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24 January 2012

Dear Committee Secretary

Senate Standing Committee on Community Affairs

**Submission on Stronger Futures framework**

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

The Law Society Northern Territory (The Society) welcomes the opportunity to respond to the Stronger Futures framework.

The mission of the Society is to enhance access to justice, improving the law and maintaining individual rights. The Society represents approximately 600 lawyers in the Northern Territory including Government and private lawyers. In doing this the Society focuses on evidence based interventions and ensuring legal needs are addressed.

The Society has conducted consultations with its Social Justice Committee and the legal services sector in the Northern Territory in developing this response to the Stronger Futures framework.

**Summary**

The Society seeks

- Recognition of the legal needs created by the framework and adequate funding to ensure those needs are met
- Recognition that community engagement includes ability to exercise legal rights and access justice.

- Recognition that Natural Justice and Procedural Fairness dictate that administrative decisions ought be reviewable
- The modification of the framework to allow access to the existing decision making review mechanism available through Centrelink
- Express provision subjecting the framework to the *Racial Discrimination Act*
- The urgent establishment of a Remote Tenancy Legal Advice Service

### **Access to justice: Increased funding for legal advice, assistance and representation**

The Society welcomes changes to improve the lives of people in the Northern Territory. In the NT access to services are often more resource intensive than in other parts of the country. This is due in part to the geographical spread of the population and the long distances between homes, courts, schools and other services, and partly due to the demographics of our population which includes a high proportion of Indigenous people.

The framework includes many initiatives which are still being developed and tested and natural justice and procedural fairness principles dictate that those subject to these new provisions ought have access to legal representation to assist them to address any concerns. This proved necessary and funding was provided through Community Legal Centres (CLCs) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) when income management commenced in the NT as part of the NT Emergency Response.

The level of legal need is higher in the Northern Territory than in other parts of the country. To achieve access to justice in the Northern Territory, in the context of new legislative provisions, a significant increase in funding for legal assistance services is required. Conversely any shortage of funding and services in the Northern Territory has a disproportional impact on Indigenous people's access to justice.

Support to this demographic to increase participation and engagement should include recognition that accessing justice is an element of that engagement. Thus there should be legislative recognition and policy consideration to ensure access to independent legal advice, assistance and representation for the individuals who are subject to this legislation, particularly regarding the School Enrolment and Attendance Measure (SEAM) and the Alcohol and other Drugs (AOD) Tribunals.

The Society is of the view that policies that purport to support individuals should also endeavor through legislative means to ensure that people are supported to the fullest extent including legal needs. In other words individuals should not be disadvantaged in attempts to access justice only because of their socioeconomic position. The legislative package enables people's rights and entitlements to be significantly impacted, and that subject to the framework ought have every support to challenge and correct errors when they occur.

Another impediment to accessing justice in the NT in relation to review of administrative decisions is the absence of a multi-purpose administrative review tribunal.

### **Reinstatement of the Racial Discrimination Act 1975**

The Society welcomes the repeal of the *Northern Territory Emergency Response Act 2007* (NTNER Act) and the reinstatement of the *Racial Discrimination Act 1975* (RDA). It is essential that all powers exercised under the Stronger Futures legislation must be undertaken consistently with the RDA. We note that neither the Stronger Futures in the Northern Territory Bill 2011 nor the two related bills refer to the RDA. The Society notes that to give effect to the Minister's undertaking that the RDA will apply, an express statement that declares that the RDA will prevail is required in the legislation, notwithstanding anything to the contrary in the Stronger Futures legislation.

### **Schedule 2, Social Security Legislation Amendment Bill 2011: School attendance plans**

The Society is concerned about the expanded model of SEAM. With the planned expansion to the Remote Service Delivery communities of Yirrkala, Maningrida, Galiwin'ku, Ngukurr, Numbulwar, Umbakumba, Angurugu, Gapuwiyak, Gunbalanya, Milingimbi, Lajamanu and Yuendumu, the townships of Alyangula and Nhulunbuy and to Alice Springs, Tennant Creek, and remaining schools in Katherine the model includes indigenous as well as non-indigenous recipients.

Parents who do not meet their part of the agreed attendance plan will have their income support payments suspended as stated in Section 124NE: "schooling requirement payment is not payable to a person if he or she fails to comply with a compliance notice".

The Society strongly supports the principle for encouraging parents to ensure that their children of compulsory school age are enrolled in and attending school but is concerned that there is little evidence that this measure is effective in achieving this end. Though this measure is a last resort the Society is concerned that it may lead to greater disengagement and disconnection, and indeed that is reflected in the latest evaluation report.

