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31st January 2012

To the Committee Secretary
Senate Standing Committees on Community Affairs
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SUBMISSION ON STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2011 AND TWO RELATED BILLS

> *"Let us be clear. You don't build a community by attacking its people's dignity. You don't build a community up by putting its people down! You don't create social inclusion by further excluding people and reducing their choices even more, watching over them even more, controlling them even more". John Falzon.*[1]

St John's SJG have followed the NTER/ NT Intervention closely since its announcement in June 2007. Members were familiar with the information contained throughout the *2007 Little Children Are Sacred* Report (*LCASR*). Members were shocked by the Government's alternative disempowering response and paternalistic policies of the NTER which have continued over the past 4 years despite widespread objection from within the NT, around Australia and Internationally. We have many serious concerns with the NT Intervention and its proposed policy directions. The policies breech human rights principals and those of UNDRIP. We have also heard directly from Aboriginal Elders and community representatives on the daily injustices they experience, of the attack on their human dignity and culture, of the increasing frustration and anger they feel, and of the

[1] Dr John Falzon (6th October 2011) http://blog.vinnies.org.au/the-factory-where-were-made/

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new form of dispossession they experience. Elders and leaders do not support the extension of Intervention under any name.

> ***"We will not support the extension of the intervention legislation. We didn't ask for it. It was imposed on us."*** November 4th 2011

We refer the committee to Submission number 40. We stand in solidarity with our Aboriginal brothers and sisters of the Northern Territory and request the proposed legislation package, the *Stronger Futures and 2 Related Bills,* be withdrawn.

Additional reasons why it should be withdrawn,

The intervention is seeded / based on a flawed policy framework. One that excludes the voice, dignity and concerns of Aboriginal people. In the lead to the NTER Aboriginal communities were blamed and repeatedly stigmatised.[2] The ease in which the NTER legislation passed in 2007 was testimony to this. As, was the ease in which the RDA was suspended to roll out racist NTER measures, i.e. measures that targeted specifically Aboriginal people. The more recent ineffective reinstatement of the RDA on 31st Dec 2010 remains of grave concern.

Today the RDA remains ineffective due to the absence of a 'not withstanding clause'. Refer June 2010 amendments, submissions to senate hearings of 2010, the advice of Peak Australian legal and Aboriginal organisations and United Nations CERD recommendations (of September 2010) numbers 16 & 10. Recommendation 10 includes, [3]

> ***... that the State party take measures to ensure that the Racial Discrimination Act prevails over all other legislation which may be discriminatory on the grounds set out in the Convention.***[4]

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[2] In July 2009 it was acknowledged by John Lawler (CEO of ACC) that there had been no evidence of paedohpile rings in the NT. **See, *Loss of Rights*, p 62-64**
http://www.concernedaustralians.com.au/media/Loss-of-Rights-Rept-2010_v2.pdf

[3] A Available at http://www.concernedaustralians.com.au/media/CERD.pdfavailable at http://www.concernedaustralians.com.au/media/CERD.pdf

[4]

Aboriginal people in effect are unlikely to mount a successful legal challenge on these policies because the NTER laws prevail. Under proposed legislation the NTER will be repealed but incorporated into new/ existing legislation.

These create and will cement institutional racism and structural barriers. Aboriginal people are discriminated against and treated as second class citizens.[5] Aboriginal people are not afforded equality or the same legal rights as all other Australians. We cannot support proposed legislation. On this and on all other concerns we fully support the submission of 'concerned Australians' submission number 87 to this senate inquiry.

The proposed bills also continue and extend (for another ten years) most of the same NTER polices which were and remain incorrectly termed 'special measures'. Consent was not gained from Aboriginal peoples at the outset of these policies. Informed consent cannot be gained in retrospect, and under the proposed legislation these policies are set to be extended for the long term! Blanket policies are failing.

The blanket approach to the NTER has denied people from across the NT prescribed communities their voice and failed to acknowledge the cultural strengths from within communities. In effect the NTER seems to have been aimed at changing the behavior and culture of Aboriginal peoples. The shift to mainstream services goes against evidence of what works**? Have the policies worked for the benefit of Aboriginal people**? Evidence from within *Close the Gap* reports proves otherwise despite what we are told.[6]

Communities have been split and Aboriginal governance structures have been ignored. Aboriginal people have lost control of their lives, communities and lands which has proven to be very damaging. One of the first measures under the NTER saw the compulsory acquisition of 600,000 Sq. Kms of Aboriginal lands.[7]

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[5] *This Is What W e Said* (Feb 2010), p,13-15

[6] Look at the statistics. E.g. on education see page 17, on health ,35 http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/ctg_nt_monitoring_rpt_janjun_2011/Documents/ctg_nt_monitoring_rpt_pt2_janjun11.pdf

[7] Prescribed areas of the ALRA are further defined in the *Report of the NTER Review Board (2008)*,9

On land Reform

The proposed legislation it seems further weakens the control or any 'real say' Aboriginal people have over their lands. There are many complexities around this and it is not clearly understood. This again fails to recognise the cultural ties to land, cultural Integrity and strengths of Aboriginal people, and fails to recognise the innate and intricate wholistic connection Aboriginal peoples have had with their lands since time immemorial,

> *"... for thousands of years you have lived in this land and fashioned a culture that endures to this day. And during all this time, the Spirit of God has been with you. Your "Dreaming", which influences your lives so strongly that, no matter what happens, you remain forever people of your culture,...."*[8] Pope John Paul II, 1986

Please do refer to the serious concerns on this- in the 'cA' submission, number 87.

