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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Submission in relation to the Stronger Futures in the Northern Territory Bill 2011

I lecture in property law at the University of New South Wales, and am currently undertaking a PhD on Aboriginal land reform in the Northern Territory.

Below is my submission in relation to the *Stronger Futures in the Northern Territory Bill 2011*. My submission deals only with the land reform provisions.

While I make this submission in my capacity as a lecturer in the Faculty of Law, I am solely responsible for its contents.

Subject to availability, I would also be happy to make oral submission to the Committee.

Regards,

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Submission in relation to land reform provisions

In 2008, the Australian Government released a two volume report called *Making Land Work*, in an attempt to better understand the complex issues affecting customary land reform in the Pacific. The report drew on the input of around 80 experts and practitioners in land reform and development. Its preparation was overseen by a steering group of that included representatives of governments and NGOs from across the Pacific. It explicitly referred to the diversity of existing circumstances and the wide variety of issues. In its preface, the report states that 'AusAID recognises that land policy reform is something that must be driven by Pacific governments and communities, not by donors'.

During the same period in which this report was prepared, the Australian Government began its involvement in Aboriginal land reform in the Northern Territory. It did not commission a detailed report, nor call on the advice of experts. It did not establish a steering group, it did not even prepare or publish a land reform policy. It simply implemented a series of reforms as if the task were self-evident: starting with township leasing, followed soon after by five-year leases, then new rules in relation to housing, and finally the application of so-called 'secure tenure' policies more broadly.

The result has been an ad hoc, confused, expensive and at times contradictory approach to the implementation of land reform. On the whole, the outcome of these reforms has been very poor.

If enacted, the *Stronger Futures in the Northern Territory Bill 2011* will give the Australian Government a new set of powers with respect to land reform, directed more specifically at town camp and community living area land. It effectively enables the Australian Government to usurp the legal role of the Northern Territory Government with respect to these forms of land. Perhaps this reflects some frustration at the slow pace of reforms by the Northern Territory Government.

It is my submission, however, that far more important that the acquisition of further powers or the making of further reforms is the development of a well-considered land reform policy. This is not something that should be rushed, or put to print as an act of justifying earlier decision-making. It should recognise the diversity and complexity of issues and attempt where possible to provide greater clarity. It should draw on the views of land reform experts, Aboriginal landowners, community residents, the civil sector and government organisations working in Aboriginal communities.

In particular, there are three things that a land reform policy needs to do.

Firstly, it needs to clarify the language, concepts and terminology of land reform. Terms such as 'communal ownership', 'individual ownership' and the more recent 'secure tenure' have been misused and poorly understood.

Secondly, it needs to clarify the rationale for reforms. There is no single reason for land reform. It is not, as appears to have been previously assumed, something self-evident. Nor is there one single type of land reform, which is capable of meeting all aims. A

particular land reform might lead to increased certainty, but dampen economic activity. A different land reform might lead to increased investment, but put vulnerable people or organisations at risk of displacement. In my view, there are less expensive and less adversarial means available to the Australian Government to meet its core concerns, but doing this requires those aims to be more clearly articulated. Indeed, it requires that those aims be better understood.

Thirdly, it needs to explicitly deal with the relationship between land reform and a) governance and b) welfare-reform theory. The importance of this is underscored by the extent to which indigenous land reform in Australia diverges from that in other countries, including the United States, New Zealand and Canada. Nowhere else in the world has indigenous land reform been used primarily to deliver long-term leases to governments. This is because *concerns* about governance and welfare reform have dominated the way in which land reform has been introduced. However, this is not supported by well developed *policies* on governance and welfare reform. The government is instead feeling its way in this area. To date, it has not even been clear on the relationship between these *concerns* and land reform.

To make this point clearly – these *concerns* have resulted in the Australian Government taking an approach to land reform that is not only unique, it is at odds with most land reform theory. This means that it is particularly important to ensure that the reforms are well considered and well understood. To date, this has not been the case.

The development of a land reform policy will not obviate the need for consultation in particular instances. It will not immediately rectify the damage that has been done by earlier reforms, particularly the damage to trust, confidence and goodwill which resulted from the compulsory acquisition of five-year leases. It will take time and involve expense. If done properly, it will also prevent further mistakes and enable more effective and less expensive reforms to be implemented in the longer term.

The provisions in relation to land reform in the *Submission in relation to the Stronger Futures in the Northern Territory Bill 2011* are broad, and give no indication as to how they will be implemented. In the absence of the development of a well-considered land reform policy, it is my reluctant submission that granting of further powers is counter-productive. While reforms to community living area land in particular are required, it would be a further setback if those reforms were rushed or poorly implemented. Land reform is long term and difficult to undo. A bad reform would be worse than no reform at all.

The committee should recommend that the provisions in relation to land reform be removed, and the Australian Government instead begin the careful process of consulting on an Indigenous land reform policy.