:

- what has worked with the current model of SEAM;
- the need to better tailor SEAM to local circumstances, for example, the *Every Child, Every Day* strategy in the Northern Territory and to be cognisant that primary responsibility for school attendance rests with the State and Territory governments and educational authorities; and
- community views in the Stronger Futures in the Northern Territory consultations.

The new arrangements are proposed to commence from 1 July 2012 with the new sites commencing progressively over a two year timeframe. Seminars will be held in each community prior to its introduction to ensure parents understand the arrangements and their obligations.

Funding of \$85.6 million over eleven years has been approved. This will include funding for additional support to families including for liaison support between schools and families. This figure does not include funding for the Northern Territory Government to support SEAM.

### ***Enrolment***

Under existing SEAM legislation, parents receiving schooling requirement income support payments, living in a SEAM trial location, and who have at least 14 per cent care of a child of compulsory school age are contacted by Centrelink and required to provide enrolment information. Those who fail to initially provide enrolment information to Centrelink are sent an enrolment notice which states how to comply with the notice, the consequences of not complying and offers social worker support. Those parents who still fail to provide enrolment information to Centrelink within the 14 day compliance period and have no reasonable excuse or a special circumstance, may have their schooling requirement income support payments suspended. Payments are fully re-instated with back pay if parents meet the requirement within a 13 week period.

Changes to the existing enrolment arrangements announced in the Stronger Futures package will see enrolment information verified twice a year, rather than once a year, ensuring that those children who become unenrolled during the school year are identified.

### ***Attendance***

The principle underpinning the SEAM measure is that all parents including those receiving a schooling requirement income support payment are expected to take reasonable steps to ensure that their children are regularly attending school.

Only parents whose children are not attending regularly and who have failed to engage with the school, provided there are no special circumstances, face payment suspension.

The proposed amendments to integrate the *Every Child, Every Day* and SEAM measures will allow a joint approach which will provide parents with one clear set of requirements for both measures. The legislation specifies that a parent may be required to attend a compulsory conference to discuss their child's school attendance, to enter into a school attendance plan, and to comply with the plan.

If a child is not attending school regularly, the parents will be asked to attend a conference. Together with the parents, a representative from the school, the Northern Territory Government and a Centrelink social worker are likely to be present at the conference. If the child is over 14 the young person will be asked to attend as well. At the conference the parent will talk through any barriers to the child's attendance. Barriers could include the family not having school uniforms for the child to wear, not having lunch for school, bullying in the classroom, problems at home which make it hard for children to get a good night's sleep, or lack of transport to ensure the child gets to school.

The conference will agree on an attendance plan to address the barriers. The attendance plan will include actions from the school, Centrelink and the family. If the child is over 14, the young person will also be asked to agree actions. Actions could include, for example, Centrelink helping the family to budget and arranging Centrepay to ensure that there is money available for school lunches every day; the parent agreeing to walk their child to school every day; Centrelink social work support and referrals to other services.

Under SEAM, payment suspensions are used as a last resort only, where it is clear that the parent has refused to engage with education authorities about their child's attendance and/or enrolment despite ongoing and intensive support from education authorities, schools, Centrelink and other support services.

Parents who are at risk of suspension will be issued with a compliance notice– if they fail to rectify the situation in the timeframe set out in the compliance notice they will have their schooling requirement income support payments suspended. The legislation also removes the current 28 day period before a suspension is triggered, as evidence from the current operation of SEAM is that this allows too much time to elapse before parents engage with the school.

Failure to meet the attendance plan in a relevant timeframe would lead to suspension of a parent's income support payment, unless certain special circumstances apply. Special circumstances could include, for example, significant illness likely to prevent a parent from complying with the compliance notice, or a natural disaster.

Under SEAM, payments can be suspended for up to 13 weeks. However, as soon as a parent complies with SEAM requirements, the payment is restored with full back pay. Experience to date shows that most parents will comply within two to three weeks of any suspension, at which point their payment is restored.

This is consistent with Centrelink procedures for suspension and restoration of Newstart Allowance, Youth Allowance, and Austudy.

SEAM does not involve a payment penalty. The rules for suspension of payment differ from the rules for any kind of "payment penalty". Suspension is used as a trigger to get a customer to re-engage, and payments are fully back-paid. A payment penalty involves a reduction in payment for a period of time and does not involve any back payment.

If the period of time the person is suspended is greater than 13 weeks, the payment cannot be restored unless special circumstances exist. If the customer's payment has been cancelled, the customer will have to test their eligibility and reapply through Centrelink.

When a parent's income support payment is suspended for failing to comply with SEAM requirements, family and childcare payments, such as Family Tax Benefit, continue to be paid during the suspension period.

If parents are constructively working with schools but are unable to change the behaviour of (particularly older) children, they will not be subject to a suspension.

Negotiations have been undertaken with the Northern Territory Government to ensure that the timing of a fine and any suspension action under SEAM is realistic for parents and will not pose undue burden. Suspension only affects the person's schooling requirement income support payment – any family payments and rent assistance will still be paid.

The proposed changes are intended to help ensure schools and families work more closely together, and to promote greater responsibility among parents for ensuring their children go to school.

## **Tackling alcohol abuse**

Alcohol misuse is a major contributing factor to the gap in Indigenous disadvantage, including low life expectancy, poor health, poor education and poor employment outcomes, especially in the Northern Territory.<sup>51</sup> The confronting evidence is that alcohol abuse inflicts a significant level of harm on Indigenous people, their families and communities.

### ***Alcohol consumption levels***

Alcohol consumption in the Northern Territory is amongst the highest in the world. In 2007-08 for Northern Territory residents aged 15 years and above, the per capita pure alcohol consumption level was estimated at approximately 14.6 litres<sup>52</sup>, almost 50 per cent higher than the national level of 10.3 litres.<sup>53</sup> Based on the latest World Health Organisation alcohol consumption data, if the Northern Territory were a country, it would rank in the top 10 per cent of countries worldwide in terms of adult per capita consumption of litres of pure alcohol. Australia would rank in the top 25 per cent.<sup>54</sup>

In 2010, the Northern Territory recorded a decline in the proportion of people drinking daily, from 10.7 per cent in 2007 to 7.5 per cent in 2010, which was statistically significant.<sup>55</sup> However the Northern Territory has the highest proportion in Australia of recent drinkers placing themselves at risk of lifetime harm and of an alcohol-related injury from a single occasion of drinking (29.4 per cent compared to Victoria with the lowest at 18.4 per cent).<sup>56</sup>

The prevalence of alcohol consumption among Indigenous Territorians is much higher than the national Indigenous average.<sup>57</sup>

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<sup>51</sup> South Australian Centre for Economic Studies, 2009. *Harms from and Costs of Alcohol Consumption in the Northern Territory*, Report commissioned by the Menzies School of Health Research.

<sup>52</sup> Northern Territory Department of Justice, Office of Crime Prevention, 2009. Alcohol Consumption Per Capita.

<sup>53</sup> Australian Bureau of Statistics, 2008. Apparent Consumption of Alcohol, Australia, 2007-08, ABS Catalogue, No 4307.0.55.001.

<sup>54</sup> World Health Organisation, 2011, *Global Status Report on Alcohol and Health*, WHO: Geneva.

<sup>55</sup> Australian Institute of Health and Welfare, 2011. *2010 National Drug Strategy Household Survey report*, Drug Statistics Series, Number 25, p. 61.

<sup>56</sup> *Ibid*, pp. 63-65.

<sup>57</sup> Chondur, S., & Pircher, S., 2011. 'Alcohol consumption in the Northern Territory', *The Chronicle*, March 2011.

## *Alcohol related costs and harms*

The cost of alcohol-related harm to the Northern Territory is estimated at \$642 million per year of which \$91.4 million represents the cost of alcohol-related crime.<sup>58</sup>

Alcohol-attributable deaths occur in the Northern Territory at about 3.5 times the rate they do nationally, with rates for non-Indigenous people in the Northern Territory about double the national rate, while rates were 9 to 10 times higher for Indigenous people. For Indigenous and non-Indigenous Territorians, the three most common causes of alcohol-attributable deaths were alcohol liver cirrhosis, road crashes and suicide.<sup>59</sup>

The Northern Territory has the highest rate of alcohol-attributable deaths and hospitalisations in the country. There were 2,319 and 2,544 alcohol-attributable hospitalisations in the Northern Territory in 2004-05 and 2005-06 respectively, at corresponding rates of 146.6 and 157.7 per 10,000 people (more than twice the national rate).<sup>60</sup>

Alcohol misuse leads to health and social problems in all populations. Among Indigenous Australians, it is a major risk factor for conditions such as liver disease, pancreatitis, diabetes and stroke and some cancers. It is also a major contributor to road traffic accidents, falls and burns, anti-social behaviour and domestic violence. Sixty per cent of all assaults and 67 per cent of domestic violence incidents in the Northern Territory are alcohol-related. Across the Northern Territory in 2009 there were 54,000 incidents of people taken into police protective custody due to alcohol misuse.

There is extensive research establishing links between alcohol and drug abuse and child maltreatment. “Children raised in dysfunctional environments where there is substance misuse, parental mental health difficulties, financial disadvantage and many other problems do not fare well”.<sup>61</sup> In recent inquiries, substance abuse, particularly alcohol abuse, has been identified as a principal factor contributing to family violence, child abuse and neglect in Indigenous communities.<sup>62 63</sup>

Consumption of alcohol by mothers during pregnancy can cause babies to be born with foetal alcohol spectrum disorder, leading to problems such as physical and intellectual disabilities, as well as problems with behaviour and learning.

