



CENTRAL LAND COUNCIL

Submission to the Senate Standing Committee on Community Affairs Inquiry into the *Stronger Futures in Northern Territory Bill 2011* and two related Bills

1 February 2012

Executive Summary

Recommendations of the Central Land Council on the land and land reform measures

The CLC has consistently supported the Australian Government and the Northern Territory Government efforts to formalise land tenure in Aboriginal communities through voluntary agreements with Aboriginal landowners.

The focus that the *Stronger Futures* land reform measures bring to the issue of leasing on Aboriginal communities on community living areas (CLAs) is welcome.

CLAs were granted by the Northern Territory Government and there is a suite of Northern Territory legislation that constrains land dealings on CLAs. These include, but are not limited to, the inability (in all but a few limited circumstances) to grant leases and licences to third parties.

There is a genuine and pressing need for comprehensive reform of the Northern Territory legislation affecting CLAs to allow for leases or licences to be granted by the Aboriginal landowners of CLAs in relation to critical community infrastructure such as police stations, power and water assets, offices, businesses etc.

The CLC supports reforming the legislation that affects CLA title in order to overcome the current constraints.

Ideally, comprehensive reform would be lead by the Northern Territory Government. In the absence of proactive leadership by the Northern Territory Government, the approach being taken by the Australian Government in the *Stronger Futures in the Northern Territory Bill 2011* and the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011* is understandable but is not ideal.

The CLC would prefer the Australian Government to develop a comprehensive and detailed CLA reform agenda and introduce a Bill that expressly sets out the reform for debate and comment. In this context, the CLC is keen to be part of the solution and willing to provide services to CLA communities similar to the way it functions with respect to communities on Aboriginal land granted under the *Land Rights Act*.

The fundamental concern is that, as the end of the *NTER* approaches, the Australian Government may be tempted to carry out minimalist reforms that are expedient but which are

not thorough. This will not provide certainty for either the third parties seeking access to CLAs or for the Aboriginal landowners of CLAs.

The specific areas of concern are identified below.

1. Stronger Futures in the Northern Territory Bill 2011

The regulation making power proposed in clause 35 (Division 3 of Part 3) relating to CLAs is very broad and is not supported in its current form.

To delegate such extensive power over an important reform agenda to the executive creates difficulties because it requires the Aboriginal landowners and the land councils to unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time.

The Australian Government could alleviate such concerns by:

- (i) Identifying the relevant Northern Territory legislation that requires amendment in order to achieve comprehensive reform of the CLA land administration system and including the appropriate amendments within the *Stronger Futures in the Northern Territory Bill 2011*; or
- (ii) Amending clause 35 of the *Stronger Futures in the Northern Territory Bill 2011* to restrict the breadth of the regulating power by including restrictions, for example:
 - include a sunset clause that stipulates that the regulation making power will cease to have effect 12 months from commencement
 - prohibit the Minister enacting regulations that have retrospective operation
 - include a stipulation that the Minister must not impose duties or functions on any entity which have resource implications without consultation
 - include a stipulation that a land council may charge the Australian Government a fee for the reasonable expenses incurred in providing services prescribed by regulations made under clause 35 of the Stronger Futures Bill

2. Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011

Item 1 of **Schedule 1**, which provides for the repeal of the whole of the *Northern Territory National Emergency Response Act 2007*, is welcomed. The respective savings provisions in Items 2 to 4 of Part 2 are supported.

Consequential amendments effected by Item 3, and Items 5 to 21 of **Schedule 2** are supported in full.

An alternative is put forward in relation to Item 1 of Schedule 2, under the heading *Aboriginal Land Rights (Northern Territory) Act 1976*. The definition of 'community living area' should be inserted into section 3 (Interpretation) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* instead of defining the term by reference to the proposed *Stronger Futures in the Northern Territory Act*.

Item 4 of Schedule 2, which proposes to insert a new function for the land councils into the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* is not supported in its current form. When a workable and effective system of land administration in relation to CLAs is provided for in legislation, an appropriate land council function could be worded in any number of ways. The wording 'at their own expense' in the land council function currently proposed, is inappropriate.

Central Land Council

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Contents

| | | |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 1. | Introduction | 4 |
| 2. | Land related measures in the Stronger Futures Bill and the Consequential and Transitional Provisions Bill | 5 |
| 3. | Community Living Areas..... | 6 |
| 3.1 | History | 6 |
| 3.2 | Constraints on dealings with CLA title | 7 |
| | 1) Northern Territory legislative restrictions on dealing with CLA title | 7 |
| | 2) Landowner and title interests remain vulnerable..... | 7 |
| | 3) No process that delivers certainty | 8 |
| 3.3 | The need for reform..... | 8 |
| 3.4 | What should a comprehensive CLA reform model look like?..... | 9 |
| | 1) Titles to CLA should be held by an entity that exists in perpetuity..... | 10 |
| | 2) The transition to CLA title must be voluntary | 10 |
| | 3) There should be no effective change to the beneficial ownership of CLAs | 10 |
| | 4) There should be parity between communities situated on CLAs with communities situated on Aboriginal land under the <i>Land Rights Act</i> | 10 |
| | 5) The <i>Pastoral Lands Act (NT)</i> must continue to make provision for the grant of new CLAs | 10 |
| 3.5 | Problems with a ‘minimalist’ approach | 10 |
| 4. | Discussion of Stronger Futures package | 11 |
| 4.1 | <i>Stronger Futures in the Northern Territory Bill 2011</i> | 11 |
| 4.2 | <i>Stronger Futures (Consequential and Transitional Provisions) Bill 2011</i> | 13 |
| 5. | Summary..... | 15 |

1. Introduction

This submission is made by the Central Land Council (CLC) to the Senate Standing Committee on Community Affairs inquiry into the *Stronger Futures in the Northern Territory Bill 2011* and two related bills.

On 25 November 2011 the Senate jointly referred the three Bills that make up the Australian Government's Stronger Futures legislative package for inquiry and report:

1. *Stronger Futures in the Northern Territory Bill 2011 (Stronger Futures Bill)*
2. *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 (Consequential and Transitional Provisions Bill)*
3. *Social Security Legislation Amendment Bill 2011*

This submission addresses only those measures in the *Stronger Futures Bill* and the *Consequential and Transitional Provisions Bill* (the Stronger Futures Bills) that relate to land and land reform. Specifically, these are contained in:

- Clauses 32, 33, 34 and 35 of Part 3 of the *Stronger Futures Bill* under the heading **Land reform**
- Part 1 of Schedule 1 of the *Consequential and Transitional Provisions Bill* under the heading **Northern Territory National Emergency Response Act 2007**
- Part 2 of Schedule 1 of the *Consequential and Transitional Provisions Bill* under the heading **Saving provisions related to land**
- Schedule 2 of the *Consequential and Transitional Provisions Bill* under the heading **Amendment of the Aboriginal Land Rights Act (NT) 1976**

The CLC's views on the other aspects of the Stronger Futures legislative package are contained in the submission to the Committee by the Aboriginal Peak Organisations Northern Territory (APO NT); of which the CLC is a member.

The Central Land Council is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Land Rights Act)* and a Native Title Representative Body under the *Native Title Act 1993*.

The CLC is first and foremost a representative organisation for the Aboriginal people in its region, particularly on land related matters including land claims and economic uses of land.

The CLC is one of four Northern Territory land councils. The CLC region covers the entire southern half of the Northern Territory, an area of some 780,000 sq km of land. The Council is made up of 90 Aboriginal people from more than 15 language groups elected from communities across the region.

2. Land related measures in the Stronger Futures Bill and the Consequential and Transitional Provisions Bill

The measures related to land in the Stronger Futures Bills are designed, among other objects, to give effect to the Australian Government's secure tenure policy.

The Australian Government currently has a policy of securing long term leases as a prerequisite for future investment in communities, particularly with respect to housing, community infrastructure and services. The secure tenure policy is also intended to foster economic development and home ownership opportunities in Aboriginal communities through the granting of formal derivative interests to third parties.

The CLC has consistently supported the Australian Government and the Northern Territory Government's efforts to formalise land tenure in Aboriginal communities through voluntary agreements with Aboriginal landowners.

The Australian Government has demonstrated its commitment to negotiating voluntary long-term leases by not extending the compulsory five-year leases acquired under the original *Northern Territory National Emergency Response Act 2007 (NTER)*. The repeal of the *NTER* and in particular those provisions in the *Land Rights Act* by which the Australian Government compulsorily acquired land, is welcome. The CLC has consistently opposed these aspects of the *NTER*.

The CLC is actively progressing various lease applications and working with the Australian and Northern Territory Governments to make the transition from the 5-year compulsory leases into voluntary leasing as smooth as possible.

The CLC has been working with both the Australian and Northern Territory Governments to negotiate leases for Government infrastructure and to enable housing investment on the large 'Remote Service Delivery' communities (all of which are on Aboriginal land).¹ The CLC is currently negotiating with other parties, including the shires, over leases in communities on Aboriginal land.

To date the focus of both the Northern Territory and Australian Government in terms of land reform has been on communities located on Aboriginal land. Through the land reform measures in the Stronger Futures Bills, the Australian Government is explicitly extending its focus to provide a platform for 'secure tenure' to Aboriginal communities situated on CLAs. The focus that the Stronger Futures land reform measures bring to the issue of leasing on Aboriginal communities on CLAs is welcomed.

The CLA communities are established under Northern Territory legislation on areas other than Aboriginal land. CLA title pertains, generally, to small areas of land that have been excised from a pastoral lease for the residential purposes of an Aboriginal group with historical connections to that land. CLAs cover a range of Aboriginal community settings from large communities to smaller communities to outstations and homelands settlements.

The CLC supports reforming the legislation that affects CLA title in order to overcome the current constraints that exist.

¹ References to Aboriginal land in this submission have the meaning in the *Aboriginal Land Rights (Northern Territory) 1976 Act*; being inalienable freehold title held in trust on behalf of the traditional Aboriginal owners.

Ideally, comprehensive reform would be led by the Northern Territory Government. In the absence of proactive leadership by the Northern Territory Government, the approach being taken by the Australian Government in the *Stronger Futures Bill* and the *Consequential and Transitional Provisions Bill* is understandable but is not ideal.

The CLC would prefer the Australian Government to develop a comprehensive and detailed CLA reform agenda and introduce a Bill that expressly sets out the proposed land reform measures for debate and comment. In this context, the CLC is keen to be part of the solution and willing to provide services to CLA communities similar to way it functions with respect to communities on Aboriginal land granted under the *Land Rights Act*.

The fundamental concern is that, as the end of the *NTER* approaches, the Australian Government may be tempted to carry out minimalist reforms that are expedient but which are not thorough. This will not provide certainty for either the third parties seeking access to CLAs or for the Aboriginal landowners of CLAs.

The specific areas of concern are identified below. The table at **Attachment A** summarises the CLC position on the relevant items in each Bill.

3. Community Living Areas

3.1 History

The origin of CLAs goes back to the inception of land rights in the Northern Territory. The *Land Rights Act*, as passed by the Fraser Government in 1976, allowed traditional Aboriginal owners to claim vacant crown land (with a few limited exceptions). Many Aboriginal communities and groups have a historical association to particular pastoral stations through working on and building up the pastoral leases. Aboriginal people with ties to land covered by pastoral leases could not get land back unless they managed to purchase the pastoral lease (which proved very difficult in all but a few cases). On pastoral leases the only land that could be claimed under the *Land Rights Act* was stock routes so during the 1980s land claims were made over these. This caused considerable contestation at the time and in 1989 a *Memorandum of Agreement* was reached between the Australian and Northern Territory Governments in an attempt to resolve the issue.

The effect of the agreement was that the Australian Government would hand back some areas of stock routes and reserves ("red areas") and at the same time amend the *Land Rights Act* to prevent claims on stock routes. In turn the Northern Territory Government introduced the *Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act (NT)* (MAAA) which provided a secure form of CLA title. As well, it provided a process for grants (referred to as excisions), which is now regulated under Part 8 of the *Pastoral Land Act (NT)*, to Aboriginal groups that could prove an historical association to the land.²

Most CLAs are relatively small areas of freehold title (colloquially known as matchboxes) that were excised from pastoral leases, by negotiation initially, then under the process in Part 8 of the *Pastoral Land Act (NT)* and its antecedent legislation. In 2000, other tenures were converted to CLA freehold under the section 16 of the MAAA. The grant of each title is to a specific Aboriginal corporation or association established to hold the title for the members.

² Part 8 of the PLA established a process by which Aboriginal people who had a historical association with a pastoral lease could make a claim leading to the excision by acquisition of a "living area" from that pastoral lease provided they could also demonstrate need. This process has never worked satisfactorily.

The tone, style and content of the current Northern Territory laws pertaining to CLAs are an anachronism belonging to a political era where the recognition of any Aboriginal interests in land was vehemently resisted by the Northern Territory Government.

The result is that while Aboriginal people were granted rights to live on CLAs by the Northern Territory Government they were not given the power to deal with their land in a way that would promote community well-being or economic growth.

3.2 Constraints on dealings with CLA title

The current Northern Territory legislation and administrative instruments governing CLAs effectively prohibit the formalisation of land tenure through the grant of leases and licences. Such formalisation is currently not legally possible because of:

1. Northern Territory legislative restrictions on dealing with CLA title
2. the CLA title holder and title being inherently vulnerable by operation of the CLA legislation
3. the absence of a land administrative system that supports the granting of certain leases and licenses

1) Northern Territory legislative restrictions on dealing with CLA title

Legislative and other restrictions exist in relation to CLA title that prevents the Aboriginal landowners from granting derivative interests. These include:

- Section 110 of the *Associations Act (NT)* explicitly restricts the grant of leases or licences. Only leases for the health, education, housing or financial services are permitted (and then only with Ministerial consent).
- Under the *Crown Lands Act (NT)* certain Government service providers have reservations in their favour in relation to CLAs granted under s46(1A) of the *Land Acquisition Act 1979 (NT)* but they are unable to obtain a lease or licence in relation if they erect assets in reliance on the reservation.
- Many activities are prohibited on CLAs by virtue of Control Plans that are in force under the *Planning Act (NT)*. In many instances the Control Plans have not been revised for decades and the controls are out of date

2) Landowner and title interests remain vulnerable

The Aboriginal associations and corporations that hold CLA title were incorporated solely for that purpose and generally have no other function than to hold the title. These bodies are often deregistered by the regulator because of failures to comply with technical requirements under the relevant legislation such as reporting requirements and maintaining office bearers and membership.