Prior to the NTER there were other land reforms to the NT ALRA (1976) in 2006 and 2007. Many Aboriginal leaders and others including Tom Calma and Mick Dodson spoke out strongly against this 'quiet revolution' which went ahead with minimal scrutiny and without the consent of traditional owners. As background can we recommend to the committee two papers?

> Mick Dodson & Diana McCarthy, *Communal land and the amendments to the Aboriginal Land Rights Act (NT)*,[9] 2006
> http://www.aiatsis.gov.au/research/docs/dp/DP19.pdf

> Diana Perche's paper, *Indigenous land reform and the market: changing social constructions in Indigenous land policy during the Howard era*[10]

Extracts of the former include,

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[8] Alice Springs, 29th November 1986

[9] http://www.aiatsis.gov.au/research/docs/dp/DP19.pdf

[10] http://www.pol.mq.edu.au/apsa/papers/Non-refereed%20papers/perche%20Indigenous%20land%20reform%20and%20the%20market.pdf

The benefits of changes to ALRA tenure are questionable ... there is no doubt that there are very real risks for traditional owners under this particular set of 'new arrangements'

The remainder of this paper focuses on only one aspect of the reforms to the ALRA: the tenure changes. We are concerned that the human rights of Indigenous Australians, which include the right to culture and property (including property with distinct characteristics) have not been adequately taken into account in the formulation of this policy and believe that proceeding with these amendments without the free, prior and informed consent of traditional owners would breech Australia's obligations under international law.

..We seek to challenge the claim that changes to the ALRA will 'help Indigenous people to get greater economic benefit from their land'. We argue that communal title is a form of title that most closely reflects traditional governance structures and that communal title as it stands should only be abandoned if traditional owners were to make it clear that this is what they want. We further argue that there is simply no evidence that communal title is an impediment to wealth creation on Indigenous land and that there is much evidence from Australia and abroad to suggest that privatisation would worsen rather than improve the economic position of Indigenous people living in remote Australia. P, 9-10

In her second reading speech the minister speaks of respecting Aboriginal custodianship and working in partnership 'with' Aboriginal peoples. We refer the committee back to the land reform concerns.

There are too many other concerns. Depression, anger and despair is increasing and palpable in communities. The intervention (despite what we are led to believe) is not working to the benefit of Aboriginal people, as seen in the Government's own *Closing the Gap in the Northern Territory Monitoring Report January – June 2011.* E.g. the incidence of suicide and self-harm in the NT have increased since the introduction of the Intervention[11] in 2007 and school attendance has dropped.[12]

Professor Jon Altman analyzed this report and stated,

> *"The most recent data on progress suggests that the Intervention is failing, at least if its aim is to close gaps of socio-economic disadvantage between Indigenous and non-Indigenous Australians in the NT.*[13] *He adds, [i]f the Intervention policy framework is wrong, why is it about to be continued? Even evidence from the government's own monitoring is being ignored.*

In addition further controls, regulations and new punitive measures are to be added in the proposed legislation, e.g. in education SEAM trials. We do not feel these policies reflect the views or consent of Aboriginal people during the recent 2011 NT 'so-called' consultations. Please refer to the research paper of October 2011 which discusses this in further detail,

> ***Cuts to Welfare Payments for School Non Attendance - Requested or Imposed?"*** **(October 2011)** [14]

Rather than providing support and encouragement for the peoples own recommendation (the return to Bilingual education, the inclusion of culturally relevant education, full time teachers, looking as issues of chronic ill health in children, parenting supports etc,) the proposed legislation focuses predominantly on punitive regulatory approaches like cuts to family support payments when children do not attend school! SEAM trials are very much in question. On this please also read. Michael Brull's article,*"2012 or 1912? Stigmatising and humiliating Aboriginal parents,"* (27 December 2011) .[15] At the time of his writing the SEAM trials had not been publically released despite calls. It is a very expensive program with little if any real success.

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11 P, 66

12 Recorded school enrolment and attendance has declined from 64.5 percent in February 2009 to 62.7 percent in February 2011 with total enrolments declining from 8,960 to 8,914, despite rapid population growth. See, also Close the Gap Report, 17

13 Professor Jon Altman summary, at http://tracker.org.au/2011/11/evidently-a-new-intervention/

14 http://www.concernedaustralians.com.au/media/Welfare-Cuts-Requested-or-Imposed.pdf

15 http://www.abc.net.au/unleashed/3747968.html

Professor Anaya and Mr AnAnd Grover in 2009, and the UN and WCC later have added to the calls for a change in policy directions.[16] As they offer advice so to the Australian Community Aboriginal Elders and representatives.
We hope this senate committee gives considered and detailed discussion to submission 40 as discussed and also to submission 29 from the Elders and Community of Ramingining.

> *"Reconciliation involves building mutually respectful relationships between Indigenous and other Australians that allow us to work together to solve problems and generate success that's in everyone's best interests."* [17]

We finish with the words of WEH Stanner from 1958,

> *There are immense pressures of expediency we all understand. But they do not answer the ethical questions. The principles are clear. Is this use of power arbitrary? Is the decision just? And is it good neighbourly? Rigorously asked, and candidly answered, (the answers) will leave many people feeling uncomfortable...There are positive requirements which compel the Aborigine to give up his own choice of life in order to gain things otherwise conceded to be his of right. The ethics of the policy thus seem very dubious*

Thank You

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[16] *This Is What We Said*, p 63 -70.

[17] http://www.reconciliation.org.au/home/opinions/reconciliation-interviews/true-reconciliation