Stronger Futures in the Northern Territory Bill 2011

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Stronger Futures in the Northern Territory Bill 2011

Date introduced: 23 November 2011

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: The formal sections commence on Royal Assent, while the operative provisions commence on Proclamation or within six months of Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Bill has three central parts:

Part 2 makes various arrangements for the control and regulation of alcohol in ‘alcohol protected areas’ of the Northern Territory.

Part 3 gives the Commonwealth certain powers to regulate town camps and community living areas in the Northern Territory.

Part 4 gives the Commonwealth the power to regulate community store licences in the Northern Territory, including the power to impose conditions on licences granted to store managers and owners.

Background

The Bill’s second reading debate in the House of Representatives was adjourned on 23 November 2011 and the Selection of Bills Committee recommended a referral to the Senate Community Affairs Legislation Committee, from which a report is due on 29 February 2012. A range of submissions are already available on the Committee’s website: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/strong_future_nt_11/submissions.htm

Basis of policy commitment

This Bill is one of a package of three Bills, the others of being the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 and elements of the Social Security Legislation Amendment Bill 2011. All three follow through on measures that had their origin in the ‘Northern Territory Emergency Response’ (NTER—often referred to as ‘The Intervention’). The NTER
was announced by the then Prime Minister, the Hon John Howard, and the then Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough, on 21 June 2007. The NTER was said to be a response to the *Ampe Akelyernemane Meke Mekarle “Little Children are Sacred”: The Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, authored by Pat Anderson and Rex Wild (the Anderson/Wild report). The report had been provided to the Northern Territory Government on 30 April 2007, had been made public on 15 May 2007 and the Commonwealth’s legislative package was both introduced and passed through the House of Representatives on 7 August 2007.¹

Many provisions and issues associated with those Bills were flagged in the Bills Digests prepared at the time. For example:

- Northern Territory National Emergency Response Bill 2007, ([Bills Digest, no. 28, 2007–08](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FG4WN6%22)), among other things, provided for banning the consumption, possession or supply of alcohol within prescribed areas, the installation of filters on publicly-funded computers, the acquisition by the Australian Government of five years leases over Indigenous township lands and certain titles over town camps, the closer management by the Commonwealth of community stores, and, to facilitate all the above, the modification of provisions regarding compensation for the acquisition of property and the partial suspension of the operation of the *Racial Discrimination Act 1975*

- Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007, ([Bills Digest, no. 21, 2007–08](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FG4WN6%22)) provided for banning the possession of pornography within ‘prescribed areas’, extended the mandate of the Australian Crime Commission to include ‘Indigenous violence and child abuse’, deployed Australian Federal Police as ‘special constables’ to the Northern Territory Police Force (NTPOL), provided that the Commonwealth can retain an interest in buildings and infrastructure on Aboriginal land if it funds their construction or major upgrade, and modified the permit system which currently governs access to Aboriginal land in the NT

- Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007, ([Bills Digest, no. 27, 2007–08](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FG4WN6%22)) provided for the introduction of an Income Management Regime (IMR), wherein some individual could have welfare payment quarantined for priority purchases and be obliged to use a ‘BasicsCard’ at approved stores, and


At the time there was much debate on all the above flagged measures. The appropriateness of suspending the application of the *Racial Discrimination Act 1975* was questioned, as was the likely

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efficacy of the income management regime. There were suggestions that the unilateral nature of the action may produce a counterproductive weakening of Indigenous governance. There were questions concerning the procedure by which the Government would decide what is appropriate for specific communities and how the Government would know when the desired changes had occurred. It was also noted that the Government had set no clear timeline for the life of its emergency response (the Government simply spoke in terms of a three-phase strategy of ‘stabilisation’, ‘normalisation’ and ‘exit’)\(^2\) and there were concerns it was underestimating the cost of some of its measures.\(^3\)

Over the ensuing years some of the measures in those original Bills have been revisited. For example, the suspension of the operation of the *Racial Discrimination Act 1975* was reversed and ‘Income Management’ was redefined in the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, *Bills Digest, no. 94 2009-10*. An administrative procedure aborted the suspension of the permit system for access to Aboriginal land. In that period there has also been a rhetorical shift in indigenous affairs policy. In February 2008 the new Rudd Government issued a formal apology to members of the Stolen Generations and sought to move away from a policy that might be perceived as unilateral or region specific by building with the states a new architecture of National Partnerships, turning the NTER into ‘Closing The Gap in the Northern Territory’, setting up the National Congress of Australia’s First Peoples, and initiating a process of possible constitutional reform.

The legislative and rhetorical changes did not silence critics of the original Intervention, which was perceived to be continuing. Some, such as Professor Jon Altman have argued that the evidence simply does not support assertions that NTER originating measures are having the desired positive effect in key areas of education, health, crime, employment and housing, concluding:

> Development in remote Aboriginal communities will inevitably require state subvention for the foreseeable future, but the current delivery architecture is faulty and runs counter to sound principles of participatory development. Rather than empowering communities to strengthen governance institutions to deliver development, in diverse forms suited to local circumstances, the current top-down, monolithic and paternalistic approach is enhancing dependence on the state — with a high proportion of the resources earmarked for Aboriginal development programs being syphoned off to external, generally non-Indigenous, interests. The state policy of normalisation is not delivering even by its own benchmarks. This is unconscionable policy failure without any apparent policy risk assessment or contingency planning.\(^4\)

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3. The Hon. J Howard (Prime Minister), at a *Joint Press Conference with the Hon. Mal Brough*, (Minister for Families, Community Services and Indigenous Affairs), offered no estimate of the total cost but said ‘It will be some tens of millions of dollars. It’s not huge but there could be some costs […].’

4. See for example, Professor Jon Altman’s critique, ‘NT Intervention three years on: government’s progress report is disturbing’, *Crikey*, 21 June 2010.

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Some, such as Professor Larissa Behrendt, have made the emphasis of their critique the infringement of indigenous people’s rights and the ignoring of real needs. On 7 February 2011, a group of ‘concerned Australians’—including former prime minister Malcolm Fraser, Professor Larissa Behrendt, Reverend Dr Djiniyini Gondarrr OAM, the Hon. Alastair Nicholson, Reverend Alistair Macrae, The Hon. Elizabeth Evatt AC, Professor Fiona Stanley, Julian Burnside QC and Anglican Archbishop of Melbourne Phillip Freiere—released a statement expressing their concerns about ‘the failure of the Federal Government, with the tacit support of the Opposition, to properly address problems facing Aboriginal people in the Northern Territory’. There has also arisen a ‘Rollback the Intervention Group’.