Significant uncertainty exists where the landowner is deregistered and remedial action is required to reinstate the relevant body.

There is, additionally, under section 114 of the *Pastoral Land Act (NT)* a power for resumption of abandoned CLAs, granted under s46(1A) of the *Land Acquisition Act 1979 (NT)*. CLAs are deemed to be abandoned where the applicant or members of the Association have not had the CLA as a principal place of residence for a period of 5 years or more.

3) No process that delivers certainty

CLA title is a form of communal title and as such certainty for third parties seeking leases or licences on CLAs depends on the landowning body functioning effectively and responsively. There is currently no process for obtaining an interest on a CLA. Aboriginal associations and corporations are not supported in any way to deal with other parties seeking an interest on their land. They do not have the resources or capacity as it was never intended they should have such a role.

By comparison, the 'secure tenure' policy can be implemented on Aboriginal land because of the legislative scheme established by the *Land Rights Act* is able to deliver leases and licences to third parties. The procedures allow traditional Aboriginal owners to make binding decisions as a group and decisions are validated by the land council. The land councils are resourced to represent traditional Aboriginal owners. Certainty is delivered to lessees and licence holders because they can be confident that the correct people were consulted and gave their informed consent to the grant.

The same level of certainty is required by parties seeking interests on CLAs. This includes governments needing to invest in services and infrastructure as well as other third parties (including Aboriginal organisations) wishing to secure an interest for commercial activity or service provision. Aboriginal landowners also require certainty to ensure the terms and conditions of leases and licences can be enforced. Such certainty cannot exist unless the current CLA regime is comprehensively reformed.

3.3 The need for reform

There are well over one hundred CLAs throughout the Northern Territory and around eighty in the CLC region. Ten of the largest communities in the CLC region are located on CLAs, including Alpururulam (Lake Nash) which is among the biggest communities in the CLC region (see **Attachment B** for a list of the larger CLA communities). As well, many of the small Aboriginal communities and outstations are located on CLAs. These communities are being underserved because of the restrictions and problems associated with formalising third party interests on CLAs.

Funding allocated to CLA communities for new infrastructure has been unable to be spent because the leases or licences necessary to secure assets, so as to comply with Australian Government funding criteria, cannot be obtained. An example is the community store at Wutunugurra (Epenarra) which was allocated funding under the Aboriginals Benefit Account (ABA) Stores Infrastructure Project but where construction has not been able to commence.

In Imanpa, a new police station cannot be built in the community but instead is likely to be built on the surrounding Mt Ebenezer pastoral lease because it was not possible for the Northern Territory Government to secure a lease within the community because of the legislative and administrative restrictions associated with CLA title.

At Alpururulam (Lake Nash) in 2010-11, a new power station was eventually built a less than ideal distance away from the community because the Northern Territory Government could not obtain the necessary leases or licences for the infrastructure at the optimal location closer to the community because of the restrictions associated with CLA title.

Communities situated on CLAs should be able to enter into commercial arrangements where they wish to do so. In the CLC region the community of Lila provides an example of the effect of the restrictions on the capacity to grant leases. The CLA is within the Watarrka (Kings Canyon) National Park and was granted as part of the original settlement of the national park. There is a nascent Aboriginal tourist venture which wishes to work with other existing tourist operators to set up a walking tour and camping ground for tourists. The current laws affecting CLA title mean the necessary leases or licences cannot be obtained.

Furthermore, there is anecdotal evidence that Aboriginal service delivery organisations are choosing not to base themselves in CLA communities and are not prioritising initiatives in CLA communities because it is impasse over obtaining secure leases (which has funding implications).

Ongoing funding for outstation and homeland communities on CLAs will also be depend upon effective reform.

3.4 What should a comprehensive CLA reform model look like?

The CLC supports the need for reform of Northern Territory legislation that currently constrains Aboriginal landowners of CLAs. There is a genuine and pressing need for the suite of Northern Territory legislation relating to CLAs to be comprehensively reformed and modernised. Only a comprehensive reform will provide sufficient certainty for all parties who are interested in the grant or receipt of derivative interests (whether for business activity or service delivery in community living areas).

During 2011, the Central Land Council and the Northern Land Council worked collaboratively with Northern Territory Government to develop a comprehensive reform package that would resolve all of the current legislative problems associated with CLA title. The package addresses the three main elements required in order to deliver certainty of dealings with respect to CLAs:

1. Removing restrictions on dealing with CLA title
2. Vulnerability of the titleholder
3. Establishing administrative processes for obtaining valid and secure leases

To resolve these restrictions and constraints several relevant Northern Territory laws would need to be amended, in concert, including:

- *Pastoral Land Act (NT)* – Part 8 provides an elaborate process for applying for and processing applications for new CLAs. It is, however, unworkable. Section 114 provides for CLAs to be resumed if they are abandoned.
- *Associations Act (NT)* – Part 6 stipulates that associations or corporations holding title to CLAs cannot deal with land (including granting a lease for more than 12 months) without the consent of the Minister. The Minister cannot consent to a dealing in the land except in a very limited number of circumstances such as to an Aboriginal corporation or to another person to provide health, education or housing services (Section 110).
- *Planning Act (NT)* – Part 6 of the Northern Territory Planning Scheme provides for Control Plans in relation to CLAs. Control Plans have effectively fettered economic development in CLA communities. Many Control Plans have remained unrevised for over 20 years and are out date.

The key principles that must underpin the CLA reforms are:

1) Titles to CLA should be held by an entity that exists in perpetuity

A new CLA freehold title should be created with the following features:

- title would be held in perpetuity
- title could only be held by a 'CLA Land Trust'
- the CLA Land Trust would be able to grant leases, licences and otherwise deal in land (but not alienate the land or encumber the land)

The CLC supports establishing a statutory land trust similar to those the Northern Territory has created through the *Parks and Reserves (Framework for the Future) Act and Regulations* or the *Kenbi Land Trust Act 2011*.

2) The transition to CLA title must be voluntary

Existing associations and corporations that hold title to CLAs should have the choice of converting their title to the new CLA freehold title.

3) There should be no effective change to the beneficial ownership of CLAs

A CLA Land Trust would be established to benefit the existing members of the association or corporation that currently holds title to a CLA.

4) There should be parity between communities situated on CLAs and communities situated on Aboriginal land under the *Land Rights Act*

Provisions similar to those in the *Land Rights Act* in relation to the divestment of interests in Aboriginal land should be replicated in relation to CLA Land Trusts divesting interests in CLAs. CLA Land Trusts would then be:

- permitted to grant leases, licences and other interests in land
- entitled to effective administrative and legal support by the land councils
- resourced to function effectively and responsively, which will require the provision of administrative and legal support
- able to receive and distribute money received from leases

5) The *Pastoral Lands Act (NT)* must continue to make provision for the grant of new CLAs

Part 8 of the *Pastoral Land Act (NT)*, which sets out a detailed CLA claim process, can be repealed and replaced with a simple provision permitting the responsible Northern Territory Minister to grant a CLA title in certain circumstances.

3.5 Problems with a 'minimalist' approach

The CLC is concerned that the Australian Government may be attracted by a minimalist approach which simply addresses the restrictions in the *Associations Act (NT)* that prevent the title holding association or corporation granting leases.

It must be emphasised that mere reform of the *Associations Act (NT)* in order to lift the restrictions around leasing on CLAs will not promote 'secure tenure' and in fact could lead to an additional array of problems. Such a minimalist approach will not provide certainty for third parties because there will still be no secure CLA title or secure title holders. Because the CLA

title is not granted in perpetuity, there is a constant threat of resumption by the Crown. Certainty is severely diminished by this threat.

Furthermore, under a minimalist approach, the CLA title would continue to be held by an Aboriginal corporation or association that is not administratively supported. The problem of Aboriginal corporations or associations that are deregistered is not addressed - so that risk remains.

CLA title is a form of communal land ownership that requires administrative support if it is to deliver certainty for third-parties operating on CLA and seeking leases. CLA title holders need such support in order to:

- receive and process lease applications in a timely fashion
- receive legal advice with respect to lease terms and conditions
- ensure that the association or corporation that owns the CLAs understands the terms of any agreement divesting an interest in land (bearing in mind that an agreement will be unconscionable if one party is aware that the other party does not understand the terms of the agreement but nevertheless proceeds to sign the agreement)
- provide certainty to the decision making process and validity to leases by ensuring informed consent is given at a correctly constituted meeting
- ensure that titles are held and produced to the land titles office to allow for interests to be registered
- assist in dealing with rent receipts and any other payments

The Northern Territory land councils are established under the *Land Rights Act* to represent Aboriginal people living within their respective areas in relation to 'the granting of traditional Aboriginal land for the benefit of Aboriginals and other purposes' (preamble to the *Land Rights Act*). The CLC membership includes members elected to represent communities situated on CLA title land. The Central Land Council currently assists Aboriginal people to apply for CLAs; this role is expressly endorsed in Part 8 of the *Pastoral Land Act (NT)*. Furthermore the CLC has historically assisted CLA communities on an *ad hoc* basis and, as resources have allowed, in relation to a range of land related issues.

For these reasons the CLC is ideally placed to provide legal and administrative assistance to CLAs, provided that:

- the suite of laws and rules governing CLA title are adequately reformed to create a workable CLA land administration system
- the land councils are adequately resourced proportional to the additional workload associated with a reformed CLA regime

4. Discussion of Stronger Futures package

4.1 Stronger Futures Bill 2011

Ideally, comprehensive reform would be lead by the Northern Territory Government. In the absence of proactive leadership by the Northern Territory Government, the approach being taken by the Australian Government in the *Stronger Futures Bill* and the *Consequential and Transitional Provisions Bill* is understandable but is not ideal.