## *Consultations feedback*

The 2008 NTER Review Board consultations indicated that the NTER alcohol restrictions had reduced alcohol abuse, though many people also considered that cannabis use had increased. In most communities people also stressed the importance of their own efforts in dealing with alcohol and drugs and the importance of alcohol management plans in addressing these issues.<sup>64</sup>

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<sup>58</sup> South Australian Centre for Economic Studies, 2009. *Op. cit.*

<sup>59</sup> Skov, S., Chikritzhs, T., Pircher, S., Whetton, S., 2010, ‘How much is too much? Alcohol consumption and related harms in the Northern Territory’, *Medical Journal of Australia*, volume 193, pp. 1-4.

<sup>60</sup> Ibid.

<sup>61</sup> Dawe, S., Harnett, P., and Frye, S., 2008. ‘Improving outcomes for children living in families with parental substance misuse: What do we know and what should we do’, *Child Abuse Prevention Issues*, no 29.

<sup>62</sup> Board of Inquiry into the Child Protection System in the Northern Territory, 2010. *Growing them strong, together, Promoting the Safety and Wellbeing of the Northern Territory’s Children*, Darwin, p. 15.

<sup>63</sup> Mullighan, E., 2008. *Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, A Report into Sexual Abuse*, Adelaide, p. xiv.

<sup>64</sup> Yu, P., Ella Duncan, M., & Gray, B., 2008. *Northern Territory Emergency Response (NTER), Report of the NTER Review Board*, pp. 85-86.



In the 2009 consultations the benefits of improved safety due to the NTER alcohol restrictions was identified, particularly by women. Grog running was said to have increased in some communities and there were concerns about people drinking outside community boundaries. Women indicated very strongly that the NTER restrictions should remain.<sup>65</sup>

In the 2011 Stronger Futures consultations a relatively frequent comment was that people wanted “dry” communities to stay “dry”. There were comments indicating that alcohol restrictions have resulted in some communities becoming quieter, with fewer violent incidents. However, there were also reports that people continued to bring alcohol into areas that have restrictions, resulting in noise and violence. More discretion at the local level to solve alcohol problems was sought and a variety of practical suggestions were made about how alcohol management plans could be developed and used to address local problems. There were also frequent comments calling for more policing and/or stronger penalties for disruptive drunks, drink driving and grog running. Concerns were expressed in some communities about the damage that might follow if the restrictions were lifted.

In each round of consultations since 2007, concerns have been expressed about families and individuals seriously affected by prolonged, heavy drinking in circumstances where if income management were to apply, it might help in getting lives and family finances back on track so children were better cared for and attended school regularly and adults entered or resumed paid work.

### ***NTER Evaluation Report 2011***

The NTER Evaluation Report concluded that:

- there is little doubt that the misuse of alcohol is one of the key factors contributing to high levels of violence and anti-social behaviour seen in many Indigenous communities and to poor Indigenous health outcomes;
- restricting alcohol use among Indigenous people is not new with many remote communities having had some form of alcohol restriction in place before the NTER
  - town camp residents have indicated that restrictions have improved safety for women and children and reduced family violence;
- the greater levels of recorded alcohol-related offences following the NTER suggest that the increased policing presence and broad and consistent alcohol laws introduced through the NTER have led to restrictions being more effectively enforced; and
- there is a body of research that indicates that restrictions on availability can be effective in reducing consumption and alcohol-related harm in remote Australia, particularly when solutions are locally based and built on acknowledgement and ownership of the issues by Indigenous people.

### ***Research***

There is a substantial body of research and evaluation on alcohol restrictions in Aboriginal communities in the Northern Territory, Western Australia, South Australia and Queensland. This work indicates that such restrictions are effective in controlling the amount and certain types of alcohol coming into communities, and reducing regular consumption levels within communities with

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<sup>65</sup> Australian Government, 2009. *Report on the Northern Territory Emergency Response Redesign Consultations*, p. 36.

restrictions, compared to areas without restrictions. However, restrictions do not guarantee complete absence of alcohol and some people will persist in trying to circumvent them.<sup>66 67</sup>

### ***Tackling alcohol misuse and harm in the Northern Territory***

The Northern Territory Government has been working to tackle alcohol abuse through its *Enough is Enough* alcohol reforms. These laws target problem drinking and are supported with increased treatment and rehabilitation options. Since 2007, the Australian Government has provided support for the enforcement of alcohol restrictions through the 62 additional police in remote communities; funding for 80 night patrol services and 22 safe places; and funding to support services for families and people affected by alcohol and drug misuse including alcohol and drug rehabilitation services.

The proposals in the Stronger Futures legislation respond to the consultation feedback and build on the evidence of what has worked in Australian Indigenous communities to date. The Stronger Futures measures will complement the Northern Territory Government's efforts and help both governments to work together. The proposals provide stability and certainty for remote communities and law enforcement authorities by continuing the alcohol restrictions and the wider footprint of restrictions introduced under the NTER.

The proposed new provisions will:

- continue current alcohol restrictions and strengthen penalties for grog running. The penalty for liquor offences involving less than 1,350 millilitres of alcohol will be increased to include an option of six months' imprisonment. Alternative sentencing options are available in the Northern Territory. Offenders can be referred to the Substance Misuse Assessment and Referral for Treatment Court which can decide alternative sentencing options including diversion into community-based treatment and rehabilitation;
- strengthen the provisions relating to alcohol management plans. This will enable plans being required to meet minimum standards. The development of plans will be community based. The Commonwealth Indigenous Affairs Minister will have the power to approve these plans to ensure that they meet these minimum standards;
- enable the Australian and Northern Territory Governments to work together to scrutinise more closely the operations of alcohol traders who are linked to significant harm to Aboriginal people by permitting the Commonwealth Indigenous Affairs Minister to request that an independent assessor appointed under the Northern Territory *Liquor Act* review licensee operations. The Northern Territory Minister could decline to appoint an assessor in certain specified circumstances, but would be required to publish a statement indicating that the request was declined and the reasons it was declined. The assessor's report will be provided to the Commonwealth and could be made public;
- require an independent review of alcohol laws to assess how effective they are in reducing alcohol-related harm among Aboriginal people in the Northern Territory. The review will be comprehensive and cover the Northern Territory Government's *Enough is Enough* reforms, the Stronger Futures alcohol restrictions and the Northern Territory *Liquor Act*. The terms of reference of the review will be determined by the Commonwealth Minister and the Northern

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<sup>66</sup> D'Abbs, P., 2007. *Restrictions on the sale and supply of alcohol: evidence and outcomes*, Curtin University of Technology/National Drug Research Institute.

<sup>67</sup> Margolis S., 2011. Increasing alcohol restrictions and rates of injury in four remote Australian Indigenous communities, *Medical Journal of Australia*, 194, pp. 503-506.

Territory Minister. The review will commence, with full involvement of Indigenous people, within two years of commencement of the Stronger Futures legislation. The review must be completed, and a report of the review must be prepared, within three years of the legislation commencing;

- require respectful signage, with direct community input into what goes on the signs. It is essential that residents and visitors to remote communities are aware of the restrictions that are in place. Signage is an important part of providing this information.

While maintaining the restrictions, the proposed legislation lays out a pathway to sustainable arrangements in the long-term, by:

- providing a legislative basis and minimum standards for community-initiated alcohol management plans;
- an approval process for alcohol management plans that is aimed at ensuring safety and well-being and reduced alcohol-related harm in communities especially for the protection of women and children; and
- an independent, comprehensive review of alcohol laws in the Northern Territory.

### ***Income Management***

In addition to the above measures which will apply in the Northern Territory, the income management referral measure is enabling legislation that is not specific to the Northern Territory. Its intended initial application in the Northern Territory will enable it to be applied to people with serious alcohol problems, irrespective of whether they are Indigenous or non-Indigenous. This measure responds to the consultation feedback and research concerning the need for people who are seriously affected by alcohol and other drugs to have support and protections to be able to get their lives and those of their families back on track. It also complements provisions in the Northern Territory Government's *Alcohol Reform (Prevention of Alcohol-Related Crime and Substance Misuse) Act 2011* which facilitates the Northern Territory Alcohol and Other Drugs Tribunal's referral for income management of people who are misusing alcohol or drugs.<sup>68</sup>

This measure has been introduced through the Social Security Legislation Amendment Bill 2011 to allow the Minister to authorise a State or Territory authority to refer people to Centrelink for income management. In the Northern Territory it is proposed that the Alcohol and Other Drugs Tribunal (the Tribunal) will be specified in a legislative instrument as a ***recognised State/Territory authority*** to enable the Tribunal to refer people with serious alcohol misuse problems for income management. This new income management measure will operate in a similar way to the current child protection income management measure which enables child protection workers to refer people for income management. The proposed legislation means that ***recognised State/Territory authorities*** will be able to refer people who will benefit from income management. In the Northern Territory this will mean that the Northern Territory Alcohol and Other Drugs Tribunal will have an additional tool to support people and families facing problems related to drug and alcohol abuse.

Participation in alcohol and drug treatment under a referral from the Northern Territory Alcohol and Other Drugs Tribunal is not compulsory, although a person remains on the Banned Drinkers Register if they do not comply with a referral for treatment. Income management will be an additional tool available to the Northern Territory Alcohol and Other Drugs Tribunal to encourage individuals to

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<sup>68</sup> *Alcohol Reform (Prevention of Alcohol-Related Crime and Substance Misuse) Act 2011*, sections 3, 31(5), 79(2).

take advantage of a referral by participating in alcohol or drug treatment. The Northern Territory Alcohol and Other Drugs Tribunal would be responsible for monitoring the individual and would have the power to revoke an income management referral notice if needed when conditions are met, for example, on completion of rehabilitation or when probation ceases.

Income management can also assist people with serious alcohol and multiple drug misuse problems by reducing the amount of discretionary funds available to be spent on alcohol and illicit drugs. It also ensures that more than half of their money is available to be spent on basic needs such as food, clothing and housing for themselves and their families.