Arguing the contrary case have been indigenous leaders such as Noel Pearson, Marcia Langton and Bess Nungarrayi Price. Bess Price, the chairwoman of the Northern Territory’s Indigenous Affairs Advisory Council, has argued that we need to ‘roll forward instead of backwards’ and accused critics of the Intervention of imagining an ideal Aboriginal society without any of the dysfunction that it actually suffers on the ground. Also speaking in favour of the Government’s approach, particularly when it comes to such dimensions of the NTER as income management has been Bob Durnam, a long-time community development worker in remote indigenous communities.

The present Labor Government, though ameliorating some aspects of the Howard Government’s Intervention and incorporating it inside a new rhetorical and administrative framework, has continued with the essence of it, and these Bill turns parliament’s focus back onto some measures that were central to the original 2007 NTER Bills.

The Government has stated that the measures in these Bills are informed by feedback from two sources.

The first source is the Stronger Futures consultations undertaken in the Northern Territory from June to August 2011. These consultations had been preceded on 22 June 2011 by the Government’s release of a discussion paper Stronger Futures in the Northern Territory, and were followed by the

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8. See interview with Monica Attard, ABC Sunday Profile, 1 April 2011, viewed 8 February 2012, http://www.abc.net.au/sundayprofile/stories/3180205.htm

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release of an independent quantitative analysis of the relevant data in September 2011 and a report on the consultations on 18 October 2011. In the last mentioned it was concluded:

while people continued to feel hurt at the way the Northern Territory Emergency Response was initially implemented, many of the Aboriginal people who participated in these consultations said that they wanted to move on, be more self-reliant and take pride in their culture.

From these consultations the Government identified School attendance and educational achievement, Economic development and employment, and Tackling alcohol abuse as being in particular urgent need of address, while having also consulted in the areas of Community safety, Health, Food security, Housing and Governance. Minister Macklin claimed they have heard ‘strong voices for change’ and declared the Government was prepared ‘to introduce legislation to allow us to act on the issues that people have told us during consultations were the most urgent’.

The other source is an independent evaluation of the NTER. Minister Macklin said this report found:

Aboriginal people living in remote communities in the Northern Territory feel safer and receive better levels of government services than they did four years ago.

She claimed the consultations ‘show that the initial roll out of the NTER by the previous Government was marked by a sense of crisis and limited consultation’ but that ‘outcomes have improved for Aboriginal people in the Northern Territory across health, employment, and safety.’ Furthermore


‘[t]he Australian Government is determined not to repeat the mistakes of the past but to work together with Aboriginal people to build stronger futures together.’

Having been informed by these two sources of information, Minister Macklin declared in a policy statement which was issued the same day that the package of relevant legislation was introduced to parliament, that:

The Australian Government, in partnership with the Northern Territory Government, is now acting on the issues people said were the most urgent:

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

**Reactions to the new Stronger Futures policy**

Many criticisms were levelled at the Government following its determination of a new ‘Stronger Futures’ policy.

A number of commentators questioned the way the key message the Government took from those reports of October and November. For example, Professor Jon Altman wrote:

A series of reports in October and November have made it quite clear that the intervention, currently re-labelled the National Partnership Agreement to Close the Gap in the Northern Territory, is having limited measurable impacts for residents of prescribed communities. Poor outcomes are evident in many areas including very clearly in the area of school attendance that hovers around 60% and that seems to be worse the larger the community.

Similarly, Eva Cox stated:

There is widespread criticism of the way the government undertook the so-called consultation and cherry-picked the results to support the decisions already made. The latest reports, touted by the minister as proving the benefits of some NTER programs, do not support her claims. The

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endorsements are few and are cautious as the data does not prove benefits, just records often flawed perceptions of possible benefits. 17

The Green Senator Rachel Siewert noted:

The consultations that informed the Stronger Futures report, for example, have come under fire for poor process and reporting. Analysis based on independent recordings of the consultations reveals striking discrepancy between opinions expressed by communities and the view of opinions present in the report. 18

Jumbunna Indigenous House of Learning researcher Paddy Gibson was reported by Amy McGuire as labeling the consultation process a ‘sham’:

“Before these so-called consultations started, government policy was clear that on every major measure, the approach of the NT Intervention would continue beyond 2012,” Mr Gibson said.

“This report on the consultations whitewashes the deep anger felt towards the Intervention and the profound damage it has done to communities.”

He says that support for linking school attendance to welfare payments was also not there and criticised the fact the scrapping of bilingual education was not on the agenda.

“Government officials running the consultations presented welfare cuts as the only concrete policy being considered to improve school attendance,” he said. “They spent the entire consultation period fishing for quotes to support the predetermined position.” 19

Similarly, the group called the Northern Territory Elder and Community Representatives, claimed the consultation report:

is simply a reflection of pre-determined policy decisions. This is shown clearly by the absence of any commitment to bilingual learning programmes as well as the proposal to introduce welfare cuts and fines to parents of non-attending school children. 20

Some commentators compared the findings of the Independent NTER Evaluation with those in other recent Government and non-government reports and found the overall picture not to be as the Minister was keen to characterise it. Professor Jon Altman wrote:


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Since 2007–08 indigenous hospitalisation rates NT-wide (not just in NTER communities) have increased from 229 per 1000 to 262 per 1000. These are extraordinarily high rates unimagined in the broader community.

Recorded school enrolment and attendance has declined from 64.5% in February 2009 to 62.7% in February 2011 with total enrolments declining from 8960 to 8914, despite rapid population growth.

Income support recipients have increased from just on 20,000 in June 2009 to nearly 24,000 in June 2011, with some of the change explained by new (“non-grandfathered”) CDEP participants being shifted onto Newstart. In the name of job creation, welfare dependence is increasing.

Reports of child abuse in NTER communities have increased from 174 in 2007–08 to 272 in 2010–11; as have domestic violence reported incidents, from 1612 to 2968. And the gap in child protection indicators between indigenous and non-indigenous has increased across the NT for a range of indicators.

The most shocking statistic is on confirmed attempt suicide/self-harm incidents that have increased from 109 in 2007–08 to 227 in 2010–11 in NTER communities. This statistic is embedded in Figure 6.4 of the report without any commentary. If such a per capita rate was replicated in Sydney it would be about 22,700. Imagine the outcry! It was buried in the report, but registered as “a concern” according to a spokeswoman speaking for the minister Jenny Macklin.

The Australian government response to what looks awfully like policy failure is to promulgate more of the same.

Similarly, Green Senator Rachel Siewert wrote:

Contrary to selectively published statistics, the collective measures of the Intervention are not delivering better overall outcomes for Aboriginal people living in the Northern Territory. The Closing the Gap in the Northern Territory Monitoring Report shows how much work there is still to do.