It is evident that clause 35 is primarily aimed at allowing the Australian Government to apply pressure to the Northern Territory Government to quickly and effectively reform the CLA land administration system so that its 'secure tenure' policy is able to be implemented. It seems equally evident that the Northern Territory Government may choose not to effectively reform the CLA land administration system in a timely fashion because a comprehensive reform of laws applying to CLAs is not palatable in an election year³ and because any effective reform will have to be comprehensive and will have resource implications.

In the above political context, the scope of the proposed regulations is understandable. Clause 35 provides the Australian Government executive with broad power to amend any Northern Territory legislation applicable to CLAs and that pertains, in some way, to granting derivative land interests or promoting economic development (the regulation making power will be interpreted in the context of the objects in clause 33).

To delegate such extensive power over an important reform agenda to the executive creates difficulties because it requires the Aboriginal landowners and the land councils to unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time. There is a very real risk that the Minister will promulgate regulations which make superficial changes to the current CLA land administration system, which although expedient, do not serve the best interests of CLA titleholders or the third parties seeking leases. Another point of concern is that the regulation making power would be in place for 10 years.

By way of comparison, the CLC notes that the Australian Government in 2011 enacted the *Territories Self-Government Legislation Amendment (Disallowance Amendment of Laws) Act 2011*, introduced by the Australian Greens, the purpose of which was to remove the power of the Australian Government executive to override or amend legislation made by the Northern Territory and Australian Capital Territory. As a result, section 9 of the *Northern Territory (Self Government Act) 1978 (Cth)*, which allowed for the Governor-General to amend or disallow a law of the Northern Territory for a six month period after the law is assented to by the Northern Territory Administrator, has been repealed.

This means that the Australian Government can no longer amend or disallow new laws of the Northern Territory, unless the decision to override has been made by the parliament. In terms of promoting parliamentary sovereignty and good Government this amendment is welcomed. In stark contrast, clause 35 of the *Stronger Futures in the Northern Territory Bill 2011* empowers the Australian Government executive to amend any law of the Northern Territory, in relation to a certain topic, through a very broad regulation making power.

The CLC would prefer the Australian Government to develop a comprehensive and detailed CLA reform agenda and introduce a Bill that expressly sets out the land reform measures for debate and comment rather than relying on delegated legislation because:

- the scope of the reform agenda, if it is to provide certainty in CLA administration, must be comprehensive
- any amendments will affect the rights of Aboriginal landowners
- any amendments will impinge on the parliamentary sovereignty of the Northern Territory
- the amendments are likely to have resource implications for the Northern Territory Government and for the land councils

³ Elections for the Northern Territory will held on 25 August 2012.

Recommendation of the Central Land Council

Stronger Futures in the Northern Territory Bill 2011

The regulation making power proposed in clause 35 (Division 3 of Part 3) relating to Aboriginal community living areas (CLAs) is very broad and is not supported in its current form.

To delegate such extensive power over an important reform agenda to the executive creates difficulties because it requires the Aboriginal landowners and the land councils to unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time. The Australian Government could alleviate such concerns by:

- (i) Identifying the relevant Northern Territory legislation that requires amendment in order to achieve comprehensive reform of the CLA land administration system and including the appropriate amendments within the *Stronger Futures Bill*; or
- (ii) Amending clause 35 of the *Stronger Futures Bill* to restrict the breadth of the regulating power by including restrictions, for example:
 - include a sunset clause that stipulates that the regulation making power will cease to have effect 12 months from commencement
 - prohibit the Minister enacting regulations that have retrospective operation
 - include a stipulation that the Minister must not impose duties or functions on any entity which have resource implications without consultation
 - include a stipulation that a land council may charge the Australian Government a fee for the reasonable expenses incurred in providing services prescribed by regulations made under clause 35 of the *Stronger Futures Bill*

4.2 Stronger Futures (Consequential and Transitional Provisions) Bill

Schedule 1, Part 1- Northern Territory National Emergency Response Act 2007

The effect of Item 1 is to repeal the whole of the *NTER Act*. The CLC supports this.

Schedule 1, Part 2 - Saving Provisions Relating to Land

The effect of the savings provisions in relation to land is that, if the Act commences before 17 August 2012, the Minister may continue the 5-year leases 'until the relevant time'. 'Relevant time' is defined as meaning a day determined by the Minister or the end of 17 August 2012, whichever is the latter. As the net effect of these savings provision does not increase the length of 5-year leases, and possibly reduces the length, the CLC supports these savings provisions.

Schedule 2 – Amendment of the Aboriginal Land Rights (NT) Act 1976

Items 1 and 2

Item 1 inserts a definition of 'community living area' into the *Land Rights Act* by reference to the *Stronger Futures Bill*. Item 2 repeals the existing definition in s20CA(5) of the *Land Rights Act* which does not capture all CLAs. The proposed new definition is appropriate but should be included in section 3 of the *Land Rights Act* and not be incorporated by reference to the *Stronger Futures Bill*.