The appeal rights for this measure will be similar to those under the child protection measure of income management. Applications for review of the decisions with respect to the qualification criteria (for example, where the issues of whether a notification from the state / territory body was received and whether the person was in receipt of an eligible income support payment and so on), or the time period to be applied, would be available through the Social Security Appeals Tribunal. In addition, the decision of the Northern Territory Alcohol and Other Drugs Tribunal, to refer a person for income management, can be appealed to the Local Court of the Northern Territory and a decision of the Local Court can be further appealed to the Supreme Court of the Northern Territory.

### ***Minimum or floor pricing***

The Australian Government has asked the Australian National Preventative Health Agency (ANPHA) to undertake preliminary work to develop the public interest case for a minimum price for alcohol for consideration by all states and territories. ANPHA will look at the evidence around the harms associated with cheap alcohol and associated consumption patterns and the different mechanisms available to affect this consumption including price-related approaches. ANPHA will provide initial advice to the Minister for Health on this issue in 2012.

### ***Substitution of cannabis for alcohol***

There has been comment in community consultations since 2007 that people are substituting cannabis for alcohol as a result of the NTER alcohol restrictions. No conclusive evidence of substitution has been identified.

In 2007 and in 2010, across the states and territories for people aged 14 years or older, the Northern Territory had the highest proportion of cannabis use (13.8 per cent and 16.5 per cent respectively). However, while in 2010 there has been an increase in recent cannabis use for all states and Territories, this increase was only statistically significant in New South Wales and Western Australia.<sup>69</sup>

A key strategy to address remote substance use was the formation of the Substance Abuse Intelligence Desk (SAID) in 2006. SAID has expanded over the past five years to include the Dog Operation Units (DOUs). The main purposes of the SAID/DOUs are to gather intelligence on suppliers and criminal networks involved in the trafficking of illicit substances; to coordinate policing operations related to the trafficking of illicit substances in the tri-state border region of South Australia, Western Australia, and the Northern Territory; and to conduct other operations to disrupt the trafficking of illicit substances into remote communities.

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<sup>69</sup> Australian Institute of Health and Welfare, 2011. *Op. cit.*, p. 108.

## Food security

Community stores licensing is a major element in the Government's strategy to improve food security and nutrition in remote Northern Territory communities and, in turn, to help close the gap. The current licensing scheme under the *Northern Territory National Emergency Response Act 2007* (NTNER Act) is due to end in August 2012 unless the Stronger Futures legislation is passed.

Community stores are a key source of food and beverage supplies for people living in remote areas and Aboriginal communities in the Northern Territory. These stores and some other outlets can often be the main source of food for people who have limited access to transport or are a long distance away from major centres with supermarkets and the range of retail options and choice that are familiar to most Australians.

While some of the difficulties facing community stores are deeply embedded in geography, such as the increased costs involved in remoteness and lack of scale, and disruption to supplies caused by the weather in particular regions, there are a number of other significant contributing issues. Lack of competition and retail management expertise has often meant there was little to buy in stores, particularly healthy products. Goods and food have tended to be of poor quality; and basic consumer protections lacking. It was not uncommon for stores to fail financially or to accumulate debts that, in the case of community owned stores, have a severe detrimental effect on the community. Licensing is designed to address these issues in order to improve quality of life and food security in remote communities.

In order to be granted a license, stores have to meet reasonable requirements, such as stocking and promoting good quality fresh and healthy food and complying with consumer protection requirements, such as through the prohibition of predatory credit practices and provision of adequate pricing information, and transparent financial arrangements. The licensing arrangements also provide support for stores to meet their licensing requirements and improve their practices generally. An assessment is made of the store to identify matters which adversely affect its capacity to function well and funding is available to help make the necessary improvements. For example, this can include upgrade to a building to meet health and safety requirements, installation of point of sale equipment that allows the store to track and control its inventory and sales as well as mentoring and training in store governance.

Under the NTER legislation, community stores licensing was introduced as a requirement for stores to participate in income management arrangements. Licensing requirements applied to stores on *Aboriginal Land Rights (Northern Territory) Act 1976* land, Community Living Areas land and town camps.

Legislation passed in 2010, which took account of community views in the 2009 NTER Redesign consultations, included changes to the original NTER stores licensing arrangements. In particular, there was a stronger emphasis on a food security objective and improvement of accountability arrangements including the transfer of various obligations under the licensing scheme from store managers to store owners.

At present, licensing is limited to those stores that are participating in income management.

As at December 2011, there were 91 licensed stores. This comprised 55 Indigenous owned stores, of which 18 were managed by Outback Stores Pty Ltd (Outback Stores) and seven by Australian Retail Consultants (the Arnhem Land Progress Aboriginal Corporation's (ALPA) retail management consultancy), 14 independently owned stores, 12 independent station stores, 5 shire owned stores, of

which one was managed by Outback Stores and two by Australian Retail Consultants, and 5 ALPA owned and managed stores.

Outback Stores is a wholly-owned Commonwealth Company subject to the *Corporations Act 2001* and the *Commonwealth Authorities and Companies Act 1997*. The Arnhem Land Progress Aboriginal Corporation was established in 1972, and is an Aboriginal-owned benevolent organisation which provides benefits to its members from the successful operation of community retail stores.

### ***Community consultations***

The 2009 NTER Redesign and 2011 Stronger Futures in the Northern Territory community consultations both involved discussion about food security, including the need to provide healthy food and strengthen stores governance and management capacity. Concerns about high prices associated with remoteness were raised by various participants including the Aboriginal Peak Organisations of the Northern Territory (APO NT).

There was strong overall support for continuation of the stores licensing scheme. As previously mentioned, two-thirds of respondents to the 2011 Community Safety and Wellbeing Research Survey said that their store had improved over the previous two years. Other stakeholders have acknowledged that improvements have been made to community stores and that food security is critical to better nutrition and health outcomes for Aboriginal people and there was support for strengthening the licensing scheme further. APO NT commented that ‘whilst the Store Licensing process adopted by the NTER is generally supported by community members and APO NT, ongoing monitoring and assessments should be undertaken to ensure licensing standards are maintained by stores’.<sup>70</sup>

Some stakeholders suggested that governments consider subsidies on fresh food, price caps on basic goods and ensuring that the standard market basket is only 25 per cent of a remote family’s weekly income. Pricing issues are not within the scope of the proposed legislation.

### ***Evaluation***

In May 2011, an independent evaluation (the evaluation) of the community stores licensing scheme found that licensing had resulted in significant improvements to the availability, range and quality of fresh and healthy food; stores’ environment; financial transparency; and consumer protection and service practices. The evaluation also indicated that most stores apply a low mark up for healthy foods compared to other food to encourage its purchase and consumption. The evaluation recorded stakeholders’ views that the impact of stores licensing was likely to be more relevant for independent and community-managed stores than to Outback Stores and ALPA stores because they do not always have procedures and policies in place with regard to quality and range of foods.

Takeaway food was considered in the evaluation to be a key area where improved quality and variety of food had occurred due to better stores management though it was not possible to directly attribute this improvement to licensing. The evaluation also indicated that this was an area where more still needed to be done.<sup>71</sup>

These findings have been reinforced by several other studies. Two-thirds of respondents to the 2011 Community Safety and Wellbeing Research Survey said that their store had improved over the

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<sup>70</sup> Aboriginal Peak Organisations Northern Territory, 2011. *Response to Stronger Futures*, August 2011, p. 29.

<sup>71</sup> Cultural & Indigenous Research Centre Australia, 2011. *Op. cit.*, pp. 11-15.

previous two years. The Northern Territory Government's 2011 remote market basket survey, while confirming the high cost of remoteness, indicated that:

- the average number of fresh fruit choices in remote stores was higher than in any other year, while vegetable choices were high but slightly down on previous years;
- the percentage of fresh fruits and vegetables that were rated to be “good” quality has increased gradually from 66 per cent in 2000 to 91 per cent for fresh fruit and 89 per cent for fresh vegetables in 2011;
- on average 94 per cent of the goods in the family food basket were available or usually available in remote stores surveyed;
- 66 per cent of remote stores employees were Indigenous employees;
- there has been a steady increase in the number of stores with stores committees and nutrition polices since 2007 with some stores, for example those operated by Outback Stores, engaging nutritionists.<sup>72</sup>

The Office of the Registrar of Indigenous Corporations has shown significant increases in reporting compliance, improved liquidity and profitability of licensed stores incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.<sup>73</sup>

### ***Proposed legislation***

The Stronger Futures approach to community stores licensing proposes that the core features of the current scheme continue with proposed further reforms directed to extending the coverage of the licensing scheme to a range of different types of stores and other locations, and improved effectiveness and flexibility.

The Stronger Futures in the Northern Territory Bill 2011 (the Bill) provides for all stores in the food security area (see below for discussion of this) that are an important source of food, drink or grocery items for an Aboriginal community to come within the scope of licensing arrangements. This broader application reflects a concern to apply the benefits of licensing to a wider range of Aboriginal communities which may be subject to food security concerns.

It is estimated that approximately 80 per cent of stores outside of the major Northern Territory centres, that are an important source of food, drink or grocery items for an Indigenous community, are currently licensed.

The area to be excluded from the food security area will be set by legislative instrument. It is intended that the area will exclude locations where the level of competition and choice in retail outlets make it unlikely that licensing would be required to ensure ongoing access to a reasonable range of food and groceries - places such as Alice Springs or Darwin.<sup>74</sup> Under the proposed legislation, the Minister for Families, Community Services and Indigenous Affairs would be able to exclude areas from the ‘food security area’ to which licensing applies. More detail on the proposed food security area concept is provided in **Attachment G**.

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<sup>72</sup> Northern Territory Department of Health and Families, 2010. *Market Basket Survey 2011*, pp. 4, 15.

<sup>73</sup> Office of Registrar of Aboriginal Corporations, 2011. *Strong corporations, strong stores, strong communities, Financial analysis of stores registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

<sup>74</sup> Explanatory memorandum, Stronger Futures in the Northern Territory Bill 2011, p. 28.