The report details how school attendance has declined since 2009. It shows that child hospitalisation rates have increased and that confirmed incidences of personal harm and suicide have more than doubled since 2007. So far, only 44 convictions for child sexual abuse have been recorded, despite this issue being a key justification for rolling out the Intervention back in 2007.

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A number of commentators were critical of the new strategy as much for what wasn’t in it as what was. Thus, Amnesty International’s Indigenous Rights Campaigner, Rodney Dillon, wanted a more holistic approach from the Government and also more support for homelands:

“We are pleased to see an emphasis on school attendance in the report - no one can deny the importance of education. But having a shower in the morning, being able to brush your teeth and having a healthy breakfast is just as crucial as getting to school each day,”.[...]

Amnesty International is concerned that the Government is continuing to neglect more than a third of the Northern Territory’s population living on remote traditional homelands.

“Although we have seen considerable financial investment being poured into Aboriginal affairs in the Northern Territory’s growth towns and town camps, none of this is going into homelands.

“Decades of research have proved that families living on their homelands are happier, healthier and stronger. As part of its Stronger Futures policy, the Government must commit to and implement an overarching plan to ensure the long-term sustainability of homelands,” said Dillon.  

Senator Rachel Siewert argued that:

The positive investments contribute to improving school attendance. More teachers, better training, bilingual education, community involvement, better parental engagement with schools, action to address children’s hearing health and more investment in case management — all these policies would deliver better outcomes than SEAM is able to.

Chris Graham, Indigenous affairs commentator and managing editor of the publication Tracker, was reported as putting the cost and outcomes as follows:

The Intervention has now cost over $2 billion and there has been little housing put up, attendance rates at school are still falling, the reasons given for the Intervention were lies and the army have been housed in expensive demountable housing while aboriginal children hang themselves in despair.

…the Northern Territory Intervention has harmed Aboriginal people; it’s caused starvation; it’s seen a dramatic rise in reports of self-harm incidents; it’s driven children away from school; it’s

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wasted hundreds of millions of taxpayer dollars. In short, it’s been a disaster for the nation’s most disadvantaged citizens; the people who could least afford it.\footnote{25}

Many of those weighing the costs and benefit of the existing approach have reflected on the needs that may not be being met by this approach. Thus Amanda Midlam suggested:

It is important to note these words from the Evaluation Report, “perhaps the clearest lesson from the NTER is the high level of unmet need within the NTER communities” (FaHSCIA). It is hard to see how new legislation aimed at controlling alcohol, food and land in Indigenous communities will address those unmet needs.\footnote{26}

Similarly Rachel Siewert claimed:

The $1.5 billion spent so far would have delivered significantly better results had it been directed to service investments and programs, rather than signs, bureaucracy and income management.\footnote{27}

John Kop, Managing Director of Remote Retail Services, in his submission to the Senate committee, expressed his organisation’s support for the Government’s aims and the Bill’s provisions, but noted:

Whilst compliance is an admirable goal, compliance without capacity does little to achieve food security.

and went on to outline all the other actions that need to be taken to improve the situation.\footnote{28}

Much of the above is clearly a reaction not so much to the detail of this Bill, as to that which has come before, to that which is not being addressed and to the continuation of an approach which this Bill and even more particularly the Social Security Legislation Amendment Bill 2011 are seen to represent. There are some who have looked at the detail of the Government’s proposals and have declared themselves supportive. For example, the long-time remote Indigenous communities development worker Bob Durnam, with respect the Government’s approach to school participation and income management (not pursued in the Stronger Futures for the Northern Territory Bill 2011, but in the related element Social Security Legislation Amendment Bill 2011) has written:

\begin{itemize}
\item[27.] Rachel Siewert, ‘Another Intervention is not the Answer’, newmatilda, 14 December 2011, viewed 8 February 2012, \url{http://newmatilda.com/2011/12/14/another-intervention-isnt-answer}
\item[28.] Remote Retail Services, Submission to the Senate Community Affairs Committee’s, Inquiry into the Stronger Futures in the Northern Territory Bill 2011 [and two related Bills], 12 January 2012, viewed 8 February 2012, \url{https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=3bdae965-32b9-4ab1-91c3-027f8e95dc3a}
\end{itemize}

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[...] I support the Commonwealth and NT governments in their efforts to prioritise school attendance, create school infrastructure of sufficient physical quality in hub communities, and recruit and retain teachers with sufficient skills to attract, engross, teach and retain students with quality education and appropriate respect and discipline (whether or not it is particularly locally relevant or bi-lingual). I think these things, supported by strictly enforced sanctions against unjustifiable non-attendance, together would make staying away from school a very unattractive option.

But also - importantly - all parties should read the fine print of the Macklin proposal carefully and without rancour or prejudice. Macklin is clearly not proposing that all of a family’s income from welfare payments will be suspended, as Part A Family Tax Benefits will not be suspended. It is the Part H income support payments like Newstart and Parenting Payment that may be suspended. The family’s Part H welfare income stream will be restored, and lost welfare income will be reimbursed, immediately upon compliance with their agreed attendance plan. There is little chance that children will go hungry, as a Centrelink social worker will be assigned to their case from the beginning to help avoid such outcomes, and they will be able to receive meals as soon as they attend school, where meals are provided.

It is in this context of divergent views on the appropriateness of processes, on the import of reports and on the best way forward, that the Stronger Future in the Northern Territory Bills are now coming up for debate.

**Committee consideration**

The Stronger Future in the Northern Territory Bills have been referred to the the Senate Community Affairs Committee for inquiry and report by 29 February 2012. Details of the inquiry are at that Committee web-page, [Stronger Futures in the Northern Territory Bill 2011 and two related Bills](http://www.crikey.com.au/2011/12/02/the-cunning-of-consultation-school-attendance-and-welfare-reform/) and many further reactions to the Government’s proposals and rationale can be found in the submissions that are becoming available on the Committee’s website.

Some have questioned the genuineness of the Government’s commitment to consultation when their deadline for submissions comes so soon after Christmas, Eva Cox writing:

As the Senate inquiry into the NT Stronger Futures laws by the Community Affairs Committee closes submissions by January 12, most of those affected or concerned about the new legislation provisions will not respond. Most are unlikely to know that it is even under way.

She also points to the diverse coalition of groups with concerns over the Government’s direction (including Aboriginal Peak Organisations of the Northern Territory, the COSS network, Northern Territory Council of Government School Organisations, Public Health Association of Australia, St Vincent de Paul Society, Uniting Care Australia, Catholic Social Services Australia, National Welfare Rights) and writes:


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These groups suggest the legislation is badly flawed, so definitely should not be rushed through over the holiday period when nobody will notice.\(^\text{30}\)

**Financial implications**

The Financial impact of this Bill is put in the Explanatory Memorandum as $86.5 million over the ten years from 1 July 2012, comprising $45.6 million to implement the Tackling Alcohol Abuse measure and $40.9 million for implementing the food security measure.

**Main issues**

There are three main parts to this Bill and each one has a substantial issue behind it.

**Part 2 – Tackling Alcohol Abuse** is the most significant section of the Bill. High levels of alcohol consumption have been repeatedly identified in reports as a principle factor contributing to the level of child abuse, assault, social dysfunction, foetal Alcohol Spectrum of Disorders and other problems in Aboriginal communities in the Northern Territory. It was, for example, identified as such in the Anderson and Wild report that sparked the NTER in 2007 and the Government has considered their tackling alcohol abuse measure to be a special measure under the Racial Discrimination Act. For an overview of the problem see the Stronger Futures in the Northern Territory Bill - Alcohol Proposals Regulation Impact Statement / Post Implementation Review appended to this Bill’s Explanatory Memorandum.

Adding to the Government’s imperative to legislate is section 6 of the *Northern Territory National Emergency Response Act 2007*, which currently provides a sunset clause of five years from the Bill’s commencement for many of the Act’s provisions, including that Act’s Part 2, which deals with the regulation of alcohol. As the bulk of the Act’s provisions commenced on 18 August 2007, they are thus destined to cease having legislative effect on 18 August 2012.

One criticism that could be made of this Bill’s approach to alcohol misuse in the NT is that there is no endorsement of a ‘floor price’ on alcohol. Many NGOs and the World Health Organisation have identified the benefits of setting a take-away price based on the cost of a standard drink of full-strength beer – currently around $1.20 in the NT. Thus, for example, cheaper end fortified and unfortified wines, both heavily used alcoholic substances in the NT, would go up in price to equal the cost of (less harmful) beer, whereas at the moment they often cost much less. The government has not yet taken a position on utilising the ‘floor price’ approach, to the disappointment of many activists in the area. This policy position is put more formally by the Gilbert + Tobin Centre of Public Law, who have called for ‘Commonwealth leadership on stronger supply-side law and policy, including volumetric measures that eradicate low cost sales of high alcohol drinks, reduced takeaway trading hours and fewer outlets.’ One of the more authoritative voices in this area, the People’s

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Alcohol Action Coalition, has commented with respect to this Bill’s measures, that while they support the measures in general, they are unlikely to succeed without a floor price:

The supply tap must be turned down, nationally as well as in the NT. The NT’s extremely high rates of consumption and the associated illness, injury, death, offending and family and social breakdown however support the argument for the immediate introduction of a floor price through regulation. If this does not happen, the efforts of the Australian (and NT) Governments to improve educational attainment, parental responsibility, employment opportunities and housing are unlikely to get a strong foothold.

The NT’s new alcohol law reforms, incorporating bans on the consumption, possession or purchase of (take-away only) alcohol by problem drinkers, and also imposing bans on those caught supplying them, will, we believe, turn out to be inadequate armour in the battle, and the cyclic tragedy will continue.

[...] The optimal alternative therefore is for the Australian Government to use its powers to implement a floor price tied to the cost of a standard drink of full-strength beer, currently around $1.20, at least initially in the NT... Given the NT Government’s reluctance to act, the Federal Government must grasp the nettle.31

In the absence of supply side regulation, however, the Bill’s approach is seen by some as an improvement over the measures taken to date by the NT Government. For example Bob Durnan comments

at last we might get a better balance between the individual’s freedom to drink alcohol in the NT, and the rights of us all to be reasonably safe from the harms caused by many consumers of alcohol. In particular, we could even see adequate respect for the rights of all children to receive proper care from sober parents and carers, not disrupted by alcohol-related harms, and a healthy start to their lives during their pre-birth, pre-school and school years.32

Part 3—Land Reform is meant to help give fuller effect to the Government’s commitment to provide a platform for secure tenure, economic development and home ownership opportunities in Aboriginal communities. The Minister has suggested that the already underway process of tenure clarification has enabled 350 new houses to be built and work on another 275 to commence.33

Negotiations over plans for housing and service improvements for people living in town camps (such as those near Alice Springs) have been protracted and there have been delays in delivering the needed improvement in the situation. Many indigenous leaders in the Territory (for example, Dr Sue Gordon, Alison Anderson, Barbara Shaw) have seen the need for the Government to push ahead with their plans, but the Aboriginal and Torres Strait Islander Social Justice Commissioner Mick

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31. People’s Alcohol Action Coalition, Submission to the Senate Committee’s, Inquiry into the Stronger Futures in the Northern Territory Bill 2011 [and two related Bills], 6 February 2012.
32. Bob Durnan comments on an article by Adam Giles, ‘NT Government action on grog clearly not enough for Macklin’

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Gooda has suggested the Government should talk with the Alice Spring town camp residents about phasing out the camp system.\textsuperscript{34}

**Part 4—Food Security** is the largest part of the Bill. The quality of the food being provided at community stores in Aboriginal communities has been recognised for some years to be both a major health issue and a management of income issue for the people in those communities. As part of the initial NTER the Government introduced a licensing system for community stores in the Northern Territory and has since issued licences to more than 80 stores that are able to participate in the income-management scheme, have a reasonable quality, quantity and range of groceries and can demonstrate sound financial structures, retail practices and governance. The Government has now decided to extend the licensing scheme to cover all shops that are a key source of food, drink and grocery items for an Indigenous community, and this includes takeaway shops and roadhouses. They have also decided licences should be issued to owners (rather than managers) to recognise the specific responsibilities and risks borne by both store owners and store manager. The proposed changes will also allow for decisions made under the community store licensing scheme to be reviewed by the Administrative Appeals Tribunal, and will remove the current provisions that permit the Australian Government to compulsorily acquire a community store’s assets and liabilities.\textsuperscript{35}

The Explanatory Memorandum suggests the Bill recognises that community stores differ greatly and that the regulation should be tailored to its individual circumstances.\textsuperscript{36} It makes the aim improving access to fresh, healthy food and tries to achieve this aim by providing for a licensing regime for all stores which are an important source of food, drink or grocery items for an Aboriginal community and which operate in the food security area. The latter will be the whole of the Northern Territory other than such areas as Alice Springs and Darwin where the choice is deemed to be sufficient to ensure adequate access to a reasonable range of fresh food and groceries.

The measure has been greeted positively by the Remote Retail Services, but John Kop, Managing Director of Remote Retail Services, in his submission to the Senate committee, wrote that:

Food Security in remote Indigenous communities is an outcome driven by good retail business practices, well-trained directors and appropriately skilled store operators. Our experience at the front line of remote retail services has found that store managers and operators generally lack basic business management and retail skills. They are doomed to repeated failure, which means that without the appropriate capacity building communities are doomed to poor food security. [...]  

\textsuperscript{34} Mark Schliebs, ‘Mick Gooda calls for Alice Springs town camps to be closed down’, *The Australian*, 3 March 2011.


\textsuperscript{36} Explanatory Memorandum, p. 15.

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An ongoing focus on licensing and corporation compliance without appropriate capacity building will result in more non-compliant organisations and a greater likelihood of business failure.

We are concerned that the focus of the FaHCSIA Stores Licensing Section has moved from capacity-building and business development to one of compliance. Along with this development, the section’s skills and resources have been downgraded.

Compliance is a necessary but insufficient element of success and needs to be accompanied by good management.

and calls for more support for building store directors and managers capacity to deliver good business practices.37

Provisions

It should be noted from the beginning that the Bill contains a ‘sunset provision’ which will cause the legislation to cease operation ten years after commencement (proposed section 118).

Part 2—Tackling alcohol abuse

The provisions governing alcohol regulation are subject not only to the sunset provision (proposed section 118), but also have a requirement that ‘no later than two years after commencement’ the Commonwealth and NT Ministers must cause an independent review of the provisions and associated laws (proposed section 28). This review must be concluded approximately one year later (i.e. within 3 years after commencement) and the report of the review must be presented to the two Ministers who are then required to table the report within 15 sitting days after they receive it.

Division 2—Modification of the NT Liquor Act and NT Liquor Regulations in alcohol protected areas

The relevant NT Liquor laws are preserved by the Bill, but there is a new Division inserted into the NT Liquor Act (‘Division 1AA—Prohibitions in alcohol protected areas’). Most significantly this introduces the offences of supplying, possessing or consuming liquor in an alcohol protected area (proposed sections 75B and 75C). The alcohol protected area is defined later in the Part (proposed Division 7). There are defences to these offences for people in a boat engaged in recreational boating or commercial fishing activities (proposed subsections 75B(2) or 75C(2)) and for those who are on organised tours (proposed subsections 75B(4) and 75C(4)). However the Minister can declare that certain areas of water are not covered by the boating/fishing exemption, and the tour


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exemptions are only available subject to certain conditions, including ‘behaving in a responsible manner’.

Under proposed section 75E the NT Liquor Commission can post notices in an area where the boating/fishing exemptions do not apply and can also put notices in newspapers regarding the relevant area. It would have been logical for proposed section 75F to regulate such notices, especially since this provision, which creates and offence of removing or damaging notices is situated in proposed Division 2. However in fact proposed section 75F creates such an offence with respect to notices governed by proposed subsection 14(3) – not notices placed under proposed section 75E.

Proposed section 75F creates an offence regarding notices about alcohol regulation at the entrances to alcohol protected areas. These notices are defined in proposed Division 4 (Notices about alcohol offences in alcohol protected areas). It is odd to have a regulation of provisions established in proposed Division 4 situated in proposed Division 2. It may be a drafting oversight not to have applied the offence provisions to regulate the placement of the relevant signs under proposed Division 2.

Unwarranted interference with these notices is an offence under proposed section 75F. On the enforcement front there is also a pre-existing power to seize vehicles which is extended to these provisions, however, in recognition of the possible communal nature of the vehicle, the legislation dictates that the inspector, in deciding whether to seize a vehicle, must have regard to whether the ‘main use of the vehicle is for the benefit of a community as a whole’, and the ‘hardship that might be caused to the community if the vehicle were seized’ (proposed section 95A).

Division 3 —Modification of NT liquor licences and NT liquor permits in force in alcohol protected areas

Current liquor licences and permits are preserved by proposed sections 12 and 13, however with the appropriate notice their terms may be varied or they may be revoked, and in the case of the licences they will only be functional if the licensee confines the sale of liquor for consumption away from the premises to someone holding a NT liquor permit in force in the particular alcohol protected area. Decisions made under these provisions are subject to review under the Administrative Appeals Tribunal (AAT) (proposed section 31).

Division 4 —Notices about alcohol offences in alcohol protected areas

The central provision of this Division (proposed section 14) allows the NT Licensing Commission to put notices about the relevant offences & etc in the entrance to an alcohol protected area via ‘a customary access route’ or airport. The NT Licensing Commission is to ensure that the wording of the notice is ‘respectful to Aboriginal people’ (proposed subsection 14(2)) and when deciding whether such a notice is necessary the Commission must consult people living in the area regarding both the need for the notice and the content and wording of the notice. They must also have regard to other information about the area and advice given by the Australian Federal Police or the police force of the NT, as well as the ‘circumstances and views of people who are living in the area’

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(proposed section 14(5)). The decision to put up a notice is another decision that is subject to 
review by the AAT under proposed section 31, and the AAT will also, therefore, arguably be in a 
position to contemplate the potentially difficult question of whether the wording of the notice is 
respectful to Aboriginal people.\(^{38}\)

It is noted that it would be here that the offence of interfering with notices erected under proposed 
section 14 might have been expected, but the offence has already been established in proposed 
Division 2’s section 75F.

Division 5—Assessments of licensed premises

Under proposed section 15, if the Commonwealth Minister believes that the sale or consumption of 
liquor from certain premises is causing ‘substantial alcohol-related harm to Aboriginal people’ 
s/he can alert the NT Minister and then can make a written request to that Minister asking that they 
appoint an assessor (defined in the NT Liquor Act) to conduct an assessment. The assessment would 
take place according to the terms specified in the request and the report would be given first to the 
NT Minister and from him/her to the Commonwealth Minister.

It is open to the NT Minister to decline the request on the grounds that it ‘would place an undue 
financial burden on the Northern Territory (including the NT Licensing Commission)’ (proposed 
paragraph 15(5)(a)) or on the even broader grounds that it ‘would otherwise be inappropriate’ 
(proposed paragraph 15(5)(b)). If the request is denied on either of these grounds the NT Minister is 
required to publish the NT Minister’s statement regarding the matter on his/her website, and the 
Commonwealth Minister may also publish the statement on the Minister’s website (proposed 
subsection 15(6)(b) and subsection 15(7)).

Division 6—Alcohol management plans

An alcohol management plan can be applied for by a person ‘or entity’ and may then be approved by 
the Minister. Under an alcohol management plan the restrictions on alcohol which would otherwise 
apply would be lifted, and the area would become a ‘community managed alcohol area’ (proposed 
section 26). This decision would be taken on the basis that instead of prohibition there are other 
mechanisms to deal with potential problems around alcohol. The details of these schemes and the 
requisite documentation or forms are to be determined under ‘rules’ which may or may not be yet 
determined.

The Minister need not approve such a plan unless the people living in the area have been sufficiently 
consulted and the majority of them support the plan (proposed section 17(6)). These circumstances

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38. It is noted here that the Explanatory Memorandum at p. 19 gives an inadequate account of proposed section 31 – 
which allows review of a broad range of decisions by the Commonwealth Minister, including the modification of NT 
liquor licences and permits and regarding the posting of notices in alcohol protected areas, whereas the Explanatory 
Memorandum specifies that the decisions which can be reviewed relate to the administration of alcohol 
management plans. Such plans may or may not be in place when the other reviewable decisions are made and do not 
represent the totality of reviewable decisions.

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are subject to review by the AAT (proposed section 31). The Explanatory Memorandum comments that under this ‘revised approach’ the Minister, in determining whether to approve of a particular plan, will be able to have regard to a wider range of the elements of an alcohol management plan, including ‘rehabilitation, service provision and education’.  

The Minister must give written notice of an intention to refuse approval of an alcohol management plan and this notice must say why the proposal is to be refused and must also invite submissions regarding the relevant matters. This notice must also specify a ‘submission period’ of at least ten business days. The Minister is then required to consider any submissions received during this period before making a determination under proposed subsection 17(1). Since such a determination is another decision which is reviewable by the AAT under proposed section 31 this will allow for a review of compliance with the specifications in proposed section 18.

Variation and revocation of alcohol management plans are subject to similar procedural provisions. The Minister can revoke an alcohol management plan if it has not been complied with or if the plan is ineffective in achieving the object of the Act (enabling ‘special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory’ proposed section 7). Both the decision to vary (proposed section 23(1)) or revoke (proposed section 24(1)) an alcohol management plan are subject to review in the AAT under proposed section 31.

Division 7—Alcohol protected areas

An area of the NT can be prescribed as an ‘alcohol protected area’ in the rules (proposed subsection 27(1)) – thus, if an alcohol management plan is approved for an area the rules need to be adjusted to preclude that area (proposed subsection 27(3)). The provisions regarding the offences of supplying, possessing or consuming alcohol which are established in the earlier provisions are targeted to apply to ‘alcohol protected areas’. The specification of an area as an alcohol protected area can be made

- on the Minister’s initiative
- following a request from, or on behalf of, someone ordinarily resident in the area or
- when an alcohol management plan has ceased being operative (proposed subsection 27(4)).

It should be noted that areas previously regulated under the Northern Territory National Emergency Response Act 2007 as ‘prescribed areas’ come across into this legislation as ‘alcohol protected areas’ (see Schedule 1, Part 3 of the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011). Before making a rule that an area is an alcohol protected area the Minister must ensure that information about the proposal and its effect is available in the area and that people living in the area have been given a reasonable opportunity to make submissions on the matter (proposed subsection 27(6)), although failure to comply with this requirement does not affect the validity of the rule (proposed subsection 27(7)).

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When making such a rule the Minister must have regard to a wide range of matters, including the submissions that have been put to him/her and also:

- whether it would reduce alcohol related harm to Aboriginal people in the Northern Territory.
- the wellbeing of people living in the area
- whether there is reason to believe that people living in the area have been the victims of alcohol related harm
- the extent to which people living in the area have expressed their concerns about being at risk of alcohol related harm
- the extent to which people living in the area have expressed the view that their wellbeing will be improved if this Part applies in relation to the area, or
- whether there is an alcohol management plan that covers the area or part of the area (whether or not the plan has been approved).

Part 3—Land reform

These provisions allow regulations to be made under the proposed Act which would function as amendments to NT legislation. The Part is broken into two functional divisions – one dealing with town camps and the other dealing with community living areas. Proposed section 34 allows the modification of NT laws in relation to town camps. In a broad based provision it allows the modification of any NT law relating to ‘the use of land; dealings in land; planning; infrastructure or ‘any matter prescribed by the regulations’ in so far as the law applies to a town camp. These regulations are immediately effective on commencement and operate as if the changes had been made by the NT Parliament. Furthermore, once the relevant law has been modified in this manner the NT Parliament can amend it as if it were legislation as created by that Parliament. Similarly further modification by regulation is possible.

The provision goes on to specify that the NT Crown Lands Act and the NT Special Purposes Leases Act can be modified (the legislation under which town camps are established) (proposed subsection 34(4)) and that the leases granted under these Acts may also be modified (proposed subsection 34(6)). Once again the modifications are to operate on commencement as if they had been amended by a NT law and they can be further modified by the NT Parliament or by further regulations. In the case of such regulations the Minister is required to consult with the Government of the NT, the lessee of the land that is the town camp and ‘any other person the Minister considers appropriate to consult.’ However failure to comply with the need for consultation does not affect the validity of the subsequent regulations (proposed subsection 34(8)).

Proposed section 35 gives the Commonwealth the same powers to modify legislation with respect to community living areas. In such cases, while the need to consult is extended to the relevant Land Council, the same approach applies whereby a failure to consult does not affect the validity of the subsequent regulations (proposed subsection 35(5)).

This dual regulation whereby both the NT and the Commonwealth Parliament can modify the same provisions could lead to some interesting results and will require a cooperative approach.
Part 4—Food security

**Proposed Part 4** involves extensive regulations, including innovative and flexible approaches to enforcement provisions. Unfortunately the length of the part is such that the Digest’s account of the provisions has had to be curtailed and a broader perspective on the provisions has had to been taken.

**Division 2 – Certain community stores must be licensed**

Under the Bill’s provisions the entire Northern Territory constitutes the ‘food security area’ (**proposed subsection 38(2)**), although there is a power in the Minister to make rules specifying that a particular area is not in the food security area (**proposed section 74**).

It is illegal for the owner or manager of a community store to operate the store if there is a determination that the owner is required to hold a community store licence and this has been communicated to them (this requirement is subject to various administrative exceptions – for instance they may be in the process of applying or the application may be rejected but this has not been communicated). It is only the owner who gets a licence (**proposed section 41**).

**Proposed Division 2** goes on to define in some detail the meaning of community store, owner and manager, including explaining that there can be more than one owner or manager of a community store, or that both roles may be played by the one person or entity.

**Division 3 – Determining whether a community store is required to be licensed**

It falls to the Secretary to determine whether the owner of a community store is required to hold a licence (**proposed section 41**). The Secretary is required to consult the customers (‘people being serviced by the community store’) on this matter, however the failure to consult will not affect the validity of the decision.\(^{40}\) Any such consultation could, however, constitute information to which the Secretary must have regard when making up his/her mind on this matter, along with any assessment of the store and the objects of this Part (promoting food security for Aboriginal communities in the NT and enhancing the contribution community stores make to this aim. Food security is defined as a ‘reasonable ongoing level of access to a range of food, drink and grocery items that is reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs’ (**proposed section 37**)). Before making a determination on whether a licence is required the Secretary must given written notice to the owner and manager of the store specifying the reason for the proposed determination and inviting written submissions on the matter. Once the relevant notice has been given and any submissions have been considered the Secretary may make a determination on this matter (which must then be communicated to the relevant parties, along with relevant information such as the timeframe for applying for a licence, and the need to do so (**proposed section 43**).

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\(^{40}\) These provisions reflect the terms of the *Legislative Instruments Act 2003*, sections 17-19.

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Division 4—Licensing of community stores

Proposed Division 4, Subdivision A regulates the grant or refusal of community store licences. It provides certain procedural protections and effectively requires the provision of access to premises, documents, material or assistance. It also defines food security matters as

(a) whether the store will provide a satisfactory range of healthy and good quality food, drink or grocery items;

(b) whether the store will take reasonable steps to promote good nutrition and healthy products;

(c) whether the store will satisfactorily address other aspects of the store’s operations which may impact on food security, including:

   (i) the quality of the retail management practices of the manager of the store; and

   (ii) whether the financial practices of the owner and manager of the store support the sustainable operation of the store; and

   (iii) the character of the owner, manager, employees and other persons involved in the store, including whether any of those persons have a criminal history; and

   (iv) the store’s business structure, governance practices and employment practices; and

   (v) the environment of the store’s premises, the infrastructure of the store’s premises and the equipment available at the store’s premises.

This is a central consideration that the Secretary must have in mind when deciding whether to grant the owner a licence, along with the overall aim of the Part, assessments of the store and the store’s ‘nature and circumstances’ (proposed section 45). If the Secretary is proposing to refuse to grant a store licence s/he must give written notice of the proposed refusal to the owner and manager of the community store. This notice must specify the reasons and invite written submissions (within a specified time frame) (proposed section 47). The final decision to either grant or refuse a licence must be communicated in writing (if it’s a refusal the notice must specify the reasons for the refusal) (proposed section 50).

Proposed Subdivision B establishes the framework for imposing conditions on community store licences, which can include anything the Secretary specifies and also the conditions in the legislation such as proposed subsection 54(1) regarding monitoring and audits and any rules which are made which apply to all community stores under proposed subsection 55(1). Proposed section 52 delineates the provisions that may be imposed when the licence is given. In the case of such a condition what might be called the ‘notice and review’ provisions apply (i.e. written notice must be given specifying the reasons for the decision and explaining that submissions can be made in a specified framework and, before any such condition is imposed, the submissions received must be considered (proposed section 53)).

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Proposed section 54 specifies one of the general conditions of a community store licence, i.e. that the owner and manager must allow an authorised officer access to the premises, including for the purposes of auditing or monitoring compliance. They must also provide an authorised officer with documents relevant to auditing and monitoring compliance, although interestingly there is no requirement to comply with such a request if it tends to incriminate or expose the person to a penalty. The Bill is also silent on the return or copying of such documents. If a condition of community store licence is breached there is a 20 penalty unit civil penalty attached (proposed section 56).

Subdivision C allows for the variation or revocation of community store licences. There is some freedom for the Secretary to vary a community store licence, (including at the request of an applicant (proposed section 57)) or at his own initiative, and if the relevant person unreasonably withholds consent for entry or access to document etc the Secretary may refuse to vary a community store licence (proposed subsection 58(6)). There is a general requirement for the ‘notice and review’ provisions to apply to any variation (or refusal to vary) or revocation of a licence (proposed section 60).

Division 5—Requirement to register under the Corporations (Aboriginal and Torres Strait Islander) Act 2006

If the owner of a community store is not registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) when there is a determination that they should be –and they are aware of this determination –then they are liable to a civil penalty under proposed section 61 (subject to various defences specified in the proposed Act (subsections (2) and (3)). The Secretary may specify that the owner is required to be registered under the CATSI Act (subject to ‘notice and review’ type provisions (proposed section 63)), and is able to revoke a licence if the owner is not registered (proposed section 65) (once again this is subject to procedural safeguards akin to the ‘notice and review’ type (proposed section 66)).

Division 6—Assessments of community stores in relation to licensing

The Secretary can initiate the assessment of a community store and can require an authorised officer to make this assessment. In assessing the store the authorised officer may consult with whoever the authorised officer considers appropriate (proposed section 67).

Under proposed section 68 the Secretary or the authorised officer must give written notice to the owner and manager of the assessment and its purpose along with the name of the relevant officer(s). If access to the store or documents is required then written notice must be given at least ten business days beforehand (unless the period is shorter by agreement). The Secretary may utilise an APS employee or a contract employee to perform the role of an authorised officer and may issue an identity card (proposed sections 69 and 70). This officer may enter the premises to perform the assessment but only with the consent of the occupier, and must leave if requested to do so (proposed section 71), although the authorised officer does not seem to be any duty to inform the owner or manager of their rights in this situation.

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While an authorised officer can request documents they need to make an assessment (and it’s a criminal penalty under proposed subsection 72(2) if the owner does not provide it or if the occuper or representative does not provide the authorised officer with the relevant assistance and facilities necessary to make the assessment (proposed subsection 72(4)). Both these provisions are defined as strict liability offences by proposed subsection 72(5), however the provisions of proposed subsection 72(2) do not apply under proposed subsection 72(3) if the documents ‘might tend to incriminate the person or expose the person to a penalty’. It will be interesting to see the views of the Scrutiny of Bills Committee on these provisions, since the strict liability provisions do not seem congruent with the overall tone of the Bill and the necessity for this formula is unclear.

Similarly proposed section 73 imposes a requirement to provide compellable information for an assessment and failure to comply with a written request in the relevant time frame incurs a criminal penalty under proposed subsection (3). However if there is a reasonable excuse the penalty does not apply, although the legislation specifies that reasons such as the commercial or confidential nature of the information are not a reasonable excuse. Furthermore the same privilege against self-incrimination is extended to such information by proposed subsection (5).

Division 8—Enforcement relating to food security

Proposed Subdivision A deals with civil penalties. It allows the Commonwealth to pursue breaches of civil penalty provisions as a debt payable to the Commonwealth. The provisions set out how the courts should treat the offences, and specify matters such as ‘multiple contraventions’ which may be penalised as a single civil penalty order (proposed section 78). It also specifies that if criminal proceedings have been taken regarding a particular offence then a civil penalty may not be made on the same grounds (proposed section 82) (however if a civil proceeding was conducted first it is possible to still have criminal proceedings arising from the same (or similar) fact situation (proposed section 84). Evidence from the civil proceedings is not admissible in the criminal proceedings (proposed section 85).

The proposed subdivision also provides a range of rulings such as the need to avoid ‘ancillary contravention’ of civil penalty provisions and the dangers of continuing contraventions of civil penalty provisions (whereby a separate contravention of the provision may be committed on each day during which an act or thing remains undone where such an omission constitutes a civil penalty). It also defines when a mistake of fact is regarded as existing and that in proceedings for a civil penalty it is not necessary to prove the person’s knowledge, intention etc, or, in summary, their state of mind.

Proposed Subdivision B deals with infringement notices, which may be given by the Secretary within 12 months of the alleged contravention. They must be identified by a unique number and give certain basic information such as the day it is given, the name of the persons to whom it is given and who gave it, give brief details of the nature of the contravention and so on. Proposed section 91 goes on to give the details of what is required. There can be negotiations about the time to pay the relevant amount under proposed section 92 and the infringement notice can be withdrawn under proposed section 93. If the amount is paid within the appropriate timeframe then the offence
cannot be prosecuted and there is no proceedings for a civil penalty order. However the person is
not regarded as having admitted guilt or liability for the alleged contravention (proposed section
94).

Proposed section 95 clarifies that the availability of infringement notices does not necessitate their
use by the Commonwealth, and nor do they affect the liability of a person who has not paid the
infringement notice, nor complied with its provisions, or when an infringement notice is
subsequently withdrawn. Nor does it prevent the giving of two or more notices and nor does it limit
the court’s subsequent discretion in determining the penalty amount to be paid.

Proposed Subdivision C provides for ‘enforceable undertakings’ which can be negotiated between
the Secretary and the licence holder. These arrangements seek to circumvent the limited nature of
the infringement notice or other penalty proceedings. It is open to the Secretary to accept a written
undertaking to take certain actions (or refrain from taking certain actions). The undertaking must be
phrased as an undertaking under this section (proposed subsections 96(1) and (2)). It is then
possible to negotiate the matter further, however if the Secretary considers the person has
breached the undertaking then an application can be made to a court. The court can make an order
directing the person to comply with the undertaking, as well as other orders available to it, such as
pecuniary penalties or to pay compensation to anyone who suffered loss as a result of the breach.

Proposed Subdivision D deals with the granting of injunctions. The courts are given the power to
issue both a restraining injunction (i.e. stopping someone from pursuing a certain course of action),
and a performance injunction (i.e. requiring someone to do something). It is specified that an
interim injunction may be ordered. Furthermore the court can make the order whether or not the
person intends to engage in that conduct again or intends to continue that conduct and whether or
not the person has done it in the past. and similarly a performance injunction can be issued whether
or not there is evidence that the person is likely to refuse or fail to do the relevant thing.

Proposed Subdivision E provides for the courts to take up matters under this legislation, utilising not
only the Federal Court and the Federal Magistrates Court, but also, to the extent constitutionally
possible, courts of the Northern Territory.

Division 9—Other matters

Proposed Division 9 deals with a range of issues, including giving the Secretary the power to get
information about a person’s criminal history (proposed section 104), and to get information from
Department’s etc for the purposes of this Part. Such a disclosure of information is deemed to be
warranted under the Privacy Act 1988 (proposed section 105). Similarly the Secretary is empowered
to release information to relevant public officials under proposed section 106.

The legal professional privilege is preserved in proposed section 107 and whatever NT laws are
capable of operating concurrently with the Part are preserved by proposed section 108. Proposed
section 109 asserts the supremacy of the current legislation, specifying that the provisions of the
Part will have effect ‘despite any other law of the Commonwealth’. It goes on to specify a list of
provisions which are deemed to comply with the *Competition and Consumer Act 2010*. Finally proposed section 110 provides a range of actions from the Part which will be covered by the AAT.

The provisions of **proposed Part 4** are detailed and copious, but the question of whether tighter licensing will by itself overcome the great problems of access to quality food in remote stores is not addressed in the Bill’s second reading speech or Explanatory Memorandum.

### Part 5- Other matters

As well as the more mechanical or interpretive provisions this Part specifies the need for compensation for acquisition of property – a compensation which, when paragraph 51(xxxi) of the Constitution is engaged, must be ‘reasonable’. While the section calls on the ‘just terms’ concept derived from paragraph 51(xxxi), the amount of compensation must be ‘reasonable’, and if there is no agreement as to the amount then the Bill makes provision for a court of competent jurisdiction to be called upon to establish a ‘reasonable amount of compensation’ (**proposed section 116**).

As well as the sunset provision of ten years in **proposed section 118** which has been discussed above, there is a requirement for an independent review of the first seven years of the operation of the Act. The report from this review must be prepared ‘before the end of eight years after commencement’ and must be given to the Minister who must table it in each House of Parliament within 15 sitting days (**proposed section 117**).

Finally it should be noted that the Rules which can be made under **proposed section 119** will be made through a legislative instrument, and since the regulations which can be made under **proposed section 120** are also defined as a legislative instruments by section six of the *Legislative Instruments Act 2003*, they will both be subject to the parliamentary scrutiny (and disallowance) regimes established for legislative instruments.

### Concluding comments

The measures in this Bill have their origins in the NTER (which will be repealed by the accompanying consequential amendment Bill). The measures are now approaching the originating legislation’s sunset date. Despite the passage of nearly five years, many intervening attempts to ameliorate the strategy, evaluate its success and consult on new directions, voices criticising these measures are still strong (and these constitute the greater part of the submissions to the Senate Committee considering this and related Bills). Often, however, it is not the provisions of this particular Bill that are being criticised, but other dimensions of the experience of the last five years and a perceived emphasis on expensive measures which emphasise compliance and are regulation-heavy. Such measure have not to date unambiguously improved the situation but have unambiguously alienated some stake holders. Though these measures may have potential to improve the situation they may be seen to be distracting from other possible strategies that could operate more constructively.

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Stronger Futures in the Northern Territory Bill 2011

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