Items 3, 11-12, 19-20

These proposed amendments are supported as they repeal provisions that provide for, and are related to, statutory rights over buildings and infrastructure.

Item 4 - Granting the land councils an express function to assist CLAs

Item 4 of Schedule 2, which would insert new function 23(1)(eb) for the land councils into the *Land Rights Act* is not supported in its current form. It is not reasonable for either the Australian or the Territory Governments to expect the land councils to deliver certainty over land interests granted to third parties in the absence of a properly reformed land administration system that makes certainty in land dealings on CLAs a possibility.

The wording of the function of new section 23(1)(eb) in the *Land Rights Act* is unacceptable because it places an obligation on the land councils to act within a regime that is not working well. For example, the CLC is regularly called on to assist where a corporation or association that holds title to a CLAs is deregistered or where the association or corporation has been inappropriately co-opted (names are changed; rules are changed; funds accepted contrary to rules etc).

Granting the land councils an express function to continue to fix up these problems at their own expense, whenever requested to do so, is not fair or reasonable. The difficulties would be exacerbated where a minimalist approach as set out at [3.5](#) above is adopted as this will only increase the likelihood of such problems occurring.

When the proposed new land council function set out in proposed section 23(1)(eb) is juxtaposed with the broad regulation making power in clause 35 of the *Stronger Futures Bill* the risk is that the systemic problems with CLAs will not be addressed and only superficial amendments that allow for leasing on CLAs are made but outside an effective land management regime that offers certainty to third parties seeking leases or licences, Aboriginal landowners, and the land councils.

Where a workable and effective system of land administration in relation to CLAs is provided for in legislation, an appropriate land council function could be worded in any number of ways.

The wording 'at their own expense' in the land council function currently proposed is inappropriate.

Item 5-9, 13-18, 21

These proposed amendments are supported as they simply remove or adjust provisions that will become anachronistic or redundant at the end of the Intervention.

Recommendations of the Central Land Council

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

- (i) Part 1 of Schedule 1, which provides for the repeal of the whole of the *NTER*, is supported.
- (ii) The whole of Part 2 of Schedule 1 under the heading Saving Provisions related to land, is supported.
- (iii) An alternative is put forward in relation to Item 1 of Schedule 2, under the heading Aboriginal Land Rights (Northern Territory) Act 1976. The definition of 'community living area' should be inserted into section 3 (Interpretation) of the *Land Rights Act* instead of defining the term by reference to the proposed Stronger Futures in the Northern Territory Act.
- (iv) Any new functions for the land councils in relation to community living areas should not commence until a workable, effective and responsible CLA land administration system is provided for in legislation.
- (v) Item 4 of Schedule 2, which would insert a new function for the land councils into the *Land Rights Act*– proposed section 23(1)(eb)- is not supported in its current form. Where a workable and effective system of land administration in relation to CLAs is provided for in legislation, an appropriate land council function could be worded in any number of ways. The wording 'at their own expense' in the land council function currently proposed is inappropriate.
- (vi) Item 3 and Items 5 to 21 of Schedule 2 are supported.

5. Summary

If comprehensive reform of the CLA land administration system is not achieved while all governments have an interest in promoting effective reform (ie. while the 'secure tenure' policy remains current) then it is likely that reform of the web of Northern Territory laws that prohibit the development of CLA communities will once again be relegated to the 'too hard basket'.

The CLC has consistently supported the decision of both the Australian Government and the Northern Territory Government to promote the voluntary formalisation of land tenure arrangements in Aboriginal communities. In the context of CLAs where the formalisation of land tenure arrangements is largely impossible due to Northern Territory laws, the CLC has consistently advocated for effective and comprehensive reform. The CLC would encourage the Australian Government to develop an appropriate CLA reform agenda if the Northern Territory Government is unwilling to do so; and to introduce a Bill that expressly sets out this reform agenda in detail for debate and comment. In this context, the CLC is keen to be part of the solution and willing to provide services to CLA communities on a basis similar to those it provides to communities situated on Aboriginal land that has been granted under the *Land Rights Act*.

However, the Australian Government's decision to delegate the design and delivery of such an important Aboriginal land reform agenda to the executive under a broad regulation making power raises concerns because it requires the CLA landowners and the land councils to

unreservedly trust the executive to devise an appropriate reform agenda at an unspecified point in time.

The CLC is concerned that as the end of the *NTER* approaches the executive may be tempted to carry out minimalist reforms that are politically expedient but are not in the best interest of Aboriginal landowners, the land councils, or third parties seeking to obtain interests in land in communities situated on CLAs. This risk is exacerbated by the fact that regulations will be in place for ten years.

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Attachment A

| <i>Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011</i> | | |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Schedule 1 – Repeal of the Northern Territory National Emergency Response Act 2007 | | |
| Part 1 – Northern Territory National Emergency Response Act 2007 | | |
| Item 1 | Repeals the entire <i>NTER</i> Act | Supported |
| Part 2 - Saving provisions relating to land | | |
| Item 2 | If the repeal of the <i>NTER</i> Act happens before 12 August 2012 this savings provision continues provisions relating to compulsory 5 year leases until, at the latest, 12 August 2012 or until the ‘relevant time’ at which the Minister can determine they end by legislative instrument. | Supported |
| Item 3 | Saves provisions and instruments made by the Australian Government related to Town Camps. | Supported |
| Item 4 | Notwithstanding the repeal of the <i>NTER</i> Act, sections 60, 61, 62 and 63 of the <i>NTER</i> Act related to rent and compensation for 5 yr leases continue to apply until the relevant time. | Supported |
| Schedule 2 – Amendment of the Aboriginal Land Rights (<i>Northern Territory</i>) Act 1976 | | |
| Item 1 and 2 | Inserts definition of community living area as having the same meaning as in the <i>Stronger Futures in the Northern Territory Act 2011</i> . | Definition should be contained in primary legislation. Suggest amending 3(1) of <i>Land Rights Act</i> by inserting this definition: “A community living area is an area granted or created as an Aboriginal community living area by or under a law of the Northern Territory. Example: Land granted under subsection 46(1A) of the <i>Lands Acquisition Act</i> of the Northern Territory is a community living area.” |
| Item 3 | Repeal Part IIB – Intervention measures. | Supported |
| Item 4 | Inserts paragraph 23(1)(eb) into the <i>Land Rights Act</i> , a new land council function: “for land that is a community living area and in the area of the land council—to assist the owner of the land, if requested to do so and at the land council’s expense, in relation to any dealings in the land (including assistance in negotiating leases of, or other grants of interests in, the land)”. | It is premature to give land council specific function in relation to lease negotiations on CLAs in the absence of a properly reformed system that delivers certainty to all the parties. |
| Item 5 | Repeals land council functions under 23(1)(fb),(fc) and (fd), relate to the land councils representing Aboriginal owners with respect to negotiations of payments under <i>NTER</i> 5-year leases under 62(1G) of the <i>NTER</i> Act. | Supported |
| Item 6 and 7 | Repeals 33B(1) relating recovering ‘reasonable expenses incurred’ from the Australian Government for the performance of the above functions. | Supported |

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| Item 8 | Deletes references to <i>NTER</i> legislation in 35(4) in relation to payment by land councils of monies received for the benefit of traditional Aboriginal owners. | Supported |
| Item 9 | Removes reference to <i>NTER</i> legislation in 70(2C)(a) relating to entry on to Aboriginal land (permits). | Supported |
| Item 10 | Application of Items 5, 8 and 9 of this Schedule, the effect being that if the Bill commences before 17 August 2012 and if leases granted under section 31 of the <i>NTER</i> Act continue, item 10 ensures that payments made under those leases, and the receipt and distribution of those payments, continues. | Supported |
| Items 11 and 12 | Removes references statutory rights associated with repealed Part IIB provisions in relation to entry on to Aboriginal land (permits). | Supported |
| Items 13 to 18 | Repeals Ministerial powers to temporarily prevent access to common areas in 5 year lease communities and roads within them. | Supported |
| Items 19 and 20 | Repeals references to repealed Part IIB provisions to traditional rights to use Aboriginal land. | Supported |
| Item 21 | Repeals Ministerial delegations available with respect to repealed Part IIB. | Supported |

| <i>Stronger Futures in the Northern Territory Bill 2011</i> | | |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Part 3 – Land Reform | | |
| Clause 33 | Object of land reform is to enable special measures to be taken: (a) to facilitate the granting of individual rights or interests in relation to land in town camps and community living areas; (b) to promote economic development in town camps and community living areas. | Supported |
| Clause 35 | Provides the Australian Government with the power to make regulations to modify laws related to uses of, and dealings in, land and laws to do with planning and infrastructure and 'any other matter prescribed by regulations' to the extent that that law applies to community living areas. | Scope of regulating power is very broad and could possibly result in unworkable, unsuitable or superficial regulations being promulgated. |

Attachment B

List of major CLA communities in the Northern Territory

There are well over 100 CLAs in the Northern Territory and include small communities and outstations/homelands.

The following communities are prescribed areas under the current Northern Territory Emergency Response Act and are subject to 5-yr leases compulsory leases.

CLC Region

Alpurrurulam (Lake Nash)
Atitjere (Harts Range)
Engawala (Alcoota)
Imangara (Murray Downs)
Imanpa (Mt Ebenezer)
Laramba (Napperby)
Tara (Neutral Junction)
Titjikala (Maryvale)
Wilora (Stirling)
Wutunugurra (Epenarra)

NLC Region

Binjari
Bulla
Jilkminggan
Minyerri
Rittarangu
Yarralin