An additional key area of concern is ensuring those that have payments stopped have adequate access to legal assistance if they wish to dispute the decision, or have payments reinstated.

To this end there are inadequate provisions in the legislation for review of these decisions. The Society strongly supports amendments to the Bills that would make Centrelink the ultimate decision maker and thus individuals could seek redress and review through existing and established processes under the Centrelink appeal mechanisms.

### **Part 2, Stronger Futures in the Northern Territory Bill 2011: Tackling alcohol abuse**

### **And Schedule 1, Social Security Legislation Amendment Bill 2011: Income management**

The Society supports the Stronger Futures approach to target problem drinking with supported treatment and rehabilitation options. Our concern is regarding the provision to allow the Alcohol and Other Drugs Tribunal to refer problem drinkers for income management. While this can be a tool to support people and families facing problems related to drug and alcohol abuse we continue to have concerns about people appearing in the Tribunal not having access to legal representation. While the Tribunal affords persons appearing before it the ability to be legally represented, there has been no increase in funding to services to enable legal services to provide such representation.

We stress that additional funding is required in order to provide adequate legal advice, assistance and representation to individuals subject to this legislation.

### **Part 3, Stronger Futures in the Northern Territory Bill 2011: Housing and Land Reform**

#### **Proposal to establish the Northern Territory Remote Tenancy Legal Advice Service**

The Society applauds the cessation of compulsory five-year leases acquired under the original NTER legislation. We welcome the Australian and Northern Territory Government's approach to voluntary lease arrangements.

In addition to this the Society calls for the urgent establishment of a Northern Territory Remote Tenancy Legal Advice Service, which has unfortunately not been put in place.

The reforms to remote housing, which started in 2009, see all the tenants in Aboriginal community controlled housing in the Northern Territory become tenants of the public housing authority. This has resulted in residents entering a new legal relationship – that of landlord and tenant with many Aboriginal people entering tenancy agreements for the first time. Navigating this relationship has caused confusion, disputes and problems for the already disenfranchised. While tenants in Darwin have access to free legal assistance through the Darwin Community Legal Service Tenants Advice Service, this service is inadequately funded to assist people outside of Darwin. ATSILS and NT Legal Aid Commission (NTLAC) have provided some assistance to 'bridge the gap' where possible; however have been unable to assist people to the level of demand.

It is thus essential and overdue that remote tenants have access to an independent advice service and appropriate support.

The Society and a number of Northern Territory Legal Services have been lobbying for an NT Remote Tenancy Legal Advice Service since August 2009. We have been working with NT legal services and relevant organisations to co-ordinate the proposal.

The Society's proposal germinated from several meetings with staff of Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and Territory Housing discussing the details of the remote housing reforms. At these meetings all parties were in agreement that there existed an urgent need for an independent advice service to assist people with their new legal rights and obligations, and in

correspondence with both FaHCSIA and Territory Housing the Society requested that funding be made available for such a service.

In October 2009 the Society provided a written proposal to both the Northern Territory and Commonwealth governments detailing the funding commitment required to provide such a service. In response to a request from Territory Housing, at a meeting on 9 August 2010, a revised proposal was formulated.

The revised proposal was provided to Territory Housing at a meeting on 29 September 2010. It was agreed that the proposal would be passed onto FaHCSIA. It was further agreed to provide a response to the Society following FaHCSIA's consideration of the proposal. To date no response has been received from Territory Housing or FaHCSIA.

On 9 August 2011 the Society sent a letter to Territory Housing requesting an urgent written response regarding the proposal. The Society once again raised this issue at the NT Jurisdictional Forum convened by the NT Government in December 2011. The Society has not had any formal response from the Territory Government to date.

We are frustrated at the lack of response from both governments in a context where each apparently agree that a Remote Tenancy Legal Advice Service is urgently required.

## **Conclusion**

In conclusion the Society is pleased to comment on the Stronger Futures framework. We are pleased that the Australian Government, in partnership with the Northern Territory Government, is taking steps to improve services, infrastructure and safety in Northern Territory communities and urges greater legislative and policy commitment to support community involvement, engagement and connectedness including assistance in exercising legal rights and obligations. This includes funding for legal assistance and also appropriate and accessible review mechanisms.

We call urgently for a Remote Tenancy Legal Advice Service.

The Society is also keen to ensure that those initiatives that are in place are evaluated and evidence based and is concerned that SEAM continues to be rolled out despite little evidence of its efficacy.

We look forward to contributing further to this process if required. We encourage the Australian Government and the Northern Territory Government to commit significant resources to the legal assistance sector in the Northern Territory.

Yours sincerely

**Megan Lawton**  
Chief Executive Officer