January 2012

Submission to the Senate Committee on the Land Reform Section of the Stronger Futures Legislation

Land Reform

The mention of land reform in the legislation is not immediately obvious as it rates little attention in the actual 'Reading of the Bill', nor is it highlighted on the Fahcsia website as are other aspects of the legislation.

The proposed land reform is presented as a special measure and applies to the Town Camps and to the Community Living Areas. We are told by Government that the Bill *will enable the Aboriginal landholders of town camps and community living areas to make use of their land for a broader range of purposes, including for economic development and private home ownership,* and that*, this bill builds on what Aboriginal people in the Northern Territory have told us about the changes they want to see for themselves and for their children.*

Of the eighty-two Community Living Areas listed on the Fahcsia site, most are small with populations of around 100 people. Seventy of these community living areas were not visited during the recent consultations and one has to ask, if the proposed land reform is to proceed as a special measure, how has consent been gained from the affected communities? And have the people of these communities been made fully aware of the impact of such legislation which would result in their loss of control over their land?

The Former Chief Justice Alastair Nicholson makes the following observation,

> *An essential prerequisite for this to be a special measure is that there was prior consultation with the people concerned and arguably, the informed consent of those people. There is no evidence of any such consent, whether informed or otherwise, and extremely limited evidence of consultation. There is nothing in the Stronger Futures report to suggest that these particular measures were discussed with the people although support for measures that enable private enterprises in the nature of small business to develop was apparently expressed by a number of people. We do not know whether these people were residents of town camps or community living areas or how many of them there were or whether their views were in any way representative of others.*

When the original Aboriginal Communities Living Areas Bill was passed back in 2000, it tells us that the *primary intention of the community living areas was to provide secure tenure for those Aboriginal groups in need, particularly for those Aboriginal groups presently or recently resident on pastoral leases. Excisions will be granted under a special freehold title to be provided under Northern Territory legislation*:

> NORTHERN TERRITORY OF AUSTRALIA
> Miscellaneous Acts Amendment (aboriginal community living areas) ACT [1]
> As in force at 1 December 2000, and

[1] http://www.austlii.edu.au/au/legis/nt/consol_act/maaclaa583.txt

with a number of clauses including:

> Actual living areas will have a *buffer zone* of one kilometre reserve from mineral exploration and mining. There will also be a provision for compensation from disturbance.

It is understood that these leases are very restrictive and that the changes planned by the Federal Government will increase flexibility of land use. However, the concern that we have is related to the control of the land in the event of a proposed economic development. Subsections of the legislation describe the requirements in relation to the owner's position in such circumstances:

> ***Subclause 35(4)*** *provides that a regulation cannot be made in relation to a community living area without prior consultation with: the Northern Territory Government; the owners of the land that is the community living area (on request from the relevant owners); the Land Council in whose area the*
> *community living area is located; and any other person the Commonwealth Minister for Indigenous Affairs considers appropriate to consult, including, for example, the Northern Territory Cattlemen's Association.*
>
> *It is intended that a public notification will be made to enable owners of community living areas to request to be consulted.*
>
> ***Subclause 35(5)*** *provides that a failure to consult as required under subclause 35(4) will not affect the validity of the regulations.*

It is clear that the owners, even if they object to the proposed regulation, are being provided with no avenues for formally opposing it. It is the Minister who has control over decision making.

The Hon Alastair Nicholson makes the following points,

> *The effect of this legislation is to give the Minister almost unlimited control over the uses of town camps and community living areas and in particular to enable their development for private purposes, presumably for profit. This is characterised as a special measure for the benefit of the Aboriginal people. It is true that the objects of the legislation are stated to enable measures to be taken for the benefit of the Aboriginal people, but the power conferred by the legislation rests entirely with the Minister and not with the people or their representatives – a classic example of white paternalism.*

And with regard to the ten year period as set out in the legislation, he goes on to say,

> *The provision of a ten year sunset clause is somewhat illusory in legislation of this sort because it preserves any action that has been taken under it after the expiration of the relevant period, by which time most, if not all, of the relevant land will have been alienated. This is important in considering whether the measures are special measures because it means that their effect will be a permanent one, despite the presence of a sunset clause. If therefore the Minister thought that it would be advantageous to sell a particular piece of land to a mining company, the people most affected would not only have no say in that process but would have lost the land permanently.*
>
> This legislation excludes Aboriginal people from the process and decision making regarding development on their land. We therefore oppose it.