Prior to determining that a community store located within the food security area is required to be licensed, the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs must undertake consultation with people receiving the store's services. The storeowner and manager must also be notified and given the opportunity to make submissions about a proposed determination that a licence is required. A decision that a store must be licensed would be subject to independent review by the Administrative Appeals Tribunal (AAT). Decisions about conditions to be applied to the licence would be subject also to review by the AAT. To allow stores not previously covered by licensing an opportunity to adjust and consider their position, it is proposed that new stores would be assessed during 2012-13 but will not be required to hold a licence until July 2013.

Overall there has been a high level of cooperation by store owners and managers with licensing requirements. Requirements are tailored to the situation of the store and the community stores licensing evaluation showed that licensing has not only been good for food security outcomes in the community but good for stores' finances. However, as would be the case with respect to any regulatory scheme, there have been incidences of non-compliance with licensing requirements. Under current legislation, the only remedy for non-compliance with licence conditions is to revoke the licence, which can create a food security crisis for the affected community. The evaluation noted that the lack of options to respond to issues added to the difficulty of ensuring compliance by some remaining 'rogue traders' still operating in the sector.

The Bill, therefore, proposes several options for responding to non-compliance with licensing conditions, which could be calibrated to the seriousness and other relevant circumstances of the particular breach. The first preference is for resolving issues cooperatively without resort to sanctions. However, the Bill proposes a range of responses, should they be necessary, including pursuing fines (which vary according to the nature of the failure to comply) by way of infringement notices or civil penalty proceedings, injunctions and enforceable undertakings.

As previously mentioned, if the store owner disagrees with the conditions on the licence, the owner would have access to independent merits review by the AAT. As with other regulatory arrangements, where the Department imposes a fine, the owner could elect to have the matter adjudicated by a court.

The Bill also contains provisions that are intended to avoid unnecessary burdens on stores and overlap with other regulatory schemes. Once granted, a licence would be valid for the duration of the ten years of the scheme (or until revoked) – rather than requiring renewal and reassessment yearly or more frequently as occurs at present.

Those stores where issues have been identified will continue to receive regular scrutiny while those that are operating well will have fewer obligations. Owners can be assured that well-run responsible enterprises will not have major new obligations and many will find benefits from participating in the scheme. On-going monitoring and assessments will continue to ensure stores maintain licensing standards.

The Bill clarifies that licensing requirements, such as licence conditions, need to be appropriate to the circumstances of the store and be linked to a food security objective.

To support and complement the legislation, the Government has announced that it will provide \$40.9 million over eleven years to support food security in remote Indigenous communities.<sup>75</sup>

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<sup>75</sup> Australian Government, 2011. *Mid-year Economic and Fiscal Outlook 2011-12*, Appendix A: Policy decisions taken since the 2011-12 Budget, Expense Measures,



This is separate from the \$51.8 million funding package announced in January 2011 for the Aboriginals Benefit Account (ABA) Community Stores Infrastructure Project that is providing new purpose-built or refurbished community stores and store manager accommodation. The infrastructure project involves extensive community consultation.<sup>76</sup>

## **Land reform**

The land reform measures in the proposed Stronger Futures legislation give effect to the Australian Government's commitment to voluntary lease arrangements on Indigenous land. The measures are intended to provide a platform for secure tenure which can then enable economic development and home ownership opportunities for Indigenous people.

The Australian Government recognises that the compulsory nature of the acquisition of five-year leases was counter-productive. The compulsory five-year leases will not be extended and fair rent will continue to be paid for the period those leases are in force. The five-year leases will continue no later than their original expiry date of 17 August 2012 to manage the transition to alternative voluntary leasing arrangements.

### ***Community consultations***

During the Stronger Futures in the Northern Territory consultations, housing discussions considered home ownership including how to encourage greater private home ownership. Similarly, during economic development and employment discussions, questions were centred on improving business and employment opportunities in Northern Territory remote communities. The consultations reported that specific barriers to economic development needed to be overcome including through continued land reform.

### ***Proposed legislation***

The proposed new land reform measures will enable the Commonwealth to modify Northern Territory legislation relating to community living areas and town camps to facilitate voluntary long term leasing, including for the granting of individual rights or interests and the promotion of economic development. The aim is to enable opportunities, where the Indigenous owners of the land wish to pursue these options, including for private home ownership in town camps and more flexible long-term leasing including for business activity in community living areas.

In the Northern Territory, the Australian Government is uniquely placed to work with Indigenous stakeholders and Land Councils to advance land tenure reform. Northern Territory Land Councils are Commonwealth statutory authorities under the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) and the Australian Government has responsibility for legislating Land Council statutory functions in relation to community living area reform. The Australian Government also maintains a key role with regard to town camps in Alice Springs through the Alice Springs Transformation Plan and the Executive Director of Township Leasing who holds subleases on behalf of the Commonwealth. The Australian Government will work with the land holders, the Northern Territory Government and other relevant stakeholders to develop options for town camp and community living area land tenure reform. These options would complement any options for reform initiated by the Northern Territory Government.

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<sup>76</sup> Macklin, J., & Snowdon, W., 2011. ABA funding to improve stores in remote NT communities, Joint media release, 4 January 2011.

## *Town camps*

The Stronger Futures in the Northern Territory Bill 2011 proposes special measures to be taken in relation to town camps to facilitate the granting of individual rights or interests and to promote economic development.

There are approximately 45 distinct town camps in the Northern Territory, mainly situated in Darwin, Alice Springs, Tennant Creek, Katherine and Borroloola and consisting primarily of social housing. While town camps are generally located close to mainstream services the level of service delivery in town camps is often not commensurate with that provided in regular town suburbs. Town camps are covered by leases in perpetuity granted to Indigenous Housing Associations or Corporations under the Northern Territory's *Special Purposes Leases Act* or *Crown Lands Act*. Currently this Northern Territory legislation, particularly the *Special Purposes Leases Act*, contains restrictions on the subdivision of leases and the permitted use or purpose of any leases. In addition to the restrictions relating to permitted use under the *Special Purposes Leases Act*, restrictions of that nature are also present in existing town camp leases. These restrictions have posed barriers to the granting of individual interests in town camp land that would enable opportunities for private home ownership and local enterprises.

The Stronger Futures in the Northern Territory Bill 2011 provides for a Commonwealth regulation-making power that will enable the modification of Northern Territory legislation in relation to land covered by town camp leases. This will allow for the overcoming of statutory restrictions and impediments relating to dealings, planning and infrastructure on town camp land for the benefit of Indigenous people.

Removing these restrictions and impediments in Northern Territory legislation will provide town camp land holders (being town camp Associations or Corporations) with the opportunity to voluntarily develop and consider options for home ownership and economic development. A number of town camp residents have indicated an interest in purchasing their own home in their town camp and also in establishing local enterprises.

In addition, one of the options under the regulation-making power is to enable existing town camp leases granted under the Northern Territory *Special Purposes Leases Act* to be treated as if they were granted under the Northern Territory *Crown Lands Act* (the latter imposing less onerous restrictions in relation to permitted use and planning related activities and therefore less onerous restrictions in relation to dealings in the relevant Association or Corporation's leasehold interest). The regulation-making power includes another option which would allow the Commonwealth to make regulations that directly modify the purposes of existing leases to remove current limitations.

As the exact form of home ownership and economic development models is a matter for consultation between town camp landholders, residents and the Northern Territory and Australian Governments, and given the complex nature of the relevant Northern Territory legislation, the regulation-making powers under this proposed measure are required to be broad in scope.

The Stronger Futures in the Northern Territory Bill 2011 provides that the Commonwealth Minister for Indigenous Affairs must consult with the Northern Territory Government and the relevant land holder before making any regulations in relation to a town camp. A regulation that changes an existing town camp lease will only be made after consultation with relevant stakeholders.

Upon the making of a regulation, the modified Northern Territory law applies in the same way as if a law of the Northern Territory had made those modifications. Therefore, any rights, titles and interests

in property created by these regulations existing at the time of sunset of the proposed Stronger Futures in the Northern Territory Act will not be adversely affected by the sunset of that Act.

The Stronger Futures in the Northern Territory Bill 2011 does not prevent the Northern Territory from introducing legislation that removes barriers and restrictions to dealings in land in town camps. The Australian and Northern Territory Governments will continue to work together, including through the Alice Springs Transformation Plan, and in consultation with town camp landholders and residents, to improve the services and opportunities for town camp residents. This includes exploring opportunities to provide resources to local stakeholders to assist their planning around the use of town camp land for development purposes. Commonwealth regulation for town camps provides another option to progress reform.

### *Community living areas*

The Stronger Futures in the Northern Territory Bill 2011 proposes special measures to be taken in relation to community living areas to facilitate the granting of individual rights or interests and to promote economic development.

A community living area is generally a small portion of land excised from a pastoral lease and granted as conditional freehold to an Indigenous community or family for residential purposes where Indigenous people did not benefit from land granted under the Land Rights Act. Community living areas have been created, granted or converted via a variety of mechanisms in Northern Territory legislation. There are over 100 community living areas in the Northern Territory including 16 of the communities covered by the compulsory five-year leases.

Northern Territory legislation contains restrictions on dealings in community living area land, including leasing. These restrictions prevent commercial leasing and leasing for certain public infrastructure and services such as police stations.

The Stronger Futures in the Northern Territory Bill 2011 provides for a Commonwealth regulation-making power that will enable the modification of Northern Territory legislation in relation to community living area land. These changes would overcome the restrictions and impediments, including consequential issues relating to dealings, planning and infrastructure for the benefit of Indigenous people.

Removing these restrictions and impediments in Northern Territory legislation will provide community living area land owners with the opportunity to voluntarily develop and consider options for home ownership and economic development and will complement the Australian Government's commitment to negotiating voluntary leases over remote Indigenous housing and other government assets in advance of the end of the five-year leases.

As the exact form of leasing models is a matter for consultation between land owners, the Northern Territory and Australian Governments, Land Councils and other stakeholders, and given the complex nature of the relevant Northern Territory legislation, the regulation making powers under this proposed measure are required to be broad in scope.

The Stronger Futures in the Northern Territory Bill 2011 provides that the Commonwealth Minister for Indigenous Affairs must consult with the owner of the community living area land (on request), the Land Council in whose area the community living area is located and the Northern Territory Government. Other relevant parties including, for example, the Northern Territory Cattlemen's Association, would also be consulted.

Upon the making of a regulation, the modified Northern Territory law applies in the same way as if a law of the Northern Territory had made those modifications. Therefore, any rights, titles and interests in property created under these regulations existing at the time of sunset of the proposed Stronger Futures in the Northern Territory Act will not be adversely affected by the sunset of that Act.

The Stronger Futures in the Northern Territory Bill 2011 does not prevent the Northern Territory from introducing legislation that removes barriers and restrictions to dealings in community living area land. The Australian and Northern Territory Governments will continue to work together with the Land Councils and other stakeholders to improve the services and opportunities for community living area residents. Commonwealth regulation for community living areas provides another option to progress reform.

The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 includes complementary provisions that allow community living area land owners to request the assistance of the relevant Land Council in relation to dealings in their land if they wish to do so. This additional function for Land Councils would provide the necessary administrative and legal support to assist community living area associations to deal effectively with interests in their land. Land Councils currently provide a limited range of support in relation to community living areas. For example, the Northern Territory's *Pastoral Land Act* provides that Land Councils may act for applicants for the grant of a community living area. However, there are no formalised support arrangements for the ongoing management of community living areas. This proposed measure is designed to enable the owners of community living areas to access similar support and assistance that Aboriginal land owners enjoy under the Land Rights Act.

***End of the five-year leases and provisions for previous Commonwealth acquisitions under section 47 of the Northern Territory National Emergency Response Act 2007***

The Australian Government has made a clear commitment to negotiating voluntary long term leases and will not be extending the compulsory five-year leases acquired under the original Northern Territory Emergency Response legislation. The Australian Government is working closely with the Northern Territory Government and Land Councils to pursue negotiations to secure voluntary leases over remote Indigenous housing and other government assets in advance of the end of the five-year leases.

While the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 proposes repeal of the *Northern Territory National Emergency Response Act 2007* (NTNER Act) the Bill includes saving provisions for certain land measures including leases granted under section 31 of the NTNER Act (the compulsory five-year leases) and Commonwealth interests acquired under section 47 of the NTNER Act. The savings provisions enable the compulsory five-year leases to continue no later than when they were due to expire under their original NTNER Act timeframe (the end of 17 August 2012), to manage the transition to alternative voluntary leasing arrangements. They also ensure that those parties whose interests in land were acquired by the Commonwealth under section 47 of the NTNER Act in the Ilpeye Ilpeye town camp will be compensated and that future models of social and or private housing can be implemented.

The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill provides that the Commonwealth Minister for Indigenous Affairs may, by legislative instrument, determine when the five-year leases cease, but no later than the end of 17 August 2012, to manage the transition to alternative voluntary leasing arrangements.

The Bill also ensures that provisions relating to compensation for acquisition of property and payment of agreed amounts or rent for the compulsory five-year leases and other acquisitions under

Part 4 of the NTNER Act continue in force. Additionally, the relevant appropriation will be saved for amounts payable including, for example, any outstanding rent to be paid by the Commonwealth to landholders affected by the compulsory five-year leases. The Australian Government is committed to fair rent payments to land owners backdated to the beginning of the five-year lease period.

FaHCSIA continues to work with the Northern Land Council and the Central Land Council to ensure five-year lease rent payments are disbursed to the relevant traditional owners as soon as possible.

The Bill also amends the Land Rights Act with regard to provisions concerning land covered by five-year leases to ensure that its operation is consistent with the repeal of the NTNER Act.

### ***Repeal of statutory rights over buildings and infrastructure***

In line with the Australian Government's commitment to negotiating voluntary long term leases, the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 proposes the repeal of Part IIB, Statutory rights over buildings or infrastructure, of the Land Rights Act, that was inserted by Schedule 3 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*.

The statutory rights provisions provided a mechanism for the Commonwealth, Commonwealth authorities, the Northern Territory and Northern Territory authorities to retain certain rights and interests, such as use and occupation rights, in buildings and infrastructure constructed or upgraded on Aboriginal land with government funds. It was intended that these provisions allow for future government investment on Aboriginal land to be protected. However, the statutory rights provisions provide that any government right or interest under Part IIB could only be created with the consent of the Land Council. Further, the provisions included a good faith obligation for holders of statutory rights and the relevant Land Council to then negotiate a lease under section 19 of the Land Rights Act. The rights and interests conferred under Part IIB were therefore only intended to be used as a transitional arrangement. The statutory rights provisions have not been used and any future use would not be consistent with the Australian Government's voluntary leasing approach.

It remains an Australian Government priority to secure leases under section 19 of the Land Rights Act over Commonwealth occupied buildings and public housing.

## **Community safety and child protection**

The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 proposes to continue measures that help make communities and, in particular, women and children, safer. This includes the current prohibited material (pornography) restrictions and the prohibitions on considerations of customary law in bail and sentencing decisions.

### ***Prohibited material***

This measure is aimed at reducing the risk of children being exposed to sexually explicit and very violent material, which has been linked to a range of problematic sexual behaviours, including sexual violence. Over the past decade, there have been government reports in the Northern Territory and in several states indicating that there are unacceptable levels of pornography exposure among children in some Indigenous communities.<sup>77</sup> This included the *Little Children are Sacred* report.

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<sup>77</sup> Bryant, C., & Willis, M., 2009. *Pornography awareness: A process of engagement with Northern Territory Indigenous communities*, Australian Institute of Criminology, p.1.

As part of the NTER, the *Classification (Publications, Films and Computers Games) Act 1995* (the Classification Act) was amended to introduce additional restrictions in prescribed areas to the restrictions already applying across the Northern Territory to prohibit the possession and supply of sexually explicit and very violent material. The NTER restrictions applied to material classified as Refused Classification or classified X18+, or would likely be Refused Classification or would likely be classified X18+.

The 2009 NTER Redesign consultations indicated the cultural sensitivities involved in discussing topics such as pornography in Aboriginal communities. Where people commented, there were consistent calls in the 2009 and 2011 consultations for the NTER restrictions to continue and people said they did not want their children to see such material. In their submission on the NTER Redesign legislation, the National Association for the Prevention of Child Abuse and Neglect indicated that the Government's proposal to strengthen measures to control pornography and alcohol abuse "has the potential to greatly improve the lives of some of Australia's most vulnerable children."<sup>78</sup>

The 2010 amendments to the NTER legislation to reinstate the *Racial Discrimination Act 1975* included a provision to allow communities to seek approval of the Commonwealth Indigenous Affairs Minister to no longer be subject to these restrictions so long as certain conditions exist in communities. No community has sought this approval to date.

The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 includes provisions to continue and make minor amendments to the restrictions.

The Bill proposes that Part 10 of the Classification Act which concerns prohibited material will be subject to an independent review after seven years in operation and will sunset after 10 years of operation. The Bill also proposes that the Commonwealth Minister for Indigenous Affairs can, at any time before the sunset of this Part of the Act, determine that some or all of the Part will cease to have effect.

To allow more long-term flexibility in future administration and enforcement of the prohibited material restrictions, the Stronger Futures legislation will not continue to apply the prohibited material restrictions through the "prescribed area" concept that was created under the NTER legislation. Upon passage of the Stronger Futures legislation, the areas where the prohibited material restrictions apply will be called prohibited material areas. A prohibited material area is an area that has been declared as a prohibited material area by the Commonwealth Minister for Indigenous Affairs in a legislative instrument.

The Government considers this measure to be a special measure within the meaning of subsection 8(1) of the *Racial Discrimination Act 1975*. The amendments are being enacted to address specific Aboriginal disadvantage and help Aboriginal people to enjoy their human rights equally with others in the Australian community. The object of Part 10 of the Classification Act, provided at section 98A, reflects this intention. The Bill is intended to operate, and to be construed, consistently with the Racial Discrimination Act.

The signs referring to prohibitions on pornography caused offence and work is underway to change the signs and to identify alternative ways of communicating information about the prohibited

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<sup>78</sup> National Association for the Prevention of Child Abuse and Neglect, 2010. *Submission to the Senate Inquiry on the Welfare Reform and Reinstatement of Racial Discrimination Act Bill*, p. 3.

material restrictions. The legislation will not specify the manner in which such communication should occur and will not require signs to refer to the prohibited material restrictions.

### *Customary law in bail and sentencing decisions*

These provisions are consistent with the Council of Australian Governments' agreement following the 2006 Indigenous Summit on Violence and Child Abuse in Indigenous Communities.<sup>79</sup>

Under the NTNER Act, customary law and cultural practice must not be taken into account in considering the seriousness of an alleged offender's criminal behaviour in bail and sentencing decisions for offences against Northern Territory laws. Bail authorities are also required to consider the potential impact of granting bail on victims, witnesses and potential witnesses. Under the *Crimes Act 1914* (Crimes Act), the same requirements apply in relation to offences against Commonwealth laws.

The NTNER Act will be repealed by Schedule 1 of the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 and the provisions relating to both Commonwealth and Northern Territory bail and sentencing decisions will be consolidated within the Crimes Act.

Schedule 4 of the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 will also amend the Crimes Act to enable customary law and cultural practice to be considered in bail and sentencing decisions for offences against Commonwealth and Northern Territory laws for accessing, remaining on or damaging cultural heritage sites (including sacred sites) or removing or damaging cultural heritage objects.

The existing provisions in the NTNER Act have had consequences for offences that protect cultural heritage, including sacred sites and cultural heritage objects. What may be viewed as relatively minor criminal behaviour, such as entering a particular site, is more serious by virtue of the significance of that site according to customary law and/or cultural practice. If customary law or cultural practice cannot be considered in bail and sentencing decisions for such offences, it would be difficult to assess the relative seriousness of the offences. Therefore, the amended provisions enable these issues to be considered for cultural heritage offences.

The prohibition on considering customary law and cultural practice as a mitigating or aggravating factor will continue to apply to all other bail and sentencing decisions for offences against Commonwealth and Northern Territory laws. This ensures that customary law and cultural practice is not used to mitigate the seriousness of an offence that involves violence or sexual abuse against vulnerable members of the community, including women and children. This is consistent with the Council of Australian Governments' agreement of 14 July 2006 that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse.

A person's cultural background can still be considered in relation to those aspects of bail and sentencing decisions that are not related to the seriousness of an alleged offender's criminal behaviour. For example, factors such as the potential impact of incarceration in light of a person's cultural background or whether or not an offender has received tribal punishment can still be considered.

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<sup>79</sup> Council of Australian Governments' Meeting 14 July 2006, COAG Communiqué.

## **Implementation**

As indicated at the beginning of this Submission, effort to close the gap will not be effective unless Aboriginal people are involved, and Aboriginal people and the Northern Territory and the Australian Governments work together on the development and implementation of solutions.

The feedback and consultation process currently occurring in communities will continue. In implementing the legislation, Aboriginal people will be consulted. There will be a variety of mechanisms that will provide opportunities for Aboriginal input to the implementation of both legislated and funded measures.

There is a range of legislative instruments such as regulations, notices and declarations, provided for in the legislation that give effect to decisions and actions under the Bills. As a general approach to preparing these instruments, draft instruments will be published on the FaHCSIA website and comment invited on them before they are finalised. Consultations will also be arranged with key stakeholders to seek input on draft instruments before they are finalised. Every endeavour will be made to provide adequate time for consideration and input to draft instruments before they are finalised.

In relation to funded measures, there is a need to better integrate the directions in a new National Partnership Agreement into actions at the community level. It is proposed that the Local Implementation Plans and the consultation processes related to these Plans will provide a mechanism for consultation with Aboriginal people in communities for implementation of funded measures.



## **CONCLUDING REMARKS**

The proposals in the Bills follow extensive consultations with Aboriginal people in the Northern Territory since 2007. They take account of the views and aspirations that people expressed in those consultations. The proposals also draw on the findings of the NTER evaluation about what measures have worked and those measures that have not worked. The proposals focus on measures that will contribute to achieving the closing the gap targets and which will help individuals, families and communities to overcome barriers that presently make achieving those targets very difficult. The Bills strengthen measures that have been shown to deliver outcomes and which have been beneficial to Aboriginal people, such as stores licensing.

The proposals take account of the unique circumstances of the Northern Territory and the challenges this presents to governments and service providers in delivering services and tackling disadvantage.

There is now an opportunity to continue to build on the investment and the hard work of the past five years which have delivered improvements in outcomes and services. The measures in the Bills are a sustainable approach which respects the rights and aspirations of Aboriginal people. It is a balanced and measured approach which in its implementation will involve Aboriginal people and seek partnership with them to achieve the object of the Stronger Futures legislation.

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## Overview of the Bills and current funding support

The Senate Community Affairs Legislation Committee has been referred the following Bills for consideration:

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

The Stronger Futures in the Northern Territory Bill 2011 and the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 were introduced into the Parliament on 23 November 2011 to support and complement a broader package of measures being developed to deliver additional effort in the Northern Territory to reduce the gap in Indigenous disadvantage and to repeal the *Northern Territory National Emergency Response Act 2007*.

The Social Security Legislation Amendment Bill 2011, introduced on the same day, proposes amendments to the operation of the income management system, in particular to improve school attendance in areas where this is poorest and for people whose lives are seriously affected by alcohol misuse.

These three related Bills make up the Stronger Futures legislative response to the views expressed by Aboriginal people in the 2011 Stronger Futures in the Northern Territory consultations.

All measures in the Bills have been designed to be consistent with the *Racial Discrimination Act 1975*.

Most measures are proposed to be reviewed at seven years and to sunset after ten years from commencement of the legislation.<sup>80</sup> This will allow measures to be given sufficient time to be effective, to be evaluated and adjustments made well before the ten year sunset occurs. For transparency and accountability, the Stronger Futures Bill proposes the review will be independent and be tabled in the Australian Parliament.<sup>81</sup>

The proposals in each of the three Bills are briefly outlined below:

- The object of the Stronger Futures in the Northern Territory Bill 2011 (the Stronger Futures Bill) is to support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy. The measures in this Bill are designed to be special measures within the meaning of the *Racial Discrimination Act 1975* and are intended to benefit Aboriginal people through practical measures aimed at reducing alcohol-related harm, improving food security in remote communities, and promoting economic development in town camps and community living areas. The measures commence on Proclamation of the legislation by the Governor-General;

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<sup>80</sup> The measures in the Social Security Legislation Amendment Bill 2011, that is, the School Enrolment and Attendance through Welfare Reform Measure, and the income management amendments are not subject to a sunset provision. The prohibition on customary law considerations in bail and sentencing in the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 is also not subject to a sunset provision.

<sup>81</sup> Stronger Futures in the Northern Territory Bill 2011, clause 117.

- The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 proposes the repeal of the *Northern Territory National Emergency Response Act 2007* and the statutory rights provisions in the *Aboriginal Land Rights (Northern Territory) Act 1976* that provide a mechanism for governments to retain an interest in buildings and infrastructure constructed or upgraded on Aboriginal land. Provisions relating to publicly funded computer audits and business management areas powers introduced under the Northern Territory Emergency Response will cease when this Bill is passed and receives Royal Assent. This Bill provides that the five-year leases provisions will be repealed with the leases to expire no later than 17 August 2012 to manage the transition to alternative voluntary leasing arrangements. This Bill proposes that the prohibited material restrictions in remote communities and provisions prohibiting customary law considerations in bail and sentencing decisions continue with some minor amendments. The prohibited material restrictions are designed as a special measure for the purposes of the *Racial Discrimination Act 1975* and will be subject to the ten-year sunset provision and the review to be undertaken at seven years. The measures will commence either on Royal Assent or Proclamation;
- The Social Security Legislation Amendment Bill 2011 amends and improves the provisions in the social security law that underpin the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM). It enables better tailoring to local circumstances. In the Northern Territory, this will enable SEAM to better complement the Northern Territory Government's *Every Child, Every Day* initiatives. The Bill also includes amendments that will allow income management to be triggered by referrals from State and Territory agencies such as the Northern Territory Alcohol and Other Drugs Tribunal. SEAM and income management are designed as general, non-discriminatory measures that are being rolled out in specific geographic areas based on need. SEAM sites have been selected based on the statistical level of attendance in a particular school or geographical area, and the likely effectiveness of funding in that area. Legislative changes for these measures will commence from 1 July 2012.

## Funding

With respect to the legislative measures, the Government will provide:

- \$85.6 million over 11 years (including \$57.1 million between 2015-16 and 2021-22) to expand the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) trial from the six current sites in the Northern Territory to all Northern Territory Remote Service Delivery communities, Alice Springs, Tennant Creek, Alyangula, Nhulunbuy and the areas of Katherine where SEAM does not currently apply. The roll-out will be phased commencing from 1 July 2012.<sup>82 83</sup>
- \$45.6 million over 11 years (including \$28.7 million from 2015-16 to 2021-22) to tackle alcohol abuse in Indigenous communities in the Northern Territory. This includes supporting the development and implementation of community specific alcohol management

<sup>82</sup> Australian Government, 2011. Mid-year Economic and Fiscal Outlook 2011-12, Appendix A: Policy decisions taken since the 2011-12 Budget, Expense Measures.

<sup>83</sup> Garrett, P., & Macklin, J., 2011. Building Stronger Futures for Children in the Northern Territory, Joint media release.

plans and referrals to income management by the Northern Territory Alcohol and Other Drugs Tribunal<sup>84</sup>;

- \$40.9 million over 11 years (including \$27.3 million from 2015-16 to 2021-22) to support food security in remote Indigenous communities.<sup>85</sup>

This does not include funding to be directed to the Northern Territory Government to support the SEAM and tackling alcohol misuse measures. The Government has set aside funding in the contingency reserve as part of the National Partnership that is yet to be negotiated with the Northern Territory Government.

When the legislative measures were introduced into the Parliament, the Government also announced a \$19.1 million jobs package to give Aboriginal people in remote communities in the Northern Territory more employment and economic opportunities. This package is intended to deliver 50 new *Working on Country* ranger positions, in addition to the current 280 existing ranger positions. This initiative responds to the feedback from communities in which Aboriginal people in the consultations said they wanted jobs with proper wages and conditions in their communities.<sup>86, 87</sup> The package also includes up to 100 traineeships positions including mentoring support to help get local people into local jobs, support for the Northern Territory Government's job guarantee for remote Indigenous students from Territory Growth Towns who complete Year 12, as well as expanding the 'Indigenous Communities in Business' project to two new locations.

Separately from the Stronger Futures legislative response, work is continuing to assist the Government with decisions about future funding for possible non-legislative measures to support the Stronger Futures in the Northern Territory approach. Funding proposals on non-legislated measures such as health, child and family support, community safety, education and community engagement are being considered in the context of the 2012-13 Budget.

### ***Principles underpinning the legislation***

The legislation has been developed to be consistent with the Government's commitments that:

- the views of Aboriginal people living in the Northern Territory will be at the centre of shaping the approach to tackling the unacceptable level of disadvantage still experienced by many Aboriginal people in the Northern Territory.
  - Between June and August 2011, consultations were held in more than 100 remote communities and town camps, and with a wide range of stakeholder organisations and service providers. More than 400 meetings were held in communities, attended by several thousand people. Consultations are continuing in communities through Government Business Managers and Indigenous Engagement Officers.
  - The legislation is part of a broader response to the issues that Aboriginal people in the consultations identified as most urgent:
    - school attendance and education;

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<sup>84</sup> Australian Government, 2011. op cit

<sup>85</sup> Australian Government, 2011. op cit

<sup>86</sup> Macklin, J., Burke, T., Arbib, M., Snowdon, W., 2011. More jobs, better job opportunities for people in the Northern Territory, Joint media release.

<sup>87</sup> Australian Government, *Stronger Futures in the Northern Territory: Report on Consultations*, p. 29.

- tackling alcohol misuse;
  - housing; and
  - strengthening local economies and increasing job opportunities.
- all future actions taken by the Government will comply with the *Racial Discrimination Act 1975*, either because they are non-discriminatory, or because they are special measures.<sup>88</sup>
  - all of the measures in the Bills have been designed to be consistent with the *Racial Discrimination Act 1975* (Racial Discrimination Act). Some measures proposed in the Bills such as the alcohol restrictions have been developed as special measures intended for the benefit of Aboriginal people. Other measures, such as the amendments to SEAM, will apply to all persons in areas selected for roll-out, whether Indigenous or non-Indigenous. SEAM will be initially rolled out in areas identified as having a particular need. However, the Government intends that these measures will also be rolled out in additional areas of high need, and may eventually apply nationally. The legislation is phrased in a way that will allow this.
  - the Racial Discrimination Act was reinstated in relation to the Northern Territory Emergency Response from 31 December 2010. The Stronger Futures legislation does not suspend or affect the operation of the Racial Discrimination Act in any way with respect to the Northern Territory and Aboriginal people.
- the future approach to closing the gap will be in partnership with Aboriginal people, built on mutual respect between governments and Aboriginal people, strengthen responsibility and support Aboriginal people to live strong, independent lives and deliver long-term, sustainable outcomes.
  - It is proposed that most measures will be in place for up to ten years from commencement of the legislation; others will be ongoing.
- a partnership approach between the Australian Government, the Northern Territory Government and Aboriginal Territorians will drive reform and improving service delivery.
  - All measures in the Bills have been developed in consultation with the Northern Territory Government and the proposed legislation complements Northern Territory Government reforms. The Chief Minister has publicly indicated support for the legislation.
- the compulsory five-year leases introduced under the Northern Territory Emergency Response will not be continued.

Given the Australian Government's existing extensive involvement in the Northern Territory, the unacceptable level of disadvantage and significant funding provided to the Northern Territory Government, the Australian Government will continue to play a key role in the Northern Territory and support the Northern Territory Government to strengthen its capacity to meet the high levels of

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<sup>88</sup> Special measures are actions that governments take to help people of a particular race claim their human rights equally with others as provided for in section 8(1) of the *Racial Discrimination Act 1975*.



need for vital services and expectations for service delivery.<sup>89</sup> Historically Aboriginal people have sought the Commonwealth to be involved in Indigenous affairs in the Territory and to remain involved.

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<sup>89</sup> Australian Government, 2011. Stronger Futures in the Northern Territory Discussion Paper.

# NAPLAN Year 3 Reading

Table 3.R5: Achievement of Year 3 Students in Reading, by Geolocation, by State and Territory, 2011.

State/ Territory	Geolocation	Mean scale score	Below national minimum standard (%)		At national minimum standard (%)	Above national minimum standard (%)				At or above national minimum standard (%)
			Exempt	Band 1		Band 2	Band 3	Band 4	Band 5	
NSW	<i>Metro</i>	429.0	1.6	2.6	8.2	15.8	21.3	21.8	28.6	95.7
	<i>Provincial</i>	405.2	1.5	4.7	12.1	19.5	22.8	19.7	19.7	93.8
	<i>Remote</i>	374.9	1.2	10.5	18.9	22.4	19.3	15.4	12.3	88.3
	<i>Very Remote</i>	348.7	0.0	23.5	19.0	18.8	14.6	10.6	13.5	76.5
Vic	<i>Metro</i>	437.7	2.9	1.6	6.4	14.4	21.1	22.7	30.8	95.5
	<i>Provincial</i>	420.3	2.6	2.6	9.3	17.3	22.5	21.5	24.2	94.8
	<i>Remote</i>	425.1	0.0	2.5	11.6	16.1	15.4	30.2	24.2	97.5
	<i>Very Remote</i>	-	-	-	-	-	-	-	-	-
Qld	<i>Metro</i>	407.2	1.7	4.6	12.3	18.8	21.9	19.9	20.9	93.8
	<i>Provincial</i>	388.1	1.8	6.5	16.5	21.5	21.7	17.3	14.7	91.7
	<i>Remote</i>	367.0	0.4	12.5	20.9	21.1	19.8	14.4	10.9	87.1
	<i>Very Remote</i>	332.8	1.5	21.6	28.1	22.0	14.0	7.1	5.7	76.9
WA	<i>Metro</i>	408.7	1.5	5.0	11.5	18.2	22.0	20.3	21.5	93.5
	<i>Provincial</i>	388.0	1.0	7.6	15.4	21.5	21.8	17.8	14.9	91.4
	<i>Remote</i>	371.8	0.8	13.4	18.3	20.0	18.5	15.6	13.4	85.7
	<i>Very Remote</i>	332.4	0.7	26.1	25.6	16.5	13.5	9.6	8.2	73.3
SA	<i>Metro</i>	408.5	2.5	4.7	11.5	18.3	22.0	19.8	21.3	92.8
	<i>Provincial</i>	389.8	2.0	7.1	14.8	20.7	22.5	17.8	15.2	90.9
	<i>Remote</i>	382.3	1.9	8.3	18.3	21.0	21.2	14.4	14.9	89.8
	<i>Very Remote</i>	326.4	2.9	27.7	21.0	19.0	14.4	8.8	6.3	69.5
Tas	<i>Metro</i>	415.3	1.9	5.8	11.9	16.5	19.2	17.9	26.8	92.4
	<i>Provincial</i>	406.4	1.5	6.1	12.8	18.0	20.8	18.6	22.2	92.4
	<i>Remote</i>	390.6	1.2	8.7	13.0	23.4	20.2	18.3	15.2	90.1
	<i>Very Remote</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
ACT	<i>Metro</i>	443.2	2.2	2.2	6.5	13.4	19.4	21.7	34.6	95.6
	<i>Provincial</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
	<i>Remote</i>	-	-	-	-	-	-	-	-	-
	<i>Very Remote</i>	-	-	-	-	-	-	-	-	-
NT	<i>Metro</i>	-	-	-	-	-	-	-	-	-
	<i>Provincial</i>	374.8	3.2	12.2	17.7	19.8	18.3	14.3	14.5	84.6
	<i>Remote</i>	354.1	1.2	19.9	19.1	18.1	15.9	13.1	12.7	78.9
	<i>Very Remote</i>	221.7	1.2	65.3	17.6	6.9	4.4	3.1	1.5	33.5
Aust	<i>Metro</i>	423.6	2.0	3.2	9.1	16.4	21.4	21.3	26.5	94.8
	<i>Provincial</i>	401.6	1.9	5.3	13.1	19.6	22.1	19.1	18.9	92.8
	<i>Remote</i>	370.5	0.9	13.0	19.0	20.3	18.9	15.0	12.9	86.0
	<i>Very Remote</i>	295.5	1.2	38.1	23.0	15.0	10.6	6.7	5.4	60.7

Source: National Assessment Program, Literacy and Numeracy, National Report for 2011, p. 6.

## NAPLAN Year 3 Reading

Table 3.R6: Achievement of Year 3 Indigenous Students in Reading, by Geolocation, by State and Territory, 2011.

State/ Territory	Geolocation	Mean scale score	Below national minimum standard (%)		At national minimum standard (%)	Above national minimum standard (%)				At or above national minimum standard (%)
			Exempt	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6 and above	
NSW	<i>Metro</i>	366.3	2.8	10.0	20.2	24.3	20.8	13.0	8.8	87.1
	<i>Provincial</i>	348.6	2.5	13.4	25.0	25.8	18.3	9.5	5.6	84.1
	<i>Remote</i>	329.1	1.3	20.4	26.5	26.8	17.5	5.7	1.9	78.4
	<i>Very Remote</i>	290.1	0.0	41.3	23.3	18.3	11.7	4.2	1.3	58.8
Vic	<i>Metro</i>	381.2	4.6	4.8	17.7	24.5	21.7	15.8	11.0	90.6
	<i>Provincial</i>	367.9	5.4	8.5	18.8	24.4	22.8	11.1	9.0	86.1
	<i>Remote</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
	<i>Very Remote</i>	-	-	-	-	-	-	-	-	-
Qld	<i>Metro</i>	349.0	1.9	14.7	25.1	23.6	18.0	11.0	5.7	83.4
	<i>Provincial</i>	340.0	2.8	16.5	27.0	24.1	17.4	7.7	4.6	80.7
	<i>Remote</i>	309.2	0.0	29.5	33.0	19.7	11.2	4.7	1.9	70.5
	<i>Very Remote</i>	299.8	1.4	30.9	36.7	20.3	8.0	2.1	0.7	67.7
WA	<i>Metro</i>	330.4	1.5	21.2	27.6	24.1	14.5	6.7	4.4	77.3
	<i>Provincial</i>	323.4	0.9	23.6	30.4	22.2	12.3	6.3	4.3	75.6
	<i>Remote</i>	298.7	1.3	33.9	30.0	20.3	8.7	4.8	0.9	64.8
	<i>Very Remote</i>	287.2	0.8	40.5	32.6	14.0	7.5	3.1	1.5	58.6
SA	<i>Metro</i>	344.0	3.8	16.9	20.8	27.2	16.9	9.9	4.6	79.4
	<i>Provincial</i>	323.1	6.7	22.8	24.8	21.8	13.8	6.3	3.8	70.5
	<i>Remote</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
	<i>Very Remote</i>	269.5	6.7	44.9	28.3	12.8	5.8	1.1	0.2	48.3
Tas	<i>Metro</i>	357.2	3.1	13.1	24.0	20.6	18.4	12.5	8.3	83.8
	<i>Provincial</i>	369.2	1.1	12.3	20.6	20.1	19.5	16.1	10.3	86.5
	<i>Remote</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
	<i>Very Remote</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
ACT	<i>Metro</i>	376.8	3.2	8.2	18.1	22.1	22.9	12.4	13.1	88.6
	<i>Provincial</i>	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.	n.p.
	<i>Remote</i>	-	-	-	-	-	-	-	-	-
	<i>Very Remote</i>	-	-	-	-	-	-	-	-	-
NT	<i>Metro</i>	-	-	-	-	-	-	-	-	-
	<i>Provincial</i>	314.6	3.0	28.5	26.1	21.1	11.8	5.8	3.7	68.5
	<i>Remote</i>	286.4	1.5	39.2	27.2	16.7	10.0	4.0	1.5	59.3
	<i>Very Remote</i>	197.2	1.2	73.6	18.0	5.3	1.4	0.4	0.0	25.2
Aust	<i>Metro</i>	354.8	2.5	13.3	22.9	24.1	18.8	11.4	7.0	84.2
	<i>Provincial</i>	343.7	2.8	15.9	25.3	24.1	17.4	8.8	5.5	81.3
	<i>Remote</i>	304.1	1.2	31.5	29.7	20.1	11.1	4.7	1.8	67.3
	<i>Very Remote</i>	248.9	1.4	53.3	26.6	11.7	4.9	1.6	0.6	45.3

Source: National Assessment Program, Literacy and Numeracy, National Report for 2011, p.7.

### Average school attendance in the Northern Territory for Term 3 2010 and 2011

Geolocation	2010			2011		
	Indigenous	Non-Indigenous	Total	Indigenous	Non-Indigenous	Total
Provincial	79.5%	89.6%	87.6%	82.9%	90.5%	89.0%
Remote	79.7%	91.6%	85.9%	78.0%	90.6%	84.6%
Very Remote	53.8%	88.9%	58.1%	53.4%	88.3%	57.9%
<b>Total</b>	64.7%	89.9%	78.6%	65.2%	90.4%	79.2%

Source: Northern Territory Department of Education and Training, 2011. <<http://www.det.nt.gov.au/students/at-school/enrolment-attendance/enrolment-attendance-statistics>>.

## School attendance rates for selected Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) sites

The table below is generated from the *myschool* website which includes all the existing Northern Territory SEAM schools and proposed SEAM schools (which includes schools within Remote Service Delivery sites). Please note that the data may not be completely comparable as it is the responsibility of each school to provide updated and relevant information. Although a minority of schools in these areas appear to have a reasonably high attendance rate, geographic areas have been chosen to ensure that people with non-attendance issues do not simply transfer from one school to another, in an attempt to avoid the measure.

While the majority of Indigenous students attend school regularly and achieve successful outcomes, poor school attendance and engagement is a major problem for a significant group of Indigenous students. On average Indigenous students miss around 26 days of schools each year, compared with 8 days for non-Indigenous students. Indigenous students in remote areas are likely to miss a greater number of days.<sup>90</sup>


Post Code	Location	School Name	Sector	School Type	Enrolments	Indigenous %	Attendance %
870	Alice Springs	Araluen Christian College	Non-Govt	Combined	156	14	92
		Living Waters Lutheran Primary School	Non-Govt	Primary	364	9	93
		Our Lady of the Sacred Heart College	Non-Govt	Combined	982	12	88
		St. Philips College	Non-Govt	Secondary	546	11	93
		The Alice Springs Steiner School	Non-Govt	Primary	96	8	89
		Yipirinya School	Non-Govt	Combined	163	100	41
		Yirara College	Non-Govt	Secondary	236	100	86
871	Alice Springs	Acacia Hill School	Govt	Special	45	78	89
		Alice Springs School of the Air	Govt	Combined	111	33	100
		Bradshaw Primary	Govt	Primary	273	54	86
		Braitling Primary	Govt	Primary	289	47	90
		Centralian Middle School	Govt	Secondary	361	58	78
		Centralian Senior Secondary College	Govt	Secondary	534	51	84
		Gillen Primary	Govt	Primary	239	70	86
		Larapinta Primary	Govt	Primary	260	46	90
		Ross Park Primary	Govt	Primary	354	17	92
		Sadadeen Primary	Govt	Primary	159	67	83

<sup>90</sup> Overcoming Indigenous Disadvantage Report 2009; COAG Reform Council 2011, Education 2010: Comparing Performance Across Australia, Sydney, p. 47.

0850/ 851	Katherine/ Katherine East	St. Joseph's College	Non-Govt	Combined	328	26	85
		Clyde Fenton	Govt	Primary	239	58	85
		Katherine School of the Air	Govt	Combined	176	18	100
		Katherine South Primary	Govt	Primary	256	32	88
		Kintore Street School	Govt	Special	8	88	81
		MacFarlane Primary	Govt	Primary	231	88	81
		Casuarina Street Primary	Govt	Primary	236	15	92
		Katherine High School	Govt	Secondary	585	42	78
861	Tennant Creek	Tennant Creek High School	Govt	Secondary	241	80	69
		Tennant Creek Primary School	Govt	Primary	362	76	71
870	Yuendumu **	Yuendumu School	Govt	Combined	157	96	49
851	Lajamanu* *	Lajamanu School	Govt	Combined	171	100	47
872	Hermannsburg**	Ntaria School	Govt	Combined	151	97	73
822	Wadeye**	Our Lady of the Sacred Heart College	Non-Govt	Combined	421	99	45
	Wurrumiyanga (Nguiu)** (Tiwi Islands)	Tiwi College	Non-Govt	Combined	71	100	77
		Murrupurtiyanuwu Catholic School	Non-Govt	Primary	199	99	75
		Xavier Community Education Centre	Non-Govt	Secondary	90	97	62
		Milikapiti School	Govt	Combined	64	95	81
		Pularumpi School	Govt	Combined	63	98	92
	Gunbalanya **	Gunbalanya School	Govt	Combined	322	100	51
871	Wallace Rockhole	Wallace Rockhole School	Govt	Combined	23	100	85
822	Maningrida **	Maningrida School	Govt	Combined	470	96	38
822	Milingimbi **	Milingimbi School	Govt	Combined	333	99	65
822	Galiwinku* *	Shepherdson College	Govt	Combined	515	96	53
822	Gapuwiyak **	Gapuwiyak School	Govt	Combined	230	97	63
881	Yirrkala**	Yirrkala Homeland School	Govt	Combined	156	100	72
		Yirrkala School	Govt	Combined	180	99	62
822	Groote Eylandt	Umbakumba School	Govt	Combined	109	100	61
885	(Umbakumba **) (Angurugu **)	Angurugu School	Govt	Combined	255	100	42
		Alyangula Area School (not RSD)	Govt	Combined	166	16	91
852	Numbulwar **	Numbulwar School	Govt	Combined	152	99	49
851	Ngukurr**	Ngukurr School	Govt	Combined	253	100	65
<b>TOTAL</b>					<b>12,381</b>	<b>61</b>	

Source: Suburb/Locality Search and 2010 Enrolment and Indigenous student information through www.myschool.edu.au as at 1 September 2011

 Existing SEAM Trial School

 Existing SEAM Trial Site

\*\* NT Remote Service Delivery (RSD) Community

**Attachment F**

**Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM),  
Evaluation Report for 2010**

(provided as a standalone document)



## Determining which areas are not in the Food Security Area

Clause 74 of the Stronger Futures in the Northern Territory Bill 2011 (the Bill) provides that the Minister may prescribe that an area in the Northern Territory is not in the food security area and is therefore beyond the scope of the licensing scheme. In making a rule for the purpose of that provision, the Minister must have regard to:

- the food security objectives (see clause 37);
- the wellbeing of people living in the area;
- any other matters the Minister considers relevant.

For example, there may be a case that licensing would not improve food security or the wellbeing of people living in a particular area where:

- a suitable range and quality of food is readily available in the area and competition means that it is unlikely that this situation could change in the near future (through, for example, changes of ownership or store policy in a particular store or stores); and
- closure or poor management of a particular store would not have a significant adverse impact on the food security of a community; and
- consumers have reasonable levels of financial literacy and knowledge of consumer rights and protections.

In these circumstances and where there are no other relevant factors, it may be appropriate for rules to exclude such areas from the food security area. These rules will be a legislative instrument and will therefore be subject to disallowance in Parliament. The Minister can make rules to exclude an area from the food security area on the Minister's own initiative or in response to a request from a person normally resident in that area.

These areas are likely to comprise the generally recognised major centres of the Northern Territory but, following passage of the legislation, the draft rules and boundaries will be issued in draft form to allow time for public comment and submissions.

It should be noted that the fact that a store is located in the food security area does not in itself mean that it will be required to be licensed. In general, stores that are located in the food security area that are an important source of food, drink or grocery items for an Aboriginal community will be required to hold a licence. However, the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs still retains a discretion not to require stores located in the food security area to hold a licence in certain circumstances having regard to certain matters (see sub-clause 41(4)). For example, it may be appropriate not to require a store in the food security area to hold a licence where:

- a store is located close to the boundary of the area excluded from the food security area and its customers are able to readily access food, drink or grocery items from competing stores in the excluded area; or
- the Aboriginal community served by the store is small or transient and in all the circumstances, the Secretary considers a requirement to be licensed to be inappropriate; or

- the sale of food, drink or grocery items is not a part of the core business of the entity, which has been providing access to these goods as a social service.

A decision that a store is required to hold a licence can be subject to independent review by the Administrative Appeals Tribunal (clause 110(a) of the Stronger Futures in the Northern Territory Bill).