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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2011

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Housing, Community Services and
Indigenous Affairs, the Hon Jenny Macklin MP)**

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2011

OUTLINE

The Stronger Futures in the Northern Territory Bill 2011 is a Bill for an Act to build stronger futures for Aboriginal people in the Northern Territory. Its object is to support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy.

The Bill comprises three measures aimed at building stronger futures for Aboriginal people in the Northern Territory. These are the tackling alcohol abuse measure, the land reform measure and the food security measure.

The Government considers that these are special measures within the meaning of section 8(1) of the *Racial Discrimination Act 1975* (Racial Discrimination Act). The Bill is being enacted to address specific Aboriginal disadvantage and help Aboriginal people to enjoy their human rights equally with others in the Australian community. The object clauses relating to each of these measures reflect that intention. The Bill is intended to operate, and to be construed, consistently with the Racial Discrimination Act.

The measures in the Bill have been developed taking into account the views of the Aboriginal people expressed during the extensive consultation process following the release of the Stronger Futures in the Northern Territory Discussion Paper in June 2011. The results of these consultations were published in the Stronger Futures in the Northern Territory Report on Consultations in October 2011.

All measures in the Bill will be the subject of an independent review of the first seven years of operation. The review must include an assessment of the effectiveness of the special measures. The report of that review must be completed eight years after the measures commence and must be tabled in Parliament. All measures will sunset after 10 years of operation.

Tackling alcohol abuse measure

The object of the tackling alcohol abuse measure is to enable special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory. The continued harm caused by alcohol abuse was a consistent theme that arose from the 2011 Stronger Futures in the Northern Territory consultations, especially the harm to communities, families and children. The consultation feedback noted that the harm caused by alcohol included accidents, deaths and health problems in communities. There were also discussions about the alcohol restrictions in place in communities. Many Aboriginal people in communities indicated that they wanted to maintain their ‘dry’ status.

Existing alcohol protections will be preserved in 'alcohol protected areas' with additional provisions that enable the geographic areas covered by these protections to be changed over time and for local solutions to be developed.

This Bill includes new provisions for the Commonwealth Minister for Indigenous Affairs to approve alcohol management plans. This allows for communities to play an active role in continuing to reduce alcohol-related harm, and to tailor a solution specific to the community's needs.

The Bill provides that any signs relating to alcohol restrictions must be respectful to Aboriginal people.

The Bill provides for an independent review to be carried out by the relevant Northern Territory Minister and Commonwealth Minister for Indigenous Affairs in relation to various laws of each jurisdiction, to assess the effectiveness of those laws in reducing alcohol-related harm amongst Aboriginal people in the Northern Territory. The review is to report within three years of commencement of the relevant provisions. The Bill also provides that, where the Commonwealth Minister for Indigenous Affairs has reasonable grounds to believe that particular licensed premises are linked to substantial alcohol-related harm to Aboriginal people, the Commonwealth Minister for Indigenous Affairs will be able to request the Northern Territory Government to appoint an assessor under the Northern Territory's Liquor Act to examine those premises.

Land reform measure

The land reform measure enables the Commonwealth to make amendments to Northern Territory legislation relating to community living areas and town camps to facilitate voluntary long term leasing, including for the granting of individual rights or interests and the promotion of economic development. This will enable opportunities for private home ownership in town camps and more flexible long term leasing including for business activity in community living areas.

The measure gives effect to the Commonwealth's commitment to provide a platform for secure tenure which then can enable economic development and home ownership opportunities in Aboriginal communities. The approach is consistent with the Commonwealth's commitment to voluntary lease arrangements on Aboriginal land.

Food security measure

The object of this measure is to enable special measures to be taken for the purpose of promoting food security for Aboriginal communities in the Northern Territory. In particular, this measure is intended to enhance the contribution currently made by the community stores licensing system to continue to improve access to fresh, healthy food.

The Bill recognises that community stores differ greatly and that the regulation of the store should be tailored to its individual circumstances. Community stores licensing will only apply to stores that are an important source of food, drink or grocery items for an Aboriginal community. Community stores licensing will not apply in areas that are major centres of the Northern Territory where there is adequate competition and choice in the supply of food, drink and grocery items.

Existing licences will be transitioned. Communities will be consulted before a decision is made as to whether any further stores should be required to hold a licence. A new penalty regime will operate, under which penalties may be imposed on community stores if they are required to hold a licence but fail to do so, or where a store breaches a condition of its licence.

FINANCIAL IMPACT STATEMENT

The financial impact of this Bill is $86.5 million over 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.

REGULATION IMPACT STATEMENT

The regulation impact statement appears at the end of this explanatory memorandum.

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2011

NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

- **Commonwealth Minister for Indigenous Affairs** means the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs.

- **Crown Lands Act** means the Crown Lands Act as in force in the Northern Territory.

- **Liquor Act** means the Liquor Act as in force in the Northern Territory.

- **Liquor Regulations** means the Liquor Regulations as in force in the Northern Territory.

- **NTER** means the Northern Territory Emergency Response.

- **NTNER Act** means the *Northern Territory National Emergency Response Act 2007*.

- **Racial Discrimination Act** means the *Racial Discrimination Act 1975*.

- **Secretary** means the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs.

- **Special Purposes Lease Act** means the Special Purposes Lease Act as in force in the Northern Territory.

- **Stronger Futures Consultation Report** means the Stronger Futures in the Northern Territory Report on Consultations of October 2011.

Part 1 – Preliminary

Division 1 – Introduction

Clause 1 sets out how the Act is to be cited, that is, as the *Stronger Futures in the Northern Territory Act 2011*.

Clause 2 provides a table that sets out the commencement dates of the various provisions in the Act. Clauses 3 to 120 of the Act will commence on Proclamation. Commencement on Proclamation will allow rules to be made under the new legislation to stipulate essential application matters, such as the areas in which the new measures will apply. If no earlier Proclamation is made, then clauses 3 to 120 will commence six months and one day after Royal Assent.

Clause 3 provides a guide to the Act.

Clause 4 outlines that the object of this Act is to support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy.

Division 2 – The Dictionary

Clause 5 defines certain terms that are used in the Act. In this explanatory memorandum, the defined terms will be addressed in the context in which they appear.

Part 2 – Tackling alcohol abuse

Summary

The proposed tackling alcohol abuse measure preserves area-based alcohol restrictions currently in place under the NTNER Act. The Bill provides for the Commonwealth Minister for Indigenous Affairs to approve alcohol management plans and for communities to develop these plans with a focus on the needs of their individual community. The Bill also provides for the appointment of Northern Territory licensing assessors to report on any premises where alcohol can be sold or consumed and that may be causing substantial alcohol-related harm. In addition, the Bill provides for an independent review of the relevant laws relating to alcohol regulation to be started within two years of commencement of the Bill.

Background

The Stronger Futures Consultation Report noted that there is general support for alcohol restrictions in communities. People living in dry communities generally want their communities to remain dry. Suggestions relating to the improvement of the alcohol restrictions included more effective regulation of licensees whose operations were impacting on levels of alcohol-related harm in communities, and providing permits that allow people to consume alcohol in private venues or to transport alcohol through communities. There were also suggestions for methods to reduce the supply of alcohol, including: total bans on alcohol sales, including takeaway; limiting the amount of alcohol that could be sold to people from particular communities; and closing down irresponsible outlets.

The tackling alcohol abuse measure proposes various initiatives to tackle alcohol-related harm to Aboriginal people. These initiatives include: a review of the relevant Commonwealth and Northern Territory alcohol and licensing laws, in relation to alcohol regulation aimed at reducing alcohol-related harm to Aboriginal people; enabling the Commonwealth Minister for Indigenous Affairs to request that Northern Territory licensing assessors assess premises that sell, or allow for the consumption of alcohol, where there is concern that they are contributing to alcohol-related harm to Aboriginal people; retaining current alcohol restrictions in Aboriginal communities including offences arising from those restrictions; and a strengthening of alcohol management plans to help bring about local solutions for Aboriginal communities that are focused on harm minimisation.

The Government considers that the tackling alcohol abuse measure is a special measure under the Racial Discrimination Act. The stated object of the measure is to enable special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory. The Government considers that this measure will assist in addressing the social, economic and health issues that affect Aboriginal people in relation to alcohol-related harm.

Explanation of the changes

Division 1 – Introduction

Clause 6 sets out the guide to Part 2 of the Bill (that is, the alcohol provisions).

Clause 7 sets out the object of Part 2, which is to provide special measures that help to reduce alcohol-related harm to Aboriginal people in the Northern Territory.

Division 2 – Modification of the NT Liquor Act and NT Liquor Regulations in relation to alcohol protected areas

Clause 8 inserts a new Division 1AA of Part VIII into the Liquor Act, which creates offences in relation to liquor within alcohol protected areas. It has stronger penalties of 100 penalty units or six months' imprisonment for offences involving bringing into, possessing, consuming, supplying or transporting less than 1,350 millilitres. Offences involving more than 1,350 millilitres continue to be punishable by a maximum of 680 penalty units or 18 months' imprisonment. The intention is that having alcohol within an alcohol protected area is to be treated as a significant offence.

It should be noted that there is an alternative process available under the Liquor Regulations for the issue of penalty infringement notices for minor offences. This process is available under this legislation by virtue of **clause 9**. Further, there is the option to refer an offender to the Substance Misuse Assessment and Referral for Treatment Court. This clause provides that the Liquor Act has effect as if Division 1AA of Part VIII, set out in this clause, were inserted into the Liquor Act. Division 1AA of Part VIII operates as follows.

> **Subsection 75A(1)** sets out a number of definitions that are used in this Division.
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> **Subsection 75A(2)** provides that Part IIAA of the Criminal Code as in force in the Northern Territory applies to an offence contained in this Division. This means that the offences contained in this Division must be done by a person with a certain level of mental intent or recklessness before a person can be convicted.
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> **Subsection 75A(3)** provides that anything done in the normal course of a postal service will not create an offence under this Division. The provision will enable postal services to be maintained in alcohol protected areas without the potential for people providing those services to be prosecuted under the provisions of this clause. However, this only applies in relation to anything done in the normal course of the provision of a postal service. It will only apply to official postal services and not to any carriage of goods outside an official postal service.

Subsection 75B(1) provides that a person commits an offence in an alcohol protected area if the person brings in liquor, has liquor in his or her possession or control, or consumes liquor in the alcohol protected area.

The maximum penalty for an offence is 100 penalty units or imprisonment for six months.

Subsection 75B(2) provides a defence to a prosecution for an offence under subsection 75B(1). If the defendant was engaged in recreational boating or commercial fishing activities on waters in an alcohol protected area, then the defence will apply, subject to subsection 75B(3). It is recognised that alcohol protected areas will include land covered by water, for example, rivers and estuaries. In many instances, Aboriginal land (and, therefore, the alcohol protected area) is defined as going to the low water mark. Therefore the area between the low water mark and the high water mark (that is, inter-tidal waters) would be alcohol protected areas in such circumstances.

It is intended that this defence will only be available where the boat carrying the alcohol enters the alcohol protected area from an area outside that alcohol protected area. The boat must be a kind of vessel used in navigation by water (see subsection 75A(1)). The boat must be on water. It is intended that recreational or commercial use of boats not be restricted by the alcohol ban, but nor should boats be permitted to become part of schemes to circumvent the alcohol ban. Alcohol cannot be brought over an alcohol protected area to supply a boat. This defence does not allow drinking on land such as from river banks or beaches.

Subsection 75B(3) provides that the defence allowed in subsection 75B(2) will not be available where the prosecution can show that the alleged conduct occurred in an area covered by a declaration made under subsection 75D(1).

Subsection 75B(4) provides that it is a defence to a prosecution for an offence under subsection 75B(1) (bringing liquor into, possessing or controlling liquor in, or consuming liquor within, an area) if certain criteria are met. Under paragraph (a), the defendant must be engaged in recreational activities. Paragraph (b) requires the recreational activities to have been organised by a person in the tourist business. Paragraph (c) requires that, if the area is a National Park or Northern Territory Park, the recreational activities are consistent with any management plan or similar document created for that park. Paragraph (d) requires that, if alcohol is consumed, the defendant must have been behaving in a responsible manner.

Subsection 75B(5) provides a defence to a prosecution under subsection 75B(1) for a person who is bringing alcohol into an alcohol protected area for the purposes of other people engaging in conduct under which those other people could claim a defence under subsection 75B(4).

Subsection 75B(6) provides that the defence allowed in subsection 75B(4) or (5) will not be available where the prosecution can show that the alleged conduct occurred in an area covered by a declaration made under subsection 75D(2).

Subsection 75B(7) provides that it is a defence to a prosecution for an offence under subsection 75B(1) (bringing liquor into, possessing or controlling liquor in, or consuming liquor within, an area) if the conduct only occurred due to the person having to render assistance in an emergency to preserve life, prevent injury or to protect property.

Subsection 75C(1) provides that a person commits an offence in a alcohol protected area if the person:

- supplies liquor to a third person;
- transports liquor intending to supply any of it, or believing that another person intends to supply any of it, to a third person; or
- possesses liquor intending to supply any of it to a third person,

and the third person is in an alcohol protected area.

The maximum penalty for an offence is 100 penalty units or six months imprisonment.

Subsection 75C(2) provides a defence to a prosecution for an offence under subsection 75C(1). It is the same defence as contained in subsection 75B(2) for offences committed under subsection 75B(1), that is, the defence of recreational boating or commercial fishing activities.

Subsection 75C(3) provides that the defence allowed in subsection 75C(2) will not be available where the prosecution can show that the alleged conduct occurred in an area covered by a declaration made under subsection 75D(1).

Subsection 75C(4) provides a defence if the defendant and the person supplied, or to be supplied, were engaged in recreational activities in a National Park or a Northern Territory park. The recreational activities must be organised by someone in the tourist business. If the area is a park and if a management plan or similar document for the park exists, the recreational activities must be consistent with that.

Subsection 75C(5) provides a defence to a prosecution under subsection 75C(1) for a person who is bringing alcohol into an alcohol protected area for the purposes of other people engaging in conduct under which those other people could claim a defence under subsection 75C(4).

Subsection 75C(6) provides that the defence allowed in subsection 75C(4) or (5) will not be available where the prosecution can show that the alleged conduct occurred in an area covered by a declaration made under subsection 75D(2).

Subsection 75C(7) provides that, where a person commits an offence in the same terms as in subsection 75C(1) but the amount of alcohol involved exceeds 1,350 millilitres, the penalty is 680 penalty units or imprisonment for 18 months. The serious penalties in relation to larger scale offences aim to reduce the flow of liquor into Aboriginal communities and target those profiting from unlawful transportation of the sale of liquor in Aboriginal communities.

Subsection 75C(8) provides that a person who can prove that he or she did not have an intention or belief that the alcohol was to be supplied to another person as provided in paragraph 75C(7)(b) will not be subject to the higher range of penalties.

Subsection 75C(9) provides that it is a defence to a prosecution for an offence under subsection 75C(1) if the conduct only occurred due to the person having to render assistance in an emergency to preserve life, prevent injury or to protect property.

Subsection 75D(1) provides that a ministerial declaration may be made which precludes the use of the recreational boating defence if necessary. Where concerns arise that the alcohol bans are being subverted by use of the recreational boating defence in particular areas, the subclause enables the removal of the defence in those particular areas.

Subsection 75D(2) provides that the Commonwealth Minister for Indigenous Affairs may declare that a specified area of land or waters in an alcohol protected area is an area to which a defence under subsection 75B(4), 75B(5), 75C(4) or 75C(5) is available. The intention is that people undertaking organised tourist activities in an alcohol protected area would be able to avail themselves of the defences in those subsections if the area is covered by a ministerial declaration.

Subsection 75D(3) provides that a ministerial declaration under subsection 75D(1) or (2) is a legislative instrument for the purposes of the Legislative Instruments Act.

Section 75E provides that, while an area is declared under subsection 75D(1) the Northern Territory Licensing Commission may, if it is practicable to do so, put up notices where a customary access route enters the area, stating that a defence under subsections 75B(2) and 75C(2) is not available in relation to the area. Additionally, the Commission may advertise in a newspaper circulated in a relevant area that a defence under subsection 75B(2) or 75C(2), that is, the defence of recreational boating or commercial fishing, is not available in relation to that area. This means that people will not be able to take alcohol into the declared area while engaging in recreational boating or commercial fishing.

Subsection 75F(1) provides that a person commits an offence if he or she removes or damages a notice explaining an alcohol ban, that is, a notice posted under subclause 14(3). The maximum penalty for an offence against this provision is five penalty units.

Subsection 75F(2) provides a defence for actions which would otherwise fall within subsection 75F(1) that were performed as part of a person's duties.

Clause 8 should be read together with clauses 12 and 13, under which existing provisions in the Liquor Act, for granting licences and permits to access alcohol in alcohol protected areas, may continue to apply on the land affected. Individual people within the alcohol protected areas may apply for a permit under section 87 of the Liquor Act, as was allowed before these measures were introduced.

The burden of proving defences, at least on the balance of probabilities, provided for in new Division 1AA of Part VIII rests with the defendant. While this seems to be contrary to usual principles, it is consistent with similar provisions in the Liquor Act. It is not intended that it should be easier, or harder, for a person to raise defences to the offences in new Division 1AA of Part VIII than it is for similar offences already existing in the Liquor Act.

Clause 9 provides that the prohibitions and offences under the Liquor Act, which are applicable to general restricted areas, will also apply in all alcohol protected areas in the Northern Territory.

Subclause 9(2) provides that any amendment to a Northern Territory law, or any action taken under such a law, is invalid to the extent that it prevents any alcohol protected area from being considered to be a general restricted area for the purposes of the Liquor Act.

Clause 10 relates to seizure of vehicles. It provides that the Liquor Act should be read as containing new section 95A. Its purpose is to ensure that a community is not disadvantaged by vehicle seizures resulting from the acts of individuals who might bring alcohol into an alcohol protected area using an asset intended for the benefit of a community. The types of vehicle covered by this measure include night patrol vehicles and community buses.

Section 95A provides that an Inspector of Licensed Premises appointed under section 18 of the Liquor Act in deciding whether to seize a vehicle, under section 95, 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 by the seizure of the vehicle.

Clause 11 provides that the Liquor Regulations have effect as if an offence under new subsection 75F(1) (that is, defacing or damaging signs) was an infringement offence for the purposes of those Regulations.

Part 3 of the Liquor Regulations provides a system of infringement notices. Infringement notices may be issued by a police officer if the police officer reasonably believes that an offence has been committed. The amount payable for an infringement notice is $100. If a person issued with an infringement notice does nothing in response to the notice, a range of sanctions may be utilised, which include making a community work order. Individuals can contest an infringement notice by electing to have the matter dealt with in a court.

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

Clause 12 confers on the Commonwealth Minister for Indigenous Affairs the authority to determine whether licences for premises within existing general restricted areas (as defined in section 4 of the Liquor Act) should be allowed to continue or should have their conditions modified.

Subclause 12(1) has effect if, immediately before the commencement of this Part, a licence under the Liquor Act was in force within a particular alcohol protected area.

Subclause 12(2) provides that, subject to this clause, the licence continues to have effect on the terms on which it was issued. Nothing in this provision prevents the NT Licensing Commission from cancelling a licence as it otherwise is entitled to under the Liquor Act.

Subclause 12(3) provides that licence holders in alcohol protected areas must not make sales of takeaway alcohol unless the purchaser holds a permit. The permit must be valid for the alcohol protected area and allow for the purchase of takeaway alcohol. Permits are issued under section 87 of the Northern Territory Liquor Act.

Subclause 12(4) provides that the Commonwealth Minister for Indigenous Affairs may give a notice to a licensee in an alcohol protected area (and to the Commission) prohibiting the sale of alcohol for consumption on the premises or away from the premises.

Subclause 12(5) provides that the Commonwealth Minister for Indigenous Affairs can determine conditions of a licence are varied as specified in a notice in writing given to the licensee and the Northern Territory Licensing Commission.

Subclause 12(6) provides that, where the Commonwealth Minister for Indigenous Affairs gives a notice under either subclause 12(4) or (5) then at least 14 days notice must be given to the licence holder of the change to their licence.

Subclause 12(7) provides that, if a determination is made under subclause (4) or (5), the Liquor Act and the licence has effect accordingly.

Subclause 13(1) provides that a permit issued under section 87 of the Liquor Act (that is, a permit enabling a person in a general exemption area which will become a alcohol protected area under this Part to possess or consume alcohol in that area), whether before or after the commencement of this Part, is subject to this Bill.

Subclause 13(2) provides that, subject to this clause, the permit continues to have effect on the terms on which it was issued. Nothing in this provision prevents the Northern Territory Licensing Commission from cancelling a permit as it otherwise is entitled to under the Liquor Act.

Subclause 13(3) provides that the Commonwealth Minister for Indigenous Affairs may, by notice in writing given to the permit holder, determine that the permit does not authorise a person to:

- bring liquor into;
- have liquor in his or her possession or under his or her control within; or
- consume liquor within,

an alcohol protected area.

Subclauses 13(4) and (5) provides that the Commonwealth Minister for Indigenous Affairs may, by notice in writing given to the permit holder, determine that the conditions of the permit are varied in a way specified in the notice from a time not earlier than 14 days after the notice is issued.

Subclause 13(6) provides that, if a determination is made under subclause 13(3) or (4), the Liquor Act and the permit have effect accordingly.

The Northern Territory Licensing Commission has issued permits to people to allow them and their guests to consume liquor within a general restricted area. It is proposed that those permits be reviewed. If it is considered necessary in order to give full effect to efforts to reduce consumption of liquor within alcohol protected areas, it may be necessary to withdraw or vary the permit while the area is an alcohol protected area**. Clause 13** will enable the Commonwealth Government to give effect to such measures.

Division 4 – Notices about alcohol offences in alcohol protected areas

Subclause 14(1) provides that the Northern Territory Licensing Commission may determine that notices should be put up at:

- the place where a customary access route enters the area; and
- the customary departure locations for aircraft flying into the area,

informing the public that it is an offence to bring liquor into the area, be in possession or control of liquor in the area, or consume, sell or otherwise dispose of liquor within an area that is an alcohol protected area, and also setting out any other information that the Commission considers appropriate.

Customary access route in this sense means usual or commonly used routes including roads or tracks. In some cases it may be a river or other water way.

Subclause 14(2) provides that any notice put up in accordance with subclause 14(1) must be respectful of Aboriginal people. To ensure that the wording of the notice is respectful, the Commission must consult with people living in the area under subclause 14(5).

Subclause 14(3) provides that the Commission must put up a notice at the places mentioned in subclause 14(1) if a determination is in force under that subclause.

Subclause 14(4) provides that, where the Commission has made a determination under subclause 14(1) in relation to an alcohol protected area, the Commission may cause a notice to be published in a newspaper, circulated in the district where that alcohol protected area is situated, which sets out that it is an offence bring liquor into, to be in possession or control of liquor, or to consume or sell liquor within a described area. The notice may also specify any other information that the Commission considers appropriate.

Subclause 14(5) provides that, before making a determination under subclause 14(1), the Commission must consult people living in the area in regard to the making of the determination or in relation to the wording of the notice.

Subclause 14(6) provides a number of factors that the Commission must have regard to before making a determination under subclause 14(1).

Subclause 14(7) provides that the Commission may revoke a determination that it has made under subclause 14(1).

Clause 14 has similarities to section 85 of the Liquor Act. The effect of clause 14 is to place a similar obligation on the Northern Territory Licensing Commission in respect of alcohol protected areas as currently applies for general restricted areas. The purpose of posting the notices is to ensure that people entering an alcohol protected area are aware of the offences in relation to liquor that apply within the alcohol protected area and the penalties that apply to an offence.

Division 5 – Assessments of licensed premises

Subclause 15(1) provides that the Commonwealth Minister for Indigenous Affairs is able to make a request under subclause 15(2) in respect of particular licensed premises (that is, to request than the Northern Territory Minister appoint an assessor under the Liquor Act) where the Commonwealth Minister for Indigenous Affairs believes that the sale of liquor is related to alcohol-related harm to Aboriginal people and the Commonwealth Minister for Indigenous Affairs has given the Northern Territory Minister 28 days notice of the Commonwealth Minister for Indigenous Affairs' intention to make such a request in relation to the premises in question.

Subclause 15(2) provides that the Commonwealth Minister for Indigenous Affairs may request the Northern Territory Minister to appoint an assessor under the Liquor Act to conduct an assessment of specific licensed premises in a specified period and with the terms of reference specified by the Commonwealth Minister for Indigenous Affairs.

Subclause 15(3) provides that, if the Northern Territory Minister receives a request made by the Commonwealth Minister for Indigenous Affairs under subclause 15(2), then the Northern Territory Minister must appoint an assessor to report, in the terms and in the time specified by the Commonwealth Minister, on the licensed premises in question. The assessor must then report as requested and the Northern Territory Minister must give the Commonwealth Minister a copy of the report as soon as practicable after the Northern Territory Minister receives the report.

Subclause 15(4) provides that subclause 15(3) does not apply if the Northern Territory Minister declines the request on grounds stipulated under subclause 15(5) and complies with the requirements in subclause 15(6).

Subclause 15(5) allows the Northern Territory Minister to decline a request they believe that compliance with the request would place an undue financial burden on the Northern Territory or would otherwise be inappropriate.

Subclause 15(6) states that, if the Northern Territory Minister does decline a request made under subclause 15(5), then, within 28 days of receiving the request, the Northern Territory Minister must give the Commonwealth Minister for Indigenous Affairs a statement, setting out the Northern Territory Minister's decision and the reasons for it, and publish the statement on the Northern Territory Minister's website.

Subclause 15(7) provides that, if the Commonwealth Minister for Indigenous Affairs receives a statement from the Northern Territory Minister in accordance with subclause 15(6), then the Commonwealth Minister for Indigenous Affairs may publish this statement on their website.

Division 6 – Alcohol management plans

Clause 16 provides for the application process for the approval of an alcohol management plan. The rationale for Ministerial approval of plans as a whole derives from the fact that the previous arrangements resulted in only those proposals in an alcohol management plan which would require a Determination were brought to the attention of the Commonwealth Minister for Indigenous Affairs. In deciding whether to approve an alcohol management plan, the Commonwealth Minister for Indigenous Affairs must now review and consider all elements of an alcohol management plan, such as rehabilitation, service provision and education, not merely proposals that would require the Commonwealth Minister for Indigenous Affairs to lift restrictions if the plan were approved. The revised approach is designed to ensure that the Commonwealth Minister for Indigenous Affairs and communities can be assured that alcohol management plans are directed at minimising alcohol related harm.

Subclause 16(1) provides that a person may apply for approval of an alcohol management plan if they lodge a written application in accordance with clause 16.

Subclause 16(2) provides that the application for approval of an alcohol management plan must be in the form prescribed by the rules (if any has been prescribed), be accompanied by the alcohol management plan and include any information or be accompanied by any other documents as are prescribed by the rules.

Subclause 16(3) provides that the alcohol management plan that accompanies an application must be in the form and include any information prescribed by the rules.

Subclause 16(4) provides that an application made under paragraph 16(1)(a) is lodged, for the purposes of this provision, if it is delivered to a person performing duties at a place prescribed by the rules, or in a manner and to a place prescribed by the rules. Alternatively, the application can be delivered to a person approved for this purpose by the Secretary.

Subclause 17(1) provides that the Commonwealth Minister for Indigenous Affairs must determine whether or not to approve an alcohol management plan where an application has been made under subclause 16(1).

The Commonwealth Minister for Indigenous Affairs cannot approve an alcohol management plan where the plan does not meet the requirements of for an alcohol management plan that are prescribed by the rules (**subclause 17(3)**). One of the purposes of the rules is to enable the Commonwealth Minister for Indigenous Affairs to establish minimum standards or criteria for alcohol management plans.

In deciding whether or not to approve an alcohol management plan, **subclause 17(2)** provides that the Commonwealth Minister for Indigenous Affairs must have regard to the object of this Part, together with any matter prescribed by the rules and any other matters the Commonwealth Minister for Indigenous Affairs considers relevant.

Subclauses 17(4) and (5) provide that, while not limiting the power of refusal, the Commonwealth Minister for Indigenous Affairs can refuse approval of an alcohol management plan, in particular, if the Commonwealth Minister for Indigenous Affairs does not receive sufficient documents, material or assistance to be able to make an informed decision.

Subclauses 17(6) and (7) provide that the Commonwealth Minister for Indigenous Affairs is not required to make a determination to approve an alcohol management plan where the Commonwealth Minister for Indigenous Affairs is satisfied that people living in the area have not been sufficiently consulted about the plan or a majority of those people do not support the plan and the Commonwealth Minister for Indigenous Affairs gives written notice of such to the applicant, including the reasons for making the decision. However, this provision does not restrict their ability to approve a plan, notwithstanding the absence of either or both of these factors.

Subclause 18(1) provides that, if the Commonwealth Minister for Indigenous Affairs proposes to refuse to approve an application for an alcohol management plan, then the Commonwealth Minister for Indigenous Affairs must give the applicant written notice to this effect.

Subclause 18(2) provides that a notice given by the Commonwealth Minister for Indigenous Affairs under subclause 18(1) must specify the reasons why approval may be refused, invite the applicant to make written submissions in relation to issues set out in the notice, and specify the manner and time period in which any submission must be lodged.

Subclause 18(3) provides that, for the purposes of subclause 18(2), any submission period must be at least 10 business days after the day on which the notice is given.

Subclause 18(4) provides that the Commonwealth Minister for Indigenous Affairs cannot refuse approval of an application for an alcohol management plan unless written notice has been given to the applicant and the Commonwealth Minister for Indigenous Affairs has considered any submission received during the relevant submission period.

Clause 19 provides that the period during which an approval of an alcohol management plan is in force starts on the day specified in the approval or, if no specification is made, the day the approval was granted and continues until either the day specified in the approval, until the approval is revoked, or the day this Act ceases to have effect, whichever is the later.

Clause 20 provides that the Commonwealth Minister for Indigenous Affairs must give written notice to the applicant in relation to whether or not approval of the alcohol management plan has been given. Where approval has been refused, the Commonwealth Minister for Indigenous Affairs must specify the reasons for that refusal.

Clause 21 provides that, where an alcohol management plan has been approved, it cannot be varied unless there is approval of that variation under subclause 23(1).

Subclause 22(1) provides that a person can apply for approval of a variation to an approved alcohol management plan by either making an application in a manner approved by the Secretary or by lodging a written application in accordance with subclauses 22(2) and (3).

Subclause 22(2) provides that an application for variation of an approved alcohol management plan must be in the form, include any information and be accompanied by any documents as prescribed by the rules.

Subclause 22(3) provides that an application made under subclause 22(1) is lodged, for the purposes of this provision, if it is delivered to a person performing duties at a place prescribed by the rules, or in a manner and to a place prescribed by the rules. Alternatively, the application can be delivered to a person approved for this purpose by the Secretary.

Subclause 23(1) provides that the Commonwealth Minister for Indigenous Affairs may approve an application to vary an approved alcohol management plan where an application has been made under subclause 22(1), by giving written notice to the applicant.

In deciding whether or not to approve a variation to an approved alcohol management plan, **subclause 23(2)** provides that the Commonwealth Minister for Indigenous Affairs must have regard to the object of this Part together with any matter prescribed by the Rules and any other matters the Commonwealth Minister for Indigenous Affairs considers relevant.

Subclause 23(3) allows the Commonwealth Minister for Indigenous Affairs to refuse to approve a variation of an alcohol management plan where the applicant does not provide sufficient documents, material or assistance to allow the Commonwealth Minister for Indigenous Affairs to make an informed decision, without limiting the grounds on which the Commonwealth Minister for Indigenous Affairs may refuse to vary an alcohol management plan (**subclause 23(4)**).

Subclauses 23(5) and **(6)** provide that, if the Commonwealth Minister for Indigenous Affairs does make a determination under subclause 23(1), then written notice of that decision must be given to the applicant, including reasons for refusal, where a decision has been made to refuse the application for variation.

Subclause 23(7) provides that a determination made under subclause 23(1) only takes effect on the day a notice is given under subclause 23(5), or on a later date as specified in that notice.

Clause 24(1) allows the Commonwealth Minister for Indigenous Affairs to revoke the approval of an alcohol management plan where the Commonwealth Minister for Indigenous Affairs is satisfied that the plan has not been complied with, the plan was varied without approval, or the plan is ineffective in achieving the object of this Part.

Subclause 24(2) provides that, if the Commonwealth Minister for Indigenous Affairs revokes an approval of an alcohol management plan, then a written notice to this effect must be given to the nominated person; that is, the person that the Commonwealth Minister for Indigenous Affairs considers is the most appropriate person to notify.

Subclause 24(3) provides that the revocation of the approval of an alcohol management plan takes effect on the day specified in the notice of revocation or at the date the notice is given, whichever is the later.

Subclause 25(1) provides that, if the Commonwealth Minister for Indigenous Affairs proposes to refuse to approve the variation of an alcohol management plan then the Commonwealth Minister for Indigenous Affairs must give the applicant written notice to this effect.

Subclause 25(2) provides that, if the Commonwealth Minister for Indigenous Affairs proposes to revoke an approved alcohol management plan, then the Commonwealth Minister for Indigenous Affairs must give the nominated person notice to this effect.

Subclause 25(3) provides that a notice given by the Commonwealth Minister for Indigenous Affairs under either subclause 25(1) or (2) must specify the reasons for the proposed revocation or why approval of the variation may be refused. Additionally, the Commonwealth Minister for Indigenous Affairs must invite written submissions in relation to issues set out in the notice, and specify the manner and time period in which any submission must be lodged.

Subclause 25(4) provides that, for the purposes of subparagraph 25(3)(c)(i), any submission period must be at least 10 business days after the day on which the notice is given.

Subclause 25(5) provides that the Commonwealth Minister for Indigenous Affairs cannot revoke or refuse approval of an application for variation of an alcohol management plan unless written notice has been given either to the nominated person or to the applicant, respectively, and the Commonwealth Minister for Indigenous Affairs has considered any submission received during the relevant submission period.

Clause 26 provides that, if the Commonwealth Minister for Indigenous Affairs has approved an application for an alcohol management plan under subclause 17(1), then the area covered by that plan will be known as a community managed alcohol area.

Division 7 – Alcohol protected areas

Subclause 27(1) allows the Commonwealth Minister for Indigenous Affairs to prescribe, in the rules, that certain areas in the Northern Territory are alcohol protected areas for the purposes of this Part (that is, those areas are subject to alcohol restrictions).

Subclause 27(2) provides that the Commonwealth Minister for Indigenous Affairs can revoke a rule made for the purposes of subclause 27(1).

Subclause 27(3) provides that, if the Commonwealth Minister for Indigenous Affairs has approved an alcohol management plan under subclause 17(1) and a rule has been made under subclause 27(1) in relation to all or part of the area covered by the alcohol management plan, then the Commonwealth Minister for Indigenous Affairs must consider whether or not to make a rule under subclause 27(2), revoking a rule under subclause 27(1) in relation to that area. That is, when an alcohol management plan has been approved by the Commonwealth Minister for Indigenous Affairs, the Commonwealth Minister for Indigenous Affairs must consider whether alcohol restrictions still need to apply in respect of part or all of the area covered by the alcohol management plan.

Subclause 27(4) provides that rules may be made for the purposes of subclause 27(1) on the Commonwealth Minister for Indigenous Affairs' own initiative, after approval of an alcohol management plan in relation to that area or at the request of a person who is ordinarily a resident in the area in question.

Subclause 27(5) provides that rules that may be made for the purposes of subclause 27(2) may be made by the Commonwealth Minister for Indigenous Affairs on his or her own initiative, after revocation of an alcohol management plan in relation to that area, or at the request of a person who is ordinarily a resident in the area in question.

Subclause 27(6) provides that, before the Commonwealth Minister for Indigenous Affairs makes a rule under either subclause 27(1) or (2), the Commonwealth Minister for Indigenous Affairs must ensure that information about the proposal to make the rule, together with a short explanation of the consequences if such a rule is made, have been made available in the area in question. Additionally, the Commonwealth Minister for Indigenous Affairs must also ensure that the people in the affected area have been given a reasonable opportunity to make submissions to the Commonwealth Minister for Indigenous Affairs about the proposal to make the rule, the consequences if the rule is made and their circumstances, concerns and views in relation to the making of the rule.

Subclause 27(7) provides that the requirement in subclause 27(6) (that is, community consultation) does not apply in respect of a rule made on the basis of the approval of an alcohol management plan. This is because there should have already been sufficient community consultation prior to an alcohol management plan being approved.

Subclause 27(8) provides that a failure by the Commonwealth Minister for Indigenous Affairs to comply with subclause 27(6) does not affect the validity of a rule made under either subclause 27(1) or (2).

Subclause 27(9) sets out a number of matters the Commonwealth Minister for Indigenous Affairs must have regard to before making a rule under either subclause 27(1) or (2).

Subclause 27(10) provides that, if the Commonwealth Minister for Indigenous Affairs makes a rule that means that an area that was an alcohol protected area is no longer such, then this Part continues to apply to any actions, or omissions, done in relation to that area when it was an alcohol protected area.

Division 8 – Independent review of Commonwealth and Northern Territory laws relating to alcohol

Subclauses 28(1) and **(2)** provide that, two years after the commencement of this Act, the Commonwealth Minister for Indigenous Affairs and the Northern Territory Minister must cause an independent review to occur of a number of different Commonwealth and Northern Territory laws, to assess their effectiveness in reducing alcohol-related harm to Aboriginal people living in the Northern Territory. The review will also report on whether any of the laws listed should be amended or repealed to achieve this goal (including whether the law is no longer needed) as well as any other matters specified by the Commonwealth Minister for Indigenous Affairs and the Northern Territory Minister.

Subclauses 28(3), (4), (5) and (6) provide that the review must be completed and a report of the review prepared within three years of commencement of this Act and that the Commonwealth Minister for Indigenous Affairs and Northern Territory Minister will cause a copy of the report to be tabled in the Commonwealth Parliament and Northern Territory Legislative Assembly, respectively, within 15 days of those Ministers having received it.

Division 9 – Other matters

Clause 29 provides that, where the Commonwealth Minister for Indigenous Affairs requests information relevant to the operation of this Part, the NT Licensing Commission or the Director must take all reasonable steps to provide that information. Clause 29 allows the Commonwealth Minister for Indigenous Affairs to ask for information at any time.

Subclause 30(1) provides that the Liquor Act and the Liquor Regulations have effect subject to the modifications in this Part in relation to an alcohol protected area. This means that the Northern Territory legislation will still have effect and will need to be read with this Bill to identify which provisions are modified, for example, in relation to alcohol protected areas.

Subclause 30(2) provides that the Liquor Act and the Liquor Regulations modified by this Part have effect as laws of the Northern Territory. In effect, the Liquor Act and the Liquor Regulations are to be read as amended accordingly.

Clause 31 provides that certain decisions made by the Commonwealth Minister for Indigenous Affairs in relation to the administration of alcohol management plans are subject to review by the Administrative Appeals Tribunal.

Part 3 – Land reform

Summary

The land reform measure gives the Commonwealth power to make regulations to amend Northern Territory legislation relating to community living areas and town camps to facilitate voluntary dealings in land, including the granting of individual rights or interests and promotion of economic development.

Background

Part 3 of this Bill gives effect to the Government's commitment to provide a platform for secure tenure, including economic development and home ownership opportunities in Aboriginal communities.

During the Stronger Futures in the Northern Territory consultations, housing discussions considered home ownership, including how to encourage greater private home ownership. Similarly, during economic development and employment discussions, questions were centred on improving business and employment opportunities in Northern Territory remote communities. The consultations reported that specific barriers to economic development should be overcome including continued land reform.

Long term leasing of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* can facilitate these goals. However, Northern Territory legislation that provides for other forms of Aboriginal land - community living areas and town camps – contains various restrictions and procedural barriers that inhibit long term leasing.

The Bill allows the Commonwealth Government to make regulations that will remove restrictions and barriers from Northern Territory legislation. The regulation making powers contained in this Part do not limit the ability of the Northern Territory Government to progress its own reforms in relation to these matters. If Northern Territory reforms are implemented in a manner which meets the Government's commitment to more flexible land tenure arrangements, Commonwealth regulation will not be necessary.

The Government considers the land reform measure to be a special measure for the purposes of the Racial Discrimination Act. The measure affords Aboriginal people opportunities for home ownership and economic development; conferring improved property rights and allowing similar opportunities that other Australians already experience.

Explanation of the changes

Division 1 – Introduction

This Division inserts a guide to the structure of Part 3 and an object provision. The object of Part 3 is to enable special measures to be taken in relation to town camps and community living areas to facilitate the granting of individual rights or interests and promote economic development.

Division 2 – Town camps

Town camps are areas of land covered by leases in perpetuity granted to Indigenous Housing Associations or Corporations under the Northern Territory's Special Purposes Leases Act or the Crown Lands Act.

Currently this Northern Territory legislation contains restrictions on the subdivision of leases in town camps and the permitted use or purpose of any leases granted over land that is part of a town camp.

This Part specifically provides for a Commonwealth regulation-making power that will enable the modification of Northern Territory legislation in relation to land covered by leases granted under the Special Purposes Leases Act or the Crown Lands Act.

Clause 34 is a regulation-making power that allows Northern Territory laws to be modified to the extent that the law applies to a town camp. The regulation-making power allows for the overcoming of restrictions and impediments relating to dealings, planning and infrastructure on town camp land for the benefit of Aboriginal people.

Future models for home ownership and economic development in town camps, developed in consultation with the relevant stakeholders, are able to be implemented.

Any regulation made under this measure is taken to have modified the relevant Northern Territory law and that modified law is to apply as if a law of the Northern Territory had made those modifications. This does not prevent the Northern Territory from concurrently using its legislative powers in relation to the same matters in town camps.

In addition, because a regulation has the effect of modifying relevant Northern Territory law, any rights, titles and interests in property created by these regulations existing at the time of sunset will not be adversely affected when the measure sunsets (see clause 118). That is, any repeal of the regulations upon sunset of this Part will not affect the amendments made to relevant Northern Territory Act(s), or to the operation of those Acts as amended. This is to ensure that any proprietary interests and rights in town camps that directly rely on the relevant Acts, as amended, are not affected by the sunset of Part 3. The relevant Act(s) would still be capable of amendment after the sunset of Part 3, but only by the Northern Territory.

This measure does not prevent the Northern Territory from introducing legislation that removes barriers and restrictions to dealings in land in town camps. If Northern Territory reforms are implemented in a manner that meets the Commonwealth commitment to more flexible land tenure arrangements, Commonwealth regulation will not be required.

Subclauses 34(4) and **34(5)** provide a related power to treat existing leases granted under the Northern Territory Special Purposes Leases Act as though these were leases granted under the Northern Territory Crown Lands Act and, therefore, subject to the provisions of the Northern Territory Crown Lands Act. This would remove certain barriers to home ownership and economic development; although the Northern Territory Crown Lands Act does impose some restrictions on dealings with land, those restrictions are less onerous than the restrictions imposed by the Northern Territory Special Purposes Leases Act.

Subclauses 34(6) and **34(7)** provide for the direct modification of the purposes of existing leases to remove current limitations.

The requirement to consult relevant parties, as provided under **subclause 34(8)**, is designed to ensure efficiency and transparency in the making of the regulations.

Subclause 34(1) provides that the regulations may modify any law of the Northern Territory in relation to matters specified in paragraphs 34(1)(a) to (e) to the extent that the law applies to a town camp.

Paragraph 34(1)(a) provides that the regulations may modify any law of the Northern Territory relating to the use of land. Existing leases are subject to statutory or instrument-specific permitted use restrictions which are not compatible with activity that meets the objects of Part 3.

Paragraph 34(1)(b) provides that the regulations may modify any law of the Northern Territory relating to dealings in land. The purpose of paragraph 34(1)(b) is to enable activity in town camps that is consistent with the objects of Part 3. Dealings in land are defined in Division 2, clause 5 of the Bill. The leases are predominately subject to statutory restrictions or procedural requirements that may prohibit certain dealings in the land, for example, mortgages and other security type transactions and subdivision, which are often necessary to enable activity that meets the objects of Part 3.

Paragraph 34(1)(c) provides that the regulations may modify any law of the Northern Territory relating to planning. The purpose of paragraph 34(1)(c) is to enable activity in town camps that is consistent with the objects of Part 3.

Paragraph 34(1)(d) provides that the regulations may modify any law of the Northern Territory relating to infrastructure. The purpose of paragraph 34(1)(d) is to enable activity in town camps that is consistent with the objects of Part 3 in town camps.

Paragraph 34(1)(e) provides that the regulations may modify any law of the Northern Territory relating to any matter prescribed by the regulations. The purpose of paragraph 34(1)(e) is to enable activity in town camps that is consistent with the objects of Part 3. Paragraph 34(1)(e) would only be used if, in any given situation, it is deemed that paragraphs 34(1)(a) to (d) would not adequately facilitate the ability to carry out that activity.

Subclause 34(2) defines the term ***town camp*** which is given a meaning that is consistent with section 20CA of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Land which meets this definition at the commencement of the Act continues to be a town camp for the purposes of this section.

Subclause 34(3) provides that, if regulations made in relation to matters specified in subclause 34(1) modify a law of the Northern Territory then, as provided under **paragraph 34(3)(a)**, upon commencement of those regulations, the relevant Northern Territory law is taken to be modified accordingly. Further, as provided under **paragraph 34(3)(b)**, the modified law is taken to apply as if a law of the Northern Territory made those modifications.

The effect of paragraph 34(3)(b) is to ensure that any modification of Northern Territory law will not be affected following the sunset of Part 4 and any consequential repeal of regulations made by subclause 34(1). This ensures that, at the time of sunset, rights, titles and interests existing in the town camps are not adversely affected by force of that sunset. Finally, **paragraph 34(3)(c)** ensures that the Northern Territory has the concurrent power to make laws relating to these matters which it will continue to have after the sunset of this provision.

Subclause 34(4) provides that the regulations may modify the Northern Territory Crown Lands Act or the Northern Territory Special Purposes Leases Act, or both Acts, to provide that a lease granted under the Special Purposes Leases Act is taken to have been granted under the Crown Lands Act.

Subclause 34(5) provides that, if regulations made in relation to subclause 34(4) modify the Northern Territory Crown Lands Act or the Northern Territory Special Purposes Leases Act, then, as provided under **paragraph 34(5)(a)**, upon commencement of those regulations, the relevant Northern Territory law is taken to be modified accordingly. Further, as provided under **paragraph 34(5)(b)**, the modified law is taken to apply as if a law of the Northern Territory made those modifications.

The effect of paragraph 34(5)(b) is to ensure that any modification of Northern Territory law will not be affected following the sunset of Part 4 and any consequent repeal of regulations made by **subclause 34(4)**. This ensures that, at the time of sunset, rights, titles and interests existing in the town camps are not adversely affected by force of that sunset. Finally, **paragraph 34(5)(c)** ensures that the Northern Territory has the concurrent power to make laws relating to these matters and which it will continue to have after the sunset of this provision.

Subclause 34(6) provides that the regulations may modify a lease granted under the Special Purposes Leases Act or the Crown Lands Act by modifying the purpose for which the land that is the subject of the lease may be used.

Subclause 34(7) provides that, if the regulations under subclause 34(6) modify a lease then, as provided under **paragraph 34(7)(a)**, upon commencement of those regulations, the lease is taken to be modified accordingly. Further, as provided under **paragraph 34(7)(b)**, the modified lease is taken to apply as if a law of the Northern Territory made those modifications. Paragraph 34(5)(c) ensures that the Northern Territory has the concurrent power to modify further the leases under Northern Territory law, which it will continue to have after the sunset of this provision.

Subclause 34(8) provides that, before making regulations in relation to a town camp, the Commonwealth Minister for Indigenous Affairs must consult with the Government of the Northern Territory, the relevant lessee and any other person the Commonwealth Minister for Indigenous Affairs considers appropriate to consult.

Subclause 34(9) provides that a failure to consult as required under subclause 34(8) will not affect the validity of the regulations.

Division 3 – Community living areas

A community living area is generally a small portion of land excised from a pastoral lease and granted as conditional freehold to an Aboriginal community or family for residential purposes where Aboriginal people did not benefit from land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Community living areas have been created, granted or include areas converted into community living areas via a variety of mechanisms in Northern Territory legislation. There are restrictions on dealings in land, including leasing, that prevent commercial leasing and leasing for public infrastructure and services such as police stations.

This Part specifically provides for a regulation-making power that will enable the modification of Northern Territory legislation in relation to community living area land.

Clause 35 is a regulation-making power that allows the regulations to be modified to the extent that the law applies to a community living area.

These changes would be effected by specific amendments made to Northern Territory legislation to overcome the restrictions and impediments, including consequential issues relating to dealings, planning and infrastructure for the benefit of Aboriginal people.

Any regulation made under **subclause 35(1)** is, under **subclause 35(3)**, taken to have modified the relevant Northern Territory law and that the modified law is to apply as if a law of the Northern Territory had made those modifications. This does not prevent the Northern Territory from concurrently using its legislative powers in relation to these matters in community living areas.

In addition, because a regulation has the effect of modifying the relevant Northern Territory law, any rights, titles and interests in property existing at the time of sunset will not be adversely affected where the measure sunsets (see clause 118). That is, any repeal of the regulations upon sunset of this Part will not affect the amendments made to the relevant Northern Territory Act(s), or to operation of those Acts as amended. This is to ensure that any proprietary interests and rights in community living areas that directly rely on the relevant Acts as amended are not affected by the sunset of this Part. The relevant Act(s) would still be capable of amendment after sunset of Part 3 but only by the Northern Territory.

This measure does not prevent the Northern Territory from introducing legislation that removes barriers and restrictions to dealings in land including leasing in community living areas. If Northern Territory reforms are implemented in a manner that meets the Commonwealth commitment to more flexible land tenure arrangements, Commonwealth regulation will not be required.

Further, this measure does not prevent the Northern Territory from being able to introduce legislation that removes the barriers to home ownership opportunities and economic development in community living areas. Should Northern Territory reforms be implemented in a manner which meets the Commonwealth commitment to more flexible land tenure arrangements, Commonwealth regulation will no longer be necessary.

The requirement to consult relevant parties as provided under **subclause 35(4)** is designed to ensure efficiency and transparency in the making of the regulations. In addition to consultation with the owner of the land that is the community living area (on request), the Land Council in whose area the community living area is located and the Northern Territory Government, it is also intended that other parties including, for example, the Northern Territory Cattlemen's Association, would also be consulted.

It is intended that a public notification will be made to enable owners of community living areas to request to be consulted.

Subclause 35(1) provides that the regulations may modify any law of the Northern Territory in relation to matters specified in paragraphs 35(1)(a) to (e) to the extent that the law applies to a community living area.

Paragraph 35(1)(a) provides that the regulations may modify any law of the Northern Territory relating to the use of land. The purpose of paragraph 35(1)(a) is to enable activity that is consistent with the objects of Part 3 in community living areas. Existing community living areas are subject to statutory restrictions relating to the use of the land which are not compatible with activity that meets the objects of Part 3.

Paragraph 35(1)(b) provides that the regulations may modify any law of the Northern Territory relating to dealings in land. The purpose of paragraph 35(1)(b) is to enable activity in community living areas that is consistent with the objects of Part 3. Dealings in land are defined in Division 2, clause 5 of the Bill. Community living areas are subject to statutory restrictions or procedural requirements that may prohibit certain dealings in the land, for example, leases, mortgages and other securities which are often necessary to enable activity that meets the objects of Part 3.

Paragraph 35(1)(c) provides that the regulations may modify any law of the Northern Territory relating to planning. The purpose of paragraph 35(1)(c) is to enable activity in community living areas that is consistent with the objects of Part 3.

Paragraph 35(1)(d) provides that the regulations may modify any law of the Northern Territory relating to infrastructure. The purpose of paragraph 35(1)(d) is to enable activity in community living areas that is consistent with the objects of Part 3.

Paragraph 35(1)(e) provides that the regulations may modify any law of the Northern Territory relating to any matter prescribed by the regulations. The purpose of paragraph 35(1)(e) is to enable activity in community living areas that is consistent with the objects of Part 3. Paragraph 35(1)(e) would only be used if, in any given situation, it is deemed that paragraphs 35(1)(a) to (d) would not adequately facilitate the ability to carry out that activity.

Subclause 35(2) provides that the term ***community living area*** means an area granted or created as an Aboriginal community living area by or under a law of the Northern Territory.

An example of a community living area is land which is granted under subsection 46(1A) of the Lands Acquisition Act of the Northern Territory.

Subclause 35(3) provides that, if regulations made in relation to matters specified in subclause 35(1) modify a law of the Northern Territory then, as provided under **paragraph 35(3)(a),** upon commencement of those regulations, the relevant Northern Territory law is taken to be modified accordingly. Further, as provided under **paragraph 35(3)(b),** the modified law is taken to apply as if a law of the Northern Territory made those modifications.

The effect of **paragraph 35(3)(b)** is to ensure that any modification of Northern Territory law will not be affected following the sunset of Part 3 and any consequential repeal of regulations made by subclause 35(1). This ensures that, at the time of sunset, rights, titles and interests existing in community living areas are not adversely affected by force of that sunset. Finally, **paragraph 35(3)(c)** ensures that the Northern Territory has the concurrent power to make laws relating to these matters which it will continue to have after the sunset of this provision.

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.

Part 4 – Food security

Summary

This Part provides for a community store licensing scheme to operate for a 10-year period to address food security issues for Aboriginal communities in the Northern Territory.

Background

Access to fresh and or healthy food in Aboriginal communities remains a significant problem, including because of the remoteness of towns and the distance from main distribution centres and major towns.

The Stronger Futures in the Northern Territory consultations on the food security measure focused on: the licensing arrangements and how they could be improved; how to ensure good quality food is available and affordable for communities; and combining business and retail expertise with community ownership. The consultations and the 2011 report on the independent evaluation of the community stores licensing program indicated that licensing has been associated with significant improvements in stores, availability of more healthy food, but also pointed to areas where the scheme could be strengthened, including addressing problems of non-compliant traders and greater community understanding of store business.

The measure will continue the community stores licensing scheme but with changes to make requirements more consistent with standard regulatory practice and, without impacting on food security outcomes, reduce unnecessary burdens on business. The licensing scheme will apply to those parts of the Northern Territory that the Commonwealth Minister for Indigenous Affairs has not prescribed in the rules as being exempted. It is intended that areas excluded from food security areas will be places such as Alice Springs or Darwin, where the level of competition and choice in retail outlets make it unlikely that licensing would be required to ensure ongoing access to a reasonable range of food or groceries.

The Secretary will be able to require a store in the food security area to hold a community store licence, provided that the store meets the requirement of being an 'important source of food, drink or grocery items for an Aboriginal community'. In determining whether a community store is required to be licensed, the Secretary must have regard to, among other things, the object of this measure, which is promoting food security for Aboriginal communities in the Northern Territory. Community consultation will continue to be an important aspect of the operation of the scheme.

The Government considers that the food security measure is a special measure for the purposes of the Racial Discrimination Act. The Government is of the view that this measure improves the health and wellbeing of Aboriginal people in the Northern Territory. It advances the enjoyment by Aboriginal people of human rights, such as the right to an adequate standard of living, including adequate food, and the right to the highest attainable standard of physical and mental health. The licensing of community stores helps to achieve this outcome, resulting in an improved supply of food, drink and grocery items for Aboriginal people living outside of major centres.

Explanation of the changes

Division 1 – Guide to this Part

Clause 36 provides a guide to explain what the Part is about.

Clause 37 provides for the object of the Part, being to enable special measures to be taken for the purpose of promoting food security for Aboriginal communities in the NT. ***Food security*** is defined to mean 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.

In particular, the object provides that the Part is intended to enhance the contribution made by community stores in the NT to achieving food security for Aboriginal communities.

The Bill aims to enhance the contribution of stores to food security in several ways. It will support improved choices and quality for Aboriginal consumers. Aboriginal community stores often have limited or no competition. Without the benefit of competition or compensating regulation, the quality and range of food, drink and grocery items available has often been poor and consumers have not had access, in particular, to a sufficient range of healthy foods.

The Bill also supports the ongoing viability of community-owned stores. Considerable management capacity is required in order to address the various difficulties which arise in operating a store in a remote location. Governance and financial transparency issues can be further threats to the viability of the store and, therefore, the food security of Aboriginal communities. The Bill provides the framework for program assistance to stores in these areas and provides the necessary backing for Aboriginal community members concerned to maintain the continued existence of the store.

Division 2 – Certain community stores must be licensed

Clause 38 provides for the sanction of a community store that is required to have a licence but has not complied with that requirement.

Subclause 38(1) provides that an owner or manager of a community store must not operate or allow the store to be operated in the food security area if the person has been notified under **subclause 43(1)** that the owner is required to hold a community store licence, and the notice is in force, and the owner does not hold a community store licence for that store. The maximum civil penalty for operating a store without a licence is 50 penalty units. Penalties for breaches of the prohibition are to be applied on a daily basis (see **subclause 87(2)**). That is, an owner or manager who operates a community store without a licence, as prohibited by this provision, may be subject to a maximum penalty of 50 penalty units for each day that they continue to operate without a licence.

Fifty penalty units is considered an appropriate daily penalty because it should adequately deter owners and managers from operating without a licence. The daily penalty should also provide extra incentive to remain, or to become, licensed so that the potential penalty does not continue to increase. The quantum of penalty is higher than other civil penalties in Part 4, which have a maximum penalty of 20 penalty units (see clauses 56 and 61), because operating without a licence is a contravention of what is considered the most serious civil penalty provision in the community stores licensing scheme. As with other civil penalty provisions, while the Secretary may issue an infringement notice for an amount of no more than one-fifth of the maximum penalty, the store owner will have the option of having their case heard and penalty decided by a court.

Subclause 38(2) clarifies that the food security area is the Northern Territory, other than areas specifically excluded from being in the food security area under clause 74.

Subclause 38(3) clarifies that the prohibition in subclause 38(1) does not apply if an application for a community store licence has been made under clause 44 during the application period referred to in paragraph 43(2)(b) and the Secretary has not refused to grant the licence under subclause 45(1) before the day. **Subclause 38(4)** also clarifies that the prohibition in subclause 38(1) does not apply during the application period referred to in paragraph 43(2)(b) unless the owner has been notified before or on that day that the Secretary has refused to grant the licence. This requires the owner to be notified of a refusal to grant the licence prior to the prohibition taking effect.

Subclause 38(5) caters for the situation where an owner has a mixed business, with some parts not being directly related to the food security goals of this Part. It allows the Secretary to give the owner and manager of the store a written notice, authorising the part of a business selling goods or services (other than food, drink or grocery items) to be operated. If such a notice is given, then subclause 38(1) does not apply on days that the notice is in force. This provision allows, for example, the Secretary to give a notice allowing a petrol station to continue selling petrol even if it is prohibited from operating a community store because it has not obtained a licence when required.

Subclause 38(5) gives the Secretary discretion to issue notices with the effect that a particular store will not be prohibited from operating in a certain way under subclause 38(1). This discretion is not reviewable in the Administrative Appeals Tribunal. Review of an exception allowing a store to operate without being prohibited under subclause 38(1) is considered unnecessary, as the outcome would probably to be beneficial to the affected owner. Review for a determination made under subclause 38(3) would still be available under the *Administrative Decisions (Judicial Review) Act 1977*.

Clause 39 provides for the meaning of ***community store***, ***owner*** and ***manager***. It should be noted that the fact that a store is defined as a community store under this Part does not in itself mean that the store is required to be licensed. The Secretary, under clause 41, still has to determine that a community store is required to hold a licence.

Subclause 39(1) provides that a community store means a business that consists wholly, or partly, of selling food, drink or grocery items at premises that are located in the food security area. This is regardless of whether the community store is mobile and also sells food, drink or grocery items in areas that are not food security areas for the purposes of the Bill. Drink refers to non-alcoholic drinks. Stores that sell only one or a combination of more than one of these items (food, drink or grocery items) will fall within this definition of a community store.

Subclause 39(2) provides that the owner of a community store is the person who has overall ownership of the community store and is entitled to the profits and liable for the debts of the community store (regardless of whether they also own the premises).

Subclause 39(3) provides that the manager of a community store is the person who is responsible for the day to day management of the community store.

As there may be instances where both the owner and the manager of a community store are the same person, **paragraph 39(4)(a)** confirms that both the owner and the manager of a community store can be the same person.

Paragraph 39(4)(b) confirms that more than one person can be the owner or the manager of a community store. This is to take account of situations where there may be co-owners of a community store, or more than one person who owns the business, or where more than one person manages the business.

Subclauses 39(5), (6), (7) and (8) clarify that:

- an unincorporated association is taken to be the owner of the store if a member or members have overall ownership of the store and are entitled to profits and liable for debts;

- a partnership is taken to be the owner of the store if a partner or partners have overall ownership of the store and are entitled to profits and liable to debts;

- notices can be served on any member (for an unincorporated partnership) or any partner (for a partnership);

- things done in relation to a store or obligations, requirements, restrictions or rights conferred under Part 4 by a member or partner of an unincorporated association or partnership are taken to be done, imposed or conferred on the unincorporated association or partnership;

- a change in partners or members does not affect the continuity of the unincorporated association or partnership; and

- the ***committee of management*** is the body that governs, manages or conducts the affairs of the association.

Clause 40 provides that, if more than one person is the owner or manager of a community store, then Part 4 of the Bill applies as follows:

- if a provision of Part 4 requires or permits a notice to be given to the owner of the community store, the notice may be given to any of the owners;

- if a provision of Part 4 requires or permits a notice to be given to the manager of the community store, the notice may be given to any of the managers;

- the obligations, requirements and restrictions imposed, and rights conferred, under Part 4, upon the owner of the community store are taken to be imposed or conferred upon each owner; and

- the obligations, requirements and restrictions imposed, and rights conferred, under Part 4, upon the manager of the community store are taken to be imposed or conferred upon each manager.

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

Clause 41 sets out the way that the Secretary may determine whether or not a community store licence is required.

Subclause 41(1) provides that the Secretary may, at any time, determine whether the owner of a community store is required to hold a community store licence.

A note to subclause 41(1) clarifies that, if the Secretary proposes to make a determination under subclause 41(1) the procedure set out at clause 42 must first be followed.

Subclause 41(2) requires the Secretary to consult the people being serviced by the community store about whether or not a licence should be required, before making a determination under subclause 41(1). Consultations are a vital source of information in the area of food security, and are also important because of the need for key decisions to take account of the concerns and views of the relevant communities. Although decisions about the grant of licences and conditions for licences are important, it was considered that the question of whether or not a licence should be required in the first place is the critical decision in the food security measure, and therefore consultation was most desirable at this stage. **Subclause 41(3)** confirms that a failure to consult under subclause 41(2) does not affect the validity of a determination under subclause 41(1).

Subclause 41(4) requires the Secretary to have regard, in considering whether the a store is required to be licensed, to the object of Part 4, any assessment of the store under clause 67, the circumstances and views of people who are being serviced by the store (to the extent that those circumstances and views relate to the determination), and any other matter the Secretary considers relevant.

Subclause 41(5) provides that the Secretary must not determine that the owner is required to hold a community store licence unless the Secretary is satisfied that the store is an important source of food, drink or grocery items for an Aboriginal community.

Among other things, a store is not likely to be an important source of one or more of these items if, for example, only a small number of people from the community use the store to acquire these items, or do not use the store for the purpose regularly.

Subclause 41(6) provides that the Secretary may revoke a determination made under subclause 41(1).

Under clause 110, the Secretary's decision to make a determination as to whether or not a community store licence is required is subject to review by the Administrative Appeals Tribunal.

Clause 42 sets out a notice procedure that allows for submissions to be made that the Secretary must consider before determining that a licence is required under clause 41. First, the Secretary must give written notice of the proposed determination to the owner and manager of the store under **subclause 42(1)**.

Subclause 42(2) provides that the notice must:

- specify the reasons for the proposed determination;
- invite written submissions, from the owner and manager of the store, about the matters specified in the notice;
- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary); and
- specify the manner in which written submission are to be lodged.

This will allow the Secretary to receive and consider submissions about a proposed determination. **Subclause 42(3)** requires the time allowed for submissions to be made to be at least 10 business days after the day the notice is given. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Subclause 42(4) clarifies that the Secretary must not determine that the owner of a community store is required to hold a community store licence, unless each person required to be given a notice has been given a notice and the Secretary has considered all written submissions received during the time allowed for submission.

The requirement to 'give' a notice can be satisfied by delivering the notice to the person personally or by leaving it at, or by sending it by pre paid post to, the address of the place of residence or business of the person last known to the person serving the document (in the case of a natural person). The requirement to 'give' a notice can also be satisfied by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate (in the case of a body corporate) (see clause 28A of the *Acts Interpretation Act 1901*).

Clause 43 provides that the Secretary must give written notice of the following determinations in relation to a community store to the owner and the manager of the community store:

- a determination under subclause 41(1) that the owner is or is not required to hold a community store licence; and
- a determination under subclause 41(6), revoking a determination that an owner is or is not required to hold a community store licence.

Under **subclause 43(2)**, that notice must:

- specify the reasons for the determination;
- specify that the owner must apply for a community store licence during the application period (which is the period set out in the notice or such longer period agreed by the Secretary);
- provide information about how an application may be made; and
- advise that, if the owner has not applied for a community store licence, or if an application is made but the Secretary refuses to grant the licence, the store may be prohibited from operating under clause 38.

Subclause 43(3) requires that the time allowed for an application to be made must be at least 20 business days after the day the notice is given. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Division 4 – Licensing of community stores

Subdivision A – Granting and refusing community store licences

Clause 44 provides the procedure by which an owner of a community store, or their representative, may apply for a community store licence. The owner must make an application in the manner approved by the Secretary, unless rules have been prescribed in accordance with subclauses 44(2) and (3) as to how an application should be made.

Subclauses 44(2) and **(3)** allow the rules to prescribe the following matters in relation to a written application:

- the form of the application;
- the information required to be included in the application;
- the documents that should accompany the application; and
- how to lodge the application (including to whom it should be made and where it should be delivered).

These application provisions allow maximum flexibility for the Secretary to approve the manner of applications and the Commonwealth Minister for Indigenous Affairs to prescribe ways of lodging applications. This will enable the Secretary or the Commonwealth Minister for Indigenous Affairs to tailor the way in which applications can be made to allow for seasonal and other communication difficulties in remote areas of the Northern Territory.

Clause 45 sets out the way in which the Secretary determines whether to grant or refuse a community store licence.

Subclause 45(1) clarifies that the Secretary must determine whether to grant a licence to the owner of a community store, if an application has been made under subclause 44(1).

A note to subclause 45(1) clarifies that, if the Secretary proposes to refuse a community store licence under subclause 45(1), the procedure set out at subclause 47 must first be followed.

Under **subclause 45(2)**, in making a determination about whether to grant a licence to the owner of a community store, the Secretary must have regard to:

- the object of Part 4 as set out at clause 37;
- the food security matters set out at clause 46;
- any assessment of the store carried out under clause 67;
- the nature and circumstances of the store (including its location and size – see the definition of ***circumstances*** at clause 5) – for example, a large community store servicing a large community could be expected to carry a broader range of healthy food than a small store with fewer customers; similarly, financial management issues may be more important where a store is community-owned and losses will impact on the broader community rather than an individual owner; and
- any other matter the Secretary considers relevant.

The Secretary may give a different weight to each criterion in considering it, depending on the particular circumstances of the store.

Subclause 45(3) provides that the Secretary may refuse to grant a community store licence to a person if:

- in the case of an owner or another person – if the person unreasonably withholds consent under clause 71 for an authorised officer to enter the premises of the community store, or if the person unreasonably refuses to provide documents, material or assistance as required by clause 72; or
- in any case where the owner does not give the Secretary sufficient documents, material or assistance to enable the Secretary to make an informed decision.

Subclause 45(4) clarifies that subclause 45(3) does not limit the grounds on which the Secretary may refuse to grant a community store licence.

Under clause 110, the decision to grant or refuse a community store licence under clause 45 is subject to review by the Administrative Appeals Tribunal.

Clause 46 sets out the meaning of ***food security matters***. These are matters to which the Secretary must have regarded when determining whether or not to grant a community store licence under clause 45, when determining the conditions that should apply to a community store licence under clause 52 and when varying a licence under clause 58. The food security matters are aspects of store operations and policy which could have a direct or indirect impact on food security. In all cases, the Secretary is required to take into account the circumstances of the store (see definition of ***circumstances*** at clause 5) when considering the food security matters.

The food security matters are, having regard to the nature and circumstances of the store:

- whether the store will provide a satisfactory range of healthy and good quality food, drink or grocery items – for example, as under current arrangements, stores are required to provide a range of fresh vegetables, fruit and lean meat that is appropriate for the size of the store; where a community store specialises in a particular type of product, such as a bakery or butcher's shop, the requirements for a satisfactory range are intended to refer only to those within their specialty; there would be no requirement to change the nature of the business;

- whether the store will take reasonable steps to promote good nutrition and healthy products; depending on the store's circumstances, this may include allowing nutrition education sessions to take place on the store premises (where the educator helps participants understand the food value of different products on display in the store); it may also include displaying healthy alternatives more prominently and pricing mark-up policies that encourage, or at least do not penalise, healthy choices;

- whether the store will satisfactorily address other aspects of the store's operations which may impact on food security, including:

    - the quality of retail management practices of the owner or manager of the store;

    - whether the financial practices of the owner and manager of the store support the sustainable operation of the store;

    - the character of the owner, manager, employees and other people involved in the store, including whether any of those people have a criminal history, including criminal records requested to be checked under clause 104 and outcomes of any previous involvement with stores or similar businesses;

- the store's business structure, governance practices and employment practices; and

- the environment of the store's premises, the infrastructure of the store's premises and the equipment available at the store's premises.

The intention of these criteria is to address those store operational issues that may impact on food security. For example, deficiencies in financial management or inventory control may reduce the capacity of the store to stock regularly fresh and healthy food or may threaten the long-term viability of the store. Effective governance practices and vetting processes for people involved in store operations assist in preventing fraud. Appropriate pricing information helps customers to budget effectively. Food security is improved where the environment and equipment are adequate for safe food preparation and storage, as well as customer and staff safety.

In considering the character of people involved in the store, it is not intended that a criminal history would in itself preclude grant of a licence. Particular consideration would be given to offences which may impact on the future operations of the store and the willingness of patrons to visit the store. This may include matters such as dishonesty, intimidation or offences against children. In considering character, issues of competence and responsibility for past failure of stores will also be relevant.

Clause 47 sets out the notice procedure for submissions that may be made for consideration by the Secretary before he or she refuses a community store licence under subclause 45(1). First, the Secretary must give written notice of the proposed refusal to the owner and manager of the store under subclause 47(2).

Under **subclause 47(2)**, that notice must:

- specify the reasons for the proposed refusal;

- invite written submissions, from the owner and manager of the community store, in relation to the matters specified in the notice;

- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary);

- provide information about the manner in which submissions are to be lodged; and

- advise that, if a community store licence is refused, the store will be prohibited from operating under clause 38.

Subclause 47(3) requires the time allowed for submissions to be at least 10 business days after the day the notice is given. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Subclause 47(4) clarifies that the Secretary must not refuse to grant a community store licence, unless each person required to be given a notice has been given a notice and the Secretary has considered all written submissions received during the time allowed for submissions.

Clause 48 clarifies that a community store licence may be expressed to relate to a specified community store or specified community stores. This covers the situation where one owner operates more than one community store, only once licence required for all stores that the owner operates.

Clause 49 confirms that a community store licence is in force for the period starting on the day specified in the licence (or the day the licence is granted, if there is no day specified) and ending on the day the licence is revoked or the day this new Act ceases to have effect, whichever occurs first.

That is, once a licence is granted it will not specify an end date and will therefore not be time limited. Regular licence monitoring under clause 54 and assessments under clause 67 will be used to identify whether any action under Part 4 should be taken, but there will be no administrative requirement to review and re-issue licences on a regular basis. This is intended to reduce the administrative burden on stores.

Subclause 50(1) requires the Secretary to give written notice, and a copy of the licence (including any conditions of the licence), of a determination under subclause 45(1) to grant a community store licence.

Subclause 50(2) requires the Secretary to give written notice of a refusal to grant a community store licence to the owner and manager of the store. **Subclause 50(3)** clarifies that the notice must specify reasons for the refusal.

Subdivision B – Conditions of community store licences

All community store licences will be subject to a number of statutory conditions set out in **clause 51**. These conditions are:

- the conditions (if any) imposed by the Secretary under subclause 52(1) at the time of issuing the licence;
- the condition set out in subclause 54(1) (monitoring and audits);
- the conditions (if any) prescribed by the rules under subclause 55(1); and
- the conditions (if any) imposed by the Secretary under subclause 58(1) (variation of licence) after the licence is issued.

Additional conditions may be imposed on holders of community store licences. Subclause 52(1) provides that the Secretary may impose conditions that may relate to, but are not limited to, the following:

- the food security matters set out at clause 46;
- auditing and reporting;
- documentation and record-keeping requirements;
- the income management regime under Part 3B of the *Social Security (Administration) Act 1999* (including, but not limited to, requirements relating to funds);
- the provision of goods or services to customers on credit or at a discounted rate;
- notifying a change of owner or manager (whether or not the change is permanent or temporary);
- notifying a change in the composition or structure of the owner; and
- assistance and facilities to be provided for the purposes of making assessments or monitoring compliance with the conditions of the licence.

A note to **subclause 52(1)** clarifies that, if the Secretary proposes to impose a condition on a community store licence under subclause 52(1), the procedure in clause 47 must first be followed.

Subclause 52(2) provides that, when considering imposing an additional condition, the Secretary must have regard to:

- the object of Part 4 (food security); and
- the food security matters set out at clause 46;
- any Secretary-initiated assessment of the store;
- the nature and circumstances of the store (including its location and size – refer to the definition of ***circumstances*** at clause 5) – for example, a large community store servicing a large community could be expected to carry a broader range of healthy food than a small store with less customers; similarly, financial management issues may be more important where a store is community-owned and losses will impact on the broader community rather than an individual owner; and
- any other matter the Secretary considers is relevant.

The Secretary may give a different weight to each criterion in considering it, depending on the particular circumstances of the store.

Subclause 52(3) clarifies that the conditions that may be imposed are not limited by the matters set out in subclause 52(1), the rules or Subdivision B (Conditions of community store licences).

Under clause 110, a decision to impose conditions on a community store licence is reviewable by the Administrative Appeals Tribunal.

Clause 53 sets out the notice procedure for submissions that may be made for consideration by the Secretary before he or she imposes a condition on a community store licence under subclause 52(1). First, the Secretary must give written notice of the proposed refusal to the owner and manager of the store under **subclause 53(1)**.

Under **subclause 53(2)**, that notice must:

- specify the proposed condition and the reasons for the proposed condition;
- invite written submissions, from the owner and manager of the community store, about the proposed condition;
- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary); and
- provide information about the manner in which submissions are to be lodged.

Subclause 53(3) requires the time allowed for submissions to be at least 10 business days after the day the notice is given. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Subclause 53(4) clarifies that the Secretary must not impose a condition on a community store licence unless each person required to be given a notice has been given a notice and the Secretary has considered all written submissions received during the time allowed for submission.

A condition is also imposed on all holders of community stores with respect to monitoring and audits. **Subclause 54(1)** provides that it is a condition of a community store licence that the holder of the licence must do all of the following:

- allow an authorised officer to enter the premises of the store or stores to which the licence relates for the purposes of auditing or monitoring compliance with the conditions of the licence;

- allow an authorised officer to inspect things at the premises; and

- if requested, give an authorised officer documents relevant to auditing and monitoring compliance.

Subclause 54(2) clarifies that paragraph 54(1)(c) regarding giving documents to an authorised officer, does not apply if giving the documents might tend to incriminate the person or expose the person to a penalty. This intends to clarify that paragraph 54(1)(c) does not abrogate the privilege against self-incrimination.

Clause 55 allows the Commonwealth Minister for Indigenous Affairs to determine conditions to which all community stores licences are subject by prescribing those conditions in the rules – **subclause 55(1)** refers. (The rules may be made by the Commonwealth Minister for Indigenous Affairs under Part 5.) **Subclause 55(2)** requires the Commonwealth Minister for Indigenous Affairs to have regard to the objects of Part 4 and any other matter the Commonwealth Minister for Indigenous Affairs considers relevant when determining conditions.

Clause 56 provides that the owner or the manager of a community store must not breach a condition of a community store licence that is in force in relation to the store. Penalties for non-compliance with this requirement are to be applied on a daily basis (see subclause 87(2)). 20 penalty units is considered an appropriate daily penalty because it should adequately deter owners and managers from breaching licence conditions. A daily penalty is necessary as, otherwise, owners could continue in breach indefinitely on payment of a single fine, and it should also provide extra incentive to remedy breaches quickly.

Subdivision C – Variation and revocation of community store licences

Clause 57 sets out the way a person may make an application for a variation of a community store licence.

The owner of a community store, or a person acting on the owner's behalf, may apply for a variation of a community store licence under **clause 57**. The owner must make an application in the manner approved by the Secretary, unless rules have been prescribed in accordance with subclauses 57(2) and (3) as to how an application should be made.

Subclauses 57(2) and (3) allow the rules to prescribe the following matters in relation to a written application:

- the form of the application;

- the information required to be included in the application;

- the documents that should accompany the application; and

- how to lodge the application (including to whom it should be made and where it should be delivered).

These application provisions allow maximum flexibility for the Secretary to approve the manner of applications and the Commonwealth Minister for Indigenous Affairs to prescribe ways of lodging applications. This will enable the Secretary or the Commonwealth Minister for Indigenous Affairs to tailor the way in which applications can be made to allow for seasonal and other communication difficulties in remote areas of the Northern Territory.

Clause 58 confers on the Secretary the power to vary a community store licence.

The Secretary will have discretion under **subclause 58(1)** to vary a community store licence at any time on the Secretary's own initiative or if an application for a variation of the licence has been made under subclause 57(1).

A note to subclause 58(1) clarifies that, if the Secretary proposes to vary or refuse to vary a community store licence under subclause 58(1), the procedure set out at subclause 60 must first be followed.

Subclause 58(2) provides that the Secretary may impose licence conditions or revoke or vary licence conditions that were imposed under subclause 52(1).

When considering using the powers of variation, **subclause 58(3)** provides that the Secretary must have regard of all of the following:

- the object of Part 4 (food security);
- the food security matters as set out at clause 46;
- any Secretary-initiated assessment of the store;
- the nature and circumstances of the store (including its location and size – see the definition of ***circumstances*** at clause 5) – for example, a large community store servicing a large community could be expected to carry a broader range of healthy food than a small store with less customers; similarly, financial management issues may be more important where a store is community-owned and losses will impact on the broader community rather than an individual owner; and
- any other matter the Secretary considers relevant.

The Secretary may give a different weight to each criterion in considering it, depending on the particular circumstances of the store. **Subclause 58(4)** clarifies that a variation takes effect on the day on which the notice is given or on a later day specified in the notice.

Subclause 58(5) provides that the variation takes effect on the date the notice is given or on a later date specified in the notice. A variation to extend the period of effect of a licence cannot be backdated to prior to the day on which the notice is given.

Subclause 58(6) gives the Secretary discretion to refuse to vary a licence if a person unreasonably withholds consent for an authorised officer to enter the premises of the community store under clause 71; or unreasonably refuses to provide documents, material or assistance as required by clause 72. The Secretary may also refuse to vary a licence if the holder of the licence does not give the Secretary sufficient information to make an informed decision. Subclause 58(6) does not limit the grounds on which the Secretary may refuse to vary a community store licence: **subclause 58(7)**.

Subclause 58(8) requires the Secretary to give written notice to the owner and manager of the store where the Secretary refuses to vary a licence in accordance with an application made under subclause 57(1).

Clause 59 allows the Secretary to revoke a community store licence.

Subclause 59(1) provides that the Secretary may revoke the licence if the Secretary is satisfied that:

- a condition of the licence has been breached;
- the owner, the manager or a person involved in the store has committed an offence against this Bill or has contravened a civil penalty provision; or
- the licence was obtained improperly – for example, if the licence was obtained by falsifying documents, corrupt means or by making misleading representations.

The first note to subclause 59(1) clarifies that, if the Secretary proposes to revoke a licence under subclause 58(1), the procedure set out at subclause 60 must first be followed.

The second note to subclause 59(1) clarifies that a licence can also be revoked under subclause 65(1) when a store owner has not registered under the CATSI Act when required to.

Subclause 59(2) provides that, if the Secretary revokes a community store licence under subclause 59(1), the Secretary must give written notice of the revocation to the owner and manager of the store.

Subclause 59(3) provides that the revocation takes effect on the day the notice is given or on a later date specified in the notice.

Under clause 110, a decision to revoke a community store licence under clause 59 and a decision to vary a community store licence under clause 58 is reviewable by the Administrative Appeals Tribunal.

Clause 60 provides the procedure that must be followed before revoking, varying or refusing to vary a community store licence. These procedures provide the owner and the manager of the community store with an opportunity to make written submissions on the proposed revocation, variation or refusal before the decision can be made.

Subclause 60(1) requires the Secretary to notify the owner and the manager of the community store if:

- the Secretary proposes to vary a community store licence under paragraph 58(1)(a);
- an application under subclause 57(1) has been made for a community store licence to be varied and the Secretary proposes to refuse to vary the licence in accordance with the application; or
- the Secretary proposes to revoke a community store licence under subclause 59(1).

Under **subclause 60(2)**, that notice must:

- specify the reasons for the proposed variation, refusal or revocation;
- invite written submissions, from the owner and manager of the community store, to the matters specified in the notice;
- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary);
- provide information about the manner in which submissions are to be lodged; and
- in the case of a proposed revocation, advise that, if a community store licence is revoked, the store will be prohibited from operating under clause 38.

Subclause 60(3) requires the time allowed for submissions to be at least 10 business days after the day the notice is given. Although it is possible for the Secretary to allow longer than the 10 business day time period for applications to be made, this ensures that the period must be a minimum of 10 days. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Subclause 60(4) provides that the Secretary must not vary or refuse to vary a community store licence under subclause 58(1), or revoke a licence under subclause 59(1), unless the people required to be given a notice under subclause 60(1) have been given such a notice and the Secretary has considered all submissions made during the period given.

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

The requirements under this Division apply where the owner of the community store is licensed.

Division 5 assists in improving the governance and capacity of Northern Territory community store owners. Governance and financial practice difficulties have been a recurring problem in relation to community stores with impacts on food security. The CATSI Act provides an incorporation framework, which, unlike others, is specifically tailored to the particular risks and requirements of the Aboriginal corporate sector. The Act recognises the particular importance to Aboriginal communities of maintaining essential services operated by Aboriginal corporations which are located in remote or very remote areas. Community store owners that are incorporated under the CATSI Act will be covered by the special provisions that apply to an 'essential service' under the CATSI Act.

Store corporations registered under the CATSI Act do not pay fees and receive a wider range of support than is available under other legislation. Incorporation under the CATSI Act also provides benefits for the community served by the store, including powers for early intervention to remedy problems relating to the provision of an essential service, such as community stores, which are not available under other legislation. These powers enable the Registrar of Indigenous Corporations to provide early proactive regulatory assistance when a corporation experiences governance or financial difficulties. Unlike a receivership, voluntary administration or liquidation, the special administration process under the CATSI Act is not driven by creditors and its prime focus is on the best interests of the members and the corporation and to protect public funding and ensure the maintenance of essential services, such as remote stores.

The aim of the special administration process is to restore good operational order to the corporation, improve governance and the financial position of the corporation and build the capacity of the members and future directors to run the corporation effectively. It therefore provides safeguards to assist the owner of a community store to continue in business and receive the support they need to secure the ongoing operation of the community store.

Clause 61 provides for a penalty when certain people do not register under the CATSI Act when required. **Subclause 61(1)** provides that the owner of a community store is liable to a civil penalty if:

- a determination has been made that the owner is required to become registered under the CATSI Act;
- the notice is in force and the owner has been notified; and
- the owner is not registered under the CATSI Act.

The maximum civil penalty for non-compliance with the requirement to register under clause 61 is 20 penalty units. Penalties for breaches of the prohibition are to be applied on a daily basis (see subclause 87(2)). That is, an owner who does not register under the CATSI Act when required to do so may be subject to a maximum penalty of 20 penalty units per day that they are not registered.

A daily penalty of twenty penalty units is considered an appropriate penalty because it should adequately deter owners from refusing to register under the CATSI Act. A daily penalty is necessary as, otherwise, owners could continue in breach indefinitely on payment of a single fine, and it should also provide extra incentive to remedy breaches quickly.

Clause 65 also allows the Secretary to revoke a community store licence if a store owner does not comply with a requirement to register under the CATSI Act.

Subclause 61(2) clarifies that subclause 61(1) does not apply if the owner makes an application during the registration period and a determination has not yet been made about whether to register the owner.

Subclause 61(3) provides that subclause 61(1) does not apply on a day in the registration period referred to in subclause 64(2)(b) unless the owner has been notified that registration under the CATSI Act has been refused.

Subclause 62(1) permits the Secretary to determine in writing that the owner of a community store is required to become registered under the CATSI Act.

A note to **subclause 62(1)** clarifies that, if the Secretary proposes to determine under subclause 62(1) that the owner is required to become registered under the CATSI Act, the procedure in clause 63 must first be followed.

Subclause 62(2) requires the Secretary to have regard to the objects of Part 4 and any other matter the Secretary considers relevant when making a determination under subclause 62(1).

Subclause 62(3) prohibits the Secretary from making such a determination unless a community store licence is held for the store.

Subclause 62(4) clarifies that the Secretary may revoke a determination made under subclause 62(1).

Subclause 63 deals with the procedure before determining that registration under the CATSI Act is required.

Under **subclause 63(1)**, if the Secretary proposes to determine under subclause 62(1) that the owner of a community store is required to become registered under the CATSI Act, the Secretary must first give written notice of the proposed determination to the owner of the store.

Under **subclause 63(2)**, the notice must invite written submissions from the owner of the store in relation to the requirement for the owner to become registered under the CATSI Act. The notice must also:

- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary); and

- specify the manner in which written submissions are to be lodged.

Subclause 63(3) requires that, for the purpose of subparagraph 63(2)(b)(i), the submission period must be at least 10 business days after the day on which the notice is given.

Subclause 63(4) clarifies that the Secretary must not require the owner of a community store to become registered under the CATSI Act unless the owner has been given a notice under subclause 62(1) and the Secretary has considered all written submissions received during the time allowed for submission.

The process of inviting responses under this provision offers an owner or a manager the opportunity to provide information which may satisfy the Secretary that, despite reasonable steps being taken, it was not reasonably practicable in the circumstances for the owner to become registered, or to put in an application to become registered, under the CATSI Act. If the Secretary is satisfied it was not reasonably practicable in the circumstances for the owner to become registered, or apply to become registered, under the CATSI Act by the period specified in the notice, or a later day agreed to by the Secretary, then the Secretary must not revoke the licence in accordance with subclause 65(4).

For example, an association that could not meet the Indigeneity requirement for CATSI Act registration would not be expected to change its membership in order to become registered.

Under clause 110, a decision to require a store to become registered under the CATSI Act is reviewable in the Administrative Appeals Tribunal.

Clause 64 sets out the procedure for notifying an owner that the Secretary has determined that registration under the CATSI Act is required.

Subclause 64(1) provides that the Secretary must give written notice of the determination that an owner is or is not required to be registered under the CATSI Act (or a determination revoking a determination requiring registration) to the owner of the store.

Subclause 64(2) provides that, if the Secretary determines that an owner is required to be registered under the CATSI Act, the notice must:

- specify the reasons for the determination;
- specify that the owner must apply for registration under the CATSI Act during the registration period (which is the period set out in the notice or such longer period agreed by the Secretary);
- advise that the owner may be subject to a civil penalty under clause 61 if an application for registration is not made by the owner or registration under the CATSI Act is refused; and
- advise that, if the owner does not become registered, the Secretary may revoke the licence under subclause 65(1) and if the licence is revoked, the store will be prohibited from operating under clause 38 after the revocation takes effect.

Subclause 64(3) requires that the time allowed for an application for registration to be made must be at least 20 business days after the day the notice is given. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

Clause 65 deals with the circumstances in which the Secretary may revoke the licence of a community store if the community store owner has been given a notice under clause 64 requiring the owner to become registered under the CATSI Act by a specified day. The owner may also be liable to a civil penalty for not complying with a requirement to register under the CATSI Act under clause 61.

If the Secretary has given an owner of a community store a written notice under subclause 64(1), and the owner has not become registered under the CATSI Act by the end of the registration period, then the Secretary may revoke the community store licence under **subclause 65(1)**.

A note to **subclause 65(1)** clarifies that, if the Secretary proposes to revoke a community store licence under subclause 65(1) then the procedure set out at 65A must first be followed.

Under **subclause 65(2)**, the Secretary must not revoke a licence under subclause 65(1), unless the Secretary is satisfied that it was not reasonably practicable in the circumstances for the owner to become registered under the CATSI Act during the registration period referred to in paragraph 64(2)(b) for applying for registration, having regard to the following:

- any submissions received from the owner in the submission period referred to in paragraph 66(2)(c) for making submissions;

- any views expressed by the Registrar (within the meaning of the CATSI Act); and

- any other matter the Secretary considers is relevant.

Under **subclause 65(3)**, if the Secretary revokes a licence under subclause 65(1), the Secretary must give written notice of the revocation to the owner and manager of the store. It is important to notify both the owner and manager about revocations because they may both be subject to a penalty under clause 38 if they operate without a licence when a licence is required.

Subclause 65(4) provides that the revocation of a community store licence will take effect on the day on which the notice is given, or on a later day specified in the notice.

Under clause 110, decisions by the Secretary under clause 65 to revoke a community store licence are reviewable by the Administrative Appeals Tribunal.

Clause 66 sets out the procedure to be undertaken before revoking a licence.

Under **subclause 66(1)**, if the Secretary proposes to make a determination to revoke a licence under subclause 65(1), the Secretary must first give written notice of the proposed determination to the owner and manager of the store. It is important to notify both the owner and manager about revocations because they may both be subject to a penalty under clause 38 if they operate without a licence when a licence is required.

Under **subclause 66(2)**, the notice must invite written submissions from the owner of the store in relation the matters specified in the notice. The notice must also:

- specify the reasons for the proposed revocation;

- specify that written submissions must be lodged during the submission period (which is the period set out in the notice or such longer period agreed by the Secretary);

- specify the manner in which written submissions are to be lodged; and

- advise that, if a licence is revoked, subclause 38(1) will prohibit the store from being operated.

Subclause 66(3) requires that, for the purpose of subparagraph 66(2)(c)(i), the submission period must be at least 10 business days after the day on which the notice is given.

Subclause 66(4) clarifies that the Secretary must not make a determination to revoke a licence unless the people required to be given a notice have been given a notice under **subclause 66(1)** and the Secretary has considered all written submissions received during the time allowed for submission.

Division 6 – Assessments of community stores in relation to licensing

Division 6 deals with assessments of community stores.

Subclause 67(1) provides that the Secretary, on the Secretary's own initiative, may require an authorised officer to assess a community store. Such an assessment must be conducted for one or more of the following purposes:

- determining whether a community store licence is required to be held in relation to a community store;
- determining whether to grant a community store licence in relation to a community store;
- determining whether impose, vary or revoke conditions on a community store licence;
- determining whether to revoke a community store licence in relation to a community store; and
- monitoring compliance with Part 4 (food security).

Subclause 67(2) requires that, in requiring an authorised officer to assess a community store under subclause 67(1), the Secretary must have regard to the object of Part 4 (food security) and any other matter the Secretary considers is relevant.

Subclause 67(3) provides that, in assessing a community store, an authorised officer may consult with such persons as the authorised officer considers appropriate.

Subclause 67(4) provides that the Secretary may require an authorised officer to assess a community store whether or not an application under clause 44(1) (application for a community store licence) has been made in relation to the community store.

Decisions made under **clause 67** are not reviewable decisions. This is because the decision to require an authorised officer to assess a store, for whatever purpose, is usually a procedural step towards, for example, a licensing decision. Key licensing decisions that are specific to individual stores have been made reviewable by the Administrative Appeals Tribunal (see **clauses 41, 45, 52, 59, 58, 110 and 65**). Review for a determination made under clause 67 would still be available under the *Administrative Decisions (Judicial Review) Act 1977*.

Clause 68 applies if an assessment of a community store is to be, or is being, conducted.

Subclause 68(2) requires that the Secretary, or the authorised officer responsible for conducting the assessment, must give a written notice to the owner and the manager of the community store that specifies all of the following:

- that the assessment is to be, or is being, conducted;
- the name of the authorised officer or officers who are conducting, or will conduct, the assessment;
- the purposes of the assessment.

Subclause 68(3) requires that, if entry to the community store, or access to material or documents, is required for the purposes of the assessment, written notice of the requirement must be given (whether in the notice under subclause 68(2) or in another notice) at least 10 business days before the day the entry or access is required, unless a shorter period is agreed with the owner or manager. The term ***business days*** is defined in clause 5 of the Bill to be a day that is not a Saturday, Sunday or a public holiday in the Northern Territory.

To avoid doubt, clause 68 does not require a store to be visited or entered for the purposes of conducting an assessment: **subclause 68(4)**.

It should be noted that, in addition to assessments as described in these subclauses, the Bill, in clause 54, provides for monitoring visits once stores have been licensed. These visits are subject to the same provisions governing access to premises but do not require notice to be given. In keeping with other regulatory schemes, it is intended that these visits will focus on visual inspections, do not require significant effort from owners or managers and will be used when advance notice is counter-productive for effective compliance. For example, a store required to provide continuous access to a range of healthy food, may put in stock temporarily only when an inspection date is known.

Clause 69 provides that the Secretary may, in writing, appoint an appropriately qualified person who is either:

- an Australian Public Service employee in the Department; or

- any other person engaged by the Department, under contract or other wise, to exercise powers, or perform duties or functions, under Part 4 (food security),

to be an authorised officer for the purposes of the exercise of the powers conferred on authorised officers by this Part.

Clause 70 empowers the Secretary to issue identity cards to an authorised officer in the form approved by the Secretary. The identity card must contain a recent photograph of the authorised officer.

Subclause 71(1) empowers an authorised officer to enter the premises of the community store for the purposes of assessing a community store under clause 67. That is, an assessment can be made for the purposes of deciding whether or not a community store licence is required, deciding whether to grant or refuse a licence, deciding whether to grant, revoke, vary or impose conditions upon a community store licence, deciding whether to revoke a community store licence, or monitoring compliance with Part 4 (food security).

Before an authorised officer can enter the premises of a community store for the purposes of assessing it, the occupier of the premises (or another person who apparently represents the occupier) must have consented to the entry and the officer has shown his or her identity card if required by the occupier: **subclause 71(2)**.

The note to subclause 71(2) reminds the reader that, if consent is unreasonably withheld, the Secretary may refuse to grant a licence: see subclause 45(3).

The occupier of the premises or another person who apparently represents the occupier can withdraw their consent to entry at any time. If this occurs then **subclause 71(3)** provides that the authorised officer must leave the premises if the occupier, or another person who apparently represents the occupier, asks the authorised officer to do so.

Clause 72 empowers authorised officers to obtain access to records and assistance and, as **subclause 72(1)** provides, the clause applies if an authorised officer is assessing a community store under clause 67.

Subclause 72(2) provides that the owner of the community store, the manager of the store, or another person who apparently represents the occupier, must, if requested, give to an authorised officer, or any other person assisting the authorised officer, such documents as are reasonably necessary for the authorised officer to make the assessment. A criminal offence attracting a penalty of 60 penalty units applies for non-compliance with this requirement. This penalty is commensurate with the penalty applicable to a provision in the *A New Tax System (Family Assistance) (Administration) Act 1999* and applicable to occupiers of child care services that has a similar purpose (clause 219L).

A note to **subclause 72(2)** clarifies that, if the owner or another person unreasonably refuses to provide documents under subclause 72(2), the Secretary may refuse to grant a community store licence: see subclause 45(3).

Subclause 72(3) clarifies that subclause 72(2) does not apply if giving the documents might tend to incriminate the person or expose the person to a penalty.

A note to **subclause 72(3)** clarifies that a defendant bears the evidential burden in relation to the matters in subclause 72(3), and refers the reader to subsection 13.3 of the *Criminal Code Act 1995.*

In addition, the occupier of premises of the community store, or another person who apparently represents the occupier, must provide the authorised officer, or any other person assisting the authorised officer, with such assistance and facilities as are necessary and reasonable for making the assessment (**subclause 72(4)**). This might include, for example, assistance to locate certain documents at the community store premises. A criminal offence attracting a penalty of 10 penalty units applies for non-compliance with this requirement. The penalty of 10 penalty units is at the lower end of the scale.

A note to **subclause 72(4)** clarifies that, if the owner or another person unreasonably refuses to provide assistance or facilities under subclause 72(4), the Secretary may refuse to grant a community store licence: see subclause 45(3).

Subclause 72(5) clarifies that the offences contained in subclauses 72(2) and (4) are offences of strict liability. The note to this subclause directs the reader to clause 6.1 of the *Criminal Code Act 1995* for a definition of strict liability. These offences are strict liability offences because:

- the prosecution would have great difficulty in proving fault (especially knowledge or intention);
- the offences in question are minor;

- the requirements that must be complied with are administrative in nature;

- the elements of these offences are factual;

- the offence does not involve dishonesty or any other serious imputation affecting the person's reputation; and

- compliance with the requirement to provide access to information and reasonable assistance and facilities is essential to the assessment process which supports the licence decision making process.

In addition to the above powers, the Secretary under **clause 73** has the power to request information from persons relating to the assessment of a community store. This power is important as some documentation may be retained with advisers and other persons and not on the premises of the community store.

Subclause 73(1) clarifies that the clause only applies to a person if the Secretary considers that information (called compellable information) relating to an assessment of a community store under clause 67 is in the person's possession, custody or control (whether held electronically or in any other form) and the information is reasonably necessary for the purposes of the assessment.

If the Secretary has reason to believe that such information is in the person's possession, custody or control, **subclause 73(2)** provides that the Secretary may, in writing, require the person to give specified compellable information to the Secretary within a specified period of time; and in a specified form or manner.

Subclause 73(3) provides that the person receiving a notice under subclause 73(2) must not fail to comply with this requirement. A criminal offence attracting a penalty of 10 penalty units applies for non-compliance. Subclause 73(3) is subject to two defences.

The first defence to subclause 73(3) in **subclause 73(4)** provides that subclause 73(3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is of a commercial nature; or subject to an obligation of confidentiality arising from a commercial relationship; or commercially sensitive.

The second defence applicable to in **subclause 73(5)** and clarifies that subclause 73(3) does not apply in relation to compellable information if giving the information might tend to incriminate the person or expose the person to a penalty.

A note to subclauses 73(4) and (5) clarifies that a defendant bears the evidential burden in relation to the matters in subclause 72(3) and refers the reader to subsection 13.3 of the *Criminal Code Act 1995.*

Subclause 73(6) clarifies that this clause has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

Division 7 – Areas that are not in the food security area

Clause 74 deals with areas that are not in the food security area. The Bill provides that the food security area is the whole of the NT (see subclause91B(2)) and this clause allows the Commonwealth Minister for Indigenous Affairs to prescribe in the rules areas that are not in the food security area. This power is intended to be used to exclude populated areas with a number of food outlets. For example, more densely populated areas such as Darwin and Alice Springs are not intended to be covered by the scheme because the level of competition and choice in retail outlets make it unlikely that licensing would be required to ensure ongoing access to a reasonable range of food, drink and grocery items.

Subclause 74(1) allows the rules to prescribe that an area in the Northern Territory is not in the ***food security area***. These rules may be revoked: **subclause 74(2)**.

Subclause 74(3) provides that the Commonwealth Minister for Indigenous Affairs may make a rule for the purposes of subclause 74(1) or (2) on the Commonwealth Minister for Indigenous Affairs' own initiative or following a request made by or on behalf of a person who is ordinarily resident in the area to which the rule relates.

Subclause 74(4) provides that, in making a rule for the purposes of subclause 74(1) or (2) the Commonwealth Minister for Indigenous Affairs must have regard to:

- the object of Part 4;
- the wellbeing of people living in the area; and
- any other matter the Commonwealth Minister for Indigenous Affairs considers relevant.

Subclause 74(5) clarifies that, if the Commonwealth Minister for Indigenous Affairs makes a rule for the purposes subclause 74(1), then Part 4 continues to apply in relation to that area after the rule takes effect, in relation to things done or not done before the rule takes effect. This puts beyond doubt the application of things that apply under Part 4 in the food security area, even before an area is prescribed not to be in the food security area.

Division 8 – Enforcement relating to food security

Division 8 concerns the enforcement provisions in relation to the community stores licensing scheme, including penalties for failing to meet requirements under the scheme. A common criticism that arose during the evaluation of the current scheme was that the only remedy available where a store was consistently non-compliant with licensing requirements was to revoke the licence. This would then create a food security problem for the community and made enforcement difficult.

Where a store breaches licensing requirements, the normal initial response will be to seek resolution without recourse to enforcement actions under Division 8, which may include issuing warning notices. Where such a process fails to achieve compliance or is not appropriate for other reasons, the Bill allows four different types of enforcement action: civil penalties; infringement notices; enforceable undertakings; and injunctions. The options of enforceable undertakings and seeking court injunctions will give store owners the chance to address breaches of the licence conditions without exposure to fines.

It should be noted that administrative decisions, such as whether to grant a licence, what conditions to impose on a licence and whether a corporation should register under the CATSI Act, are subject to review by the Administrative Appeals Tribunal. In a situation where a store owner disputes an infringement notice, where the Secretary has considered there has been a breach of an enforceable undertaking or that an injunction has not been followed, the case and its outcome (including the amount of any penalty within the maximum provided in the legislation) will be determined by the relevant court.

Subdivision A – Civil penalties

Civil penalty orders are available for civil penalty provisions in Part 4, which relate to:

- **clause 38** – operating a community store without a licence (50 penalty units);
- **clause 56** – breach of condition of community store licence (20 penalty units); and
- **clause 61** – not registering under the CATSI Act (20 penalty units).

Civil penalty orders are considered an appropriate sanction for dealing with contraventions of the food security clauses set out above because breaches of licence conditions that create an immediate threat to personal or community safety already attract criminal penalties under other legislation. While failing to cooperate with improvements in food security has important consequences, it is considered that the impact of breaches would not be such as to require the possibility of a criminal conviction and civil, rather than criminal, penalties are sufficient.

Subclause 75(1) provides that the Secretary may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

Subclause 75(2) clarifies that a civil penalty provision is a subsection or section not divided into subsections of this Part if the words 'civil penalty' and one or more amounts in penalty units are set out at the foot of the section or subsection.

Subclause 75(3) provides that the Secretary must make an application under subclause 75(1) within six years of the alleged contravention.

If a relevant court is satisfied that the person has contravened the civil penalty provision, **subclause 75(4)** provides that the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Subclause 75(5) clarifies that an order under subclause 75(4) is a civil penalty order.

Subclause 75(6) provides that a pecuniary penalty must not be more than the pecuniary penalty specified for the civil penalty provision. Section 4B(3) of the *Crimes Act 1914,* which imposes a 'corporate multiplier' of five times the maximum criminal penalty for bodies corporate. In relation to civil penalties for Part 4 (food security), imposing a higher penalty for a body corporate is not considered appropriate. This is because most community stores are non-profit community-owned entities and would not necessarily have a significantly higher capacity to pay a fine than an individual.

Subclause 75(7) clarifies that the court must take into account all relevant matters, including:

- the nature and extent of the contravention;
- the nature and extent of any loss or damage suffered because of the contravention;
- the circumstances in which the contravention took place; and
- whether the person has previously been found by a court to have engaged in any similar conduct.

Clause 76 deals with the civil enforcement of a penalty.

Subclause 76(1) clarifies that a pecuniary penalty is a debt payable to the Commonwealth, and **subclause 76(2)** provides that the Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

Clause 77 relates to conduct contravening more than one civil penalty provision.

Subclause 77(1) provides that, if conduct constitutes a contravention of two or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.

Subclause 77(2) clarifies that the person is not liable to more than one pecuniary penalty under Part 8 in relation to the same conduct.

Clause 78 deals with multiple contraventions of civil penalty provisions.

Subclause 78(1) provides that a relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or similar character.

Subclause 78(2) provides that the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

Clause 79 provides that a relevant court may direct that two or more proceedings for civil penalty orders are to be heard together.

Clause 80 provides that a relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

Clause 81 clarifies that a contravention of a civil penalty provision is not an offence.

Clause 82 provides that a relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Clause 83 deals with criminal proceedings occurring during civil proceedings.

Subclause 83(1) provides that proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

- criminal proceedings are commenced or have already been commenced against the person for an offence; and

- the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Subclause 83(2) provides that the proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed and costs must not be awarded in relation to the civil proceedings.

Clause 84 provides that criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

Clause 85 deals with the non-admissibility of evidence given in civil proceedings.

Subclause 85(1) provides that evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:

- the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made; and

- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Subclause 85(2) clarifies that subclause 85(1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Clause 86 deals with ancillary contravention of civil penalty provisions.

Subclause 86(1) provides that a person must not:

- attempt to contravene a civil penalty provision;

- aid, abet, counsel or procure a contravention of a civil penalty provision;

- induce (by threats, promises or otherwise) a contravention of a civil penalty provision;

- be in any way directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or

- conspire with others to effect a contravention of a civil penalty provision.

Subclause 86(2) clarifies that a person who contravenes subclause 86(1) in relation to a civil penalty provision is taken to have contravened the provision.

Clause 87 sets out how to deal with continuing contravention of civil penalty provisions.

Subclause 87(1) provides that, if an act or thing is required under a civil penalty provision to be done within a particular period or before a particular time, then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

Subclause 87(2) provides that a person who contravenes a civil penalty provision that requires an act or thing to be done within a particular period or before a particular time, commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

This means that the maximum penalty will continue to grow, the longer that a person remains in contravention of the civil penalty provision. This is specifically to provide a disincentive to continue to contravene civil penalty provisions. If the maximum penalty were the same regardless of the length of the breach, some stores would effectively be able to 'buy' exemption from ongoing licensing requirements by a single payment of civil penalty. This is consistent with other legislation generally applying to other requirements of stores.

Clause 88 deals with the defence of mistake of fact.

Subclause 88(1) provides that a person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:

- at or before the time of the conduct constituting the contravention, the person considered whether or not the facts existed and was under a mistaken but reasonable belief about those facts; and

- has those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

Subclause 88(2) provides that, for the purposes of subclause 88(1), a person may be regarded as having considered whether or not facts existed if:

- the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

- the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Subclause 88(3) clarifies that a person who wishes to rely on the defence of mistake of fact in proceedings for a civil penalty order bears an evidentiary burden in relation to that matter.

Clause 89 deals with the state of mind of a person in relation to civil penalty provisions.

Subclause 89(1) provides that, in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subclause 86(1)), it is not necessary to prove:

- the person's intention;
- the persons' knowledge;
- the person's recklessness;
- the person's negligence; or
- any other state of mind of the person.

Subclause 89(2) clarifies that subclause 89(1) does not affect the operation of clause 88 about the defence of mistake of fact.

Subdivision B – Infringement notices

Infringement notices are considered an appropriate sanction for civil and criminal provisions under the Part 4 because they provide the opportunity for stores to settle an issue without requiring attendance at court and to reduce the potential amount of the penalty to be paid under the civil and criminal provisions. An infringement notice allows a person to pay a smaller fine equal to one-fifth of the maximum amount a court could impose under the relevant provision, without admitting liability, to avoid civil penalty proceedings. Alternatively, the person can dispute the infringement notice and have their case heard and the penalty determined by the court.

Clause 90 deals with when an infringement notice can be given.

Subclause 90(1) provides that, if the Secretary has reasonable grounds to believe that a person has contravened an enforceable provision, the Secretary may give to the person an infringement notice for the alleged contravention. ***Enforceable provision*** is defined at clause 5 to be a civil penalty provision or a provision of Part 4 that creates an offence.

Subclause 90(2) provides that the infringement notice must be given within 12 months after the day the contravention is alleged to have taken place.

Subclause 90(3) provides that a single infringement notice must relate only to a single contravention of a single civil penalty provision unless subclause 90(4) applies.

Subclause 90(4) provides that the Secretary may give a person a single infringement notice relating to multiple contraventions of a single provision if:

- the provision requires the person to do a thing within a particular period or before a particular time;
- the person fails or refuses to do that thing within that period or before that time;
- the failure or refusal occurs on more than one day; and
- each contravention is constituted by the failure or refusal on one of those days.

A note to subclause 90(4) directs the reader to subsection 4K(2) of the *Crimes Act 1914* in relation to continuing offences and clause 87 for continuing contraventions of civil penalty provisions.

Clause 91 deals with matters to be included in an infringement notice.

Subclause 91(1) provides that an infringement notice must:

- be identified by a unique number;
- state the day it is given;
- state the name of the person to whom the notice is given;
- state the name of the person who gave the notice;
- give brief details of the alleged contravention, including:
    - the provision that was allegedly contravened;
    - the maximum penalty a court could impose for the contravention; and
    - the time (if known) and day of, and the place of, the alleged contravention; and
- state the amount that is payable under the notice;

- given an explanation of how payment of the amount is to be made;

- state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):

    - if the provision is an offence provision and does not also constitute a civil penalty provision – the person will not be liable to be prosecuted in a court for the alleged contravention (this ensures that a person who pays an amount under an infringement notice for an alleged contravention of an offence provision is not liable to be prosecuted for that offence following making the payment); or

    - if the provision is an offence provision that can also constitute a civil penalty provision – the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order will not be brought, in relation to the alleged contravention (this ensures that a person who pays an amount under an infringement notice for an alleged contravention of an offence provision, that can also constitute a civil penalty, is not liable to be prosecuted for the offence or subject to proceedings for that civil penalty following making the payment); or

    - if the provision is a civil penalty provision – proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention (this ensures that a person who pays an amount under an infringement notice for an alleged contravention of a civil penalty provision is not liable to be subject to proceedings for that civil penalty following making the payment); and

- state that payment of the amount is not an admission of guilt or liability;

- state that the person may apply to the relevant Secretary to have the period in which to pay the amount extended;

- state that the person may choose not to pay the amount and, if the person does so:

    - if the provision is an offence provision and does not also constitute a civil penalty provision – the person may be prosecuted in a court for the alleged contravention; or

    - if the provision is an offence provision and can also constitute a civil penalty provision – the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be bought, kin relation to the alleged contravention; or

- if the provision is a civil penalty provision – proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and

- set out how the notice can be withdrawn;

- state that, if the notice is withdrawn:

  - if the provision is an offence provision and does not also constitute a civil penalty provision – the person may be prosecuted in a court for the alleged contravention; or

  - if the provision is an offence provision and can also constitute a civil penalty provision – the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or

  - if the provision is a civil penalty provision – proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and

- state that the person may make written representations to the Secretary seeking the withdrawal of the notice.

Subclause 91(2) provides that, for the purposes of the amount payable under the notice and required to be in the notice under paragraph 91(1)(f), the amount must be equal to one-fifth of the maximum penalty that the court could impose on the person for that contravention.

Clause 92 deals with extensions of time to pay an infringement notice amount. This allows a person to seek additional time if they are not able to pay the amount within the original 28 day notice period. Extension can also occur more than once.

Subclause 92(1) allows a person to apply to the Secretary for an extension of the period to pay as stated in an infringement notice and required by paragraph 91(1)(h).

Subclause 92(2) provides that, if the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary is able to do this before or after the end of the period.

Subclause 92(3) provides that, if the period is extended, a reference in Division 3 or in a notice or other instrument under Division 3 to the period to pay as stated in an infringement notice and required by paragraph 91(1)(h) is taken to be a reference to the extended period.

Subclause 92(4) provides that, if the Secretary does not extend the period, a reference in Division 3 or a notice or other instrument under Division 3 to the period to pay as stated in an infringement notice and required by paragraph 91(1)(h) is taken to be a reference to the period that ends on the later of the following days:

- the day that is the last day of the period referred to in paragraph 91(1)(h); or

- the day that is seven days after the day the person was given notice of the Secretary's decision not to extend.

Subclause 92(5) clarifies that the Secretary may extend the period more than once under subclause 91(2).

Clause 93 deals with withdrawal of an infringement notice. It allows people to apply for withdrawal by making submissions and ensures that the Secretary must take into account those submissions.

Subclause 93(1) provides that a person to whom an infringement notice has been given may make written representations to the Secretary seeking withdrawal of the notice.

Subclause 93(2) provides that the Secretary may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

Subclause 93(3) provides that, when deciding whether or not to withdraw an infringement notice, the Secretary:

- must take into account any written representations seeking the withdrawal that were given by the person to the authorised officer; and

- may take into account the following:

    - whether a court has previously imposed a penalty on the person for a contravention of an enforceable provision (enforceable provision is defined at clause 5 to be a civil penalty provision or a provision of Part 4 that creates an offence);

    - the circumstances of the alleged contravention;

    - whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of an enforceable provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;

    - any other matter the Secretary considers relevant.

The Secretary may give a different weight to each criterion in considering it, depending on the particular circumstances of the contravention.

Subclause 93(4) provides that notice of the withdrawal of the infringement notice must be given to the person and must state:

- the person's name and address;
- the day the infringement notice was given;
- the identifying number of the infringement notice;
- that the infringement notice is withdrawn; and
- that:
    - if the provision is an offence provision and does not also constitute a civil penalty provision – the person may be prosecuted in a court for the alleged contravention; or
    - if the provision is an offence provision and can also constitute a civil penalty provision – the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
    - if the provision is a civil penalty provision – proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Subclause 93(5) provides that, if the Secretary withdraws the infringement notice and the person has already paid the amount stated in the notice, the Commonwealth must refund to the person an amount equal to the amount paid.

Clause 94 deals with the effect of paying an infringement notice amount. It provides that a person cannot be prosecuted nor can civil penalty proceedings be brought against that person for the civil penalty to which the infringement notice relates.

Subclause 94(1) provides that, if the person to whom an infringement notice for an alleged contravention of an enforceable provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 91(1)(h):

- any liability of the person for the alleged contravention is discharged;
- either:
    - if the provision is an offence provision – the person may not be prosecuted in a court for the alleged contravention; or

- if the provision is a civil penalty provision – civil penalty proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and

- the person is not regarded as having admitted guilt or liability for the alleged contravention; and

- if the provision is an offence provision – the person is not regarded as having been convicted of the alleged offence.

Subclause 94(2) clarifies that subclause 94(1) does not apply if the notice has been withdrawn.

Clause 95 deals with the effect of Division 8.

Subclause 95(1) provides that Division 8 does not:

- require an infringement notice to be given to a person for an alleged contravention of an enforceable provision (***enforceable provision*** is defined at clause 5 to be a civil penalty provision or a provision of Part 4 that creates an offence); or

- affect the liability of a person for an alleged contravention of an enforceable provision if:

  - the person does not comply with an infringement notice given to the person for the contravention; or

  - an infringement notice is not given to the person for the contravention; or

  - an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

- prevent the giving of two or more infringement notices to a person for an alleged contravention of an enforceable provision; or

- limit the court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened an enforceable provision ('enforceable provision' is defined at clause 5 to be a civil penalty provision or a provision of Part 4 that creates an offence).

Subdivision C – Enforceable undertakings

Enforceable undertakings are a type of administrative sanction that allows the Secretary and a person to agree to that person's undertaking to comply with an enforceable provision. ***Enforceable provision*** is defined at clause 5 to be a civil penalty provision or a provision of Part 4 that creates an offence.

An undertaking to comply with an enforceable provision may be to take or refrain from taking specified action to comply, or to take specified action directed towards ensuring compliance or avoiding contravention. The Secretary will be able to take a person who has given an enforceable undertaking to a court to enforce the undertaking, if necessary. The relevant court will be able to make a number of different orders depending on the circumstances.

Enforceable undertakings are a valuable enforcement tool as they are non-adversarial and allow for a conversation between the person and the Secretary with a view to complying with the Bill. They also promote a culture of compliance within regulatory regimes and encourage correction of contraventions rather than penalties. Rather than issuing an infringement notice or instigating civil penalty proceedings, a consensual agreement as to an enforceable undertaking may be an appropriate policy outcome where the Secretary is aware that an enforceable provision is or may be breached, but where the person is able to assure the Secretary that certain steps can be taken to remedy the breach or potential breach. Use of an enforceable undertaking does not affect the Secretary's other powers in relation to infringement notices, civil penalty proceedings and injunctions. That is, other powers are not precluded from being used if an enforceable undertaking has been agreed to.

In the context of food security, enforceable undertakings will allow the Secretary to work with a community store to remedy breaches or potential breaches for the purposes of achieving an appropriate level of food security for an Aboriginal community. Although other regulatory powers will be available to the Secretary, recourse to those other powers are intended to be unnecessary should an enforceable undertaking be agreed to and complied with.

When considering whether to use enforceable undertakings in relation to Part 4, the Secretary may have regard to the surrounding circumstances of the breach (including potential breaches) in question, including:

- whether the breach was inadvertent;
- whether person/s involved in the breach have been co-operative, including providing information where relevant;
- whether an enforceable undertaking will achieve an effective outcome for those who have been adversely affected by the breach; and
- whether the person is likely to comply with the enforceable undertaking.

The Secretary may not use enforceable undertakings where other powers are considered more appropriate.

Clause 96 deals with the acceptance of enforceable undertakings.

Subclause 96(1) provides that the Secretary may accept any of the following undertakings:

- a written undertaking given by a person that the person will, in order to comply with an enforceable provision, take specified action;

- a written undertaking given by a person that the person will, in order to comply with an enforceable provision, refrain from taking specified action; or

- a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene an enforceable provision, or is unlikely to contravene such a provision, in the future.

Subclause 96(2) provides that the undertaking must be expressed to be an undertaking under clause 96. This ensures that there will be no confusion as to whether an enforceable undertaking has been made, and also that written agreements not specifically stated to be enforceable undertakings made under clause 96 cannot be considered an enforceable undertaking.

Subclause 96(3) provides that the person may withdraw or vary the undertaking at any time with the written consent of the Secretary.

Subclause 96(4) provides that the consent of the Secretary is not a legislative instrument. This provision is included to assist readers, as the written consent of the Secretary is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subclause 96(5) provides that the Secretary may, by written notice given to the person, cancel the undertaking.

Clause 97 deals with enforcement of undertakings. It allows the Secretary to apply to a relevant court for certain orders to enforce the undertaking.

Subclause 97(1) provides that, if:

- a person has been given an undertaking under clause 96;

- the undertaking has not been withdrawn or cancelled; and

- and authorised officer considers that the person has breached the undertaking,

the Secretary may apply to a relevant court for an order under **subclause 97(2)**.

Subclause 97(2) provides that, if the relevant court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:

- an order directing the person to comply with the undertaking;

- an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

- any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

- any other order that the court considers appropriate.

Subdivision D – Injunctions

Injunctions are court orders that require restraint from conduct or performance of certain things. In relation to community stores, they are intended to be used in situations where the conduct or the refusal to do certain things carries unacceptable risks of harm either to the store or its customers.

Clause 98 deals with the grant of injunctions.

Subclause 98(1) provides that, if a person has engaged, is engaging or proposes to engage, in conduct in contravention of an enforceable provision, a relevant court may, on application by an authorised officer, grant an injunction:

- restraining the person from engaging in the conduct; and

- if, in the court's opinion, it is desirable to do so – requiring the person to do a thing.

Subclause 98(2) provides that, if:

- a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and

- the refusal or failure was, is or would be a contravention of a provision enforceable under Part 8,

the court may, on application by an authorised officer, grant an injunction requiring the person to do that thing.

Clause 99 deals with the grant of interim injunctions. These are injunctions that can be obtained urgently, without being able to require an applicant for an injunction to give an undertaking as to damages, prior to the grant of an injunction under clause 98.

Subclause 99(1) provides that, before deciding an application under clause 98, a relevant court may grant an interim injunction restraining a person from engaging in conduct or requiring a person to do a thing.

Subclause 99(2) provides that the court must not require an applicant for an injunction under clause 98 to give an undertaking as to damages as a condition of granting an interim injunction.

Clause 100 clarifies that a relevant court may discharge or vary an injunction granted by the court under Division 5.

Clause 101 deals with certain limits on granting restraining or performance injunctions that do not apply.

Subclause 101(1) provides that the power of a relevant court under Division 5 to grant an injunction restraining a person from engaging in conduct may be exercised:

- whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind;

- whether or not the person has previously engaged in conduct of that kind; and

- whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Subclause 101(2) provides that the power of a relevant court under Division 5 to grant an injunction requiring a person to do a thing may be exercised:

- whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing;

- whether or not the person has previously refused or failed to do that thing; and

- whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that thing.

Clause 102 provides clarifies that the powers conferred on a relevant court under Division 5 are in addition to, and not instead of, any other powers of the court, whether conferred by the Bill or otherwise.

Subdivision E – Civil jurisdiction of courts

Clause 103 deals with the civil jurisdiction of courts.

Subclause 103(1) clarifies that jurisdiction is conferred on a court referred to in an item in the table below in relation to civil matters arising under the Bill, subject to the limits on the court's jurisdiction (if any) specified in the item:

Civil jurisdiction of courts		
Item	**Court on which civil jurisdiction is conferred**	**Limits of jurisdiction**
1	The Federal Court of Australia	No specified limits.
2	The Federal Magistrates Court	No specified limits.
3	A superior court, or lower court, of the Northern Territory	The court's general jurisdictional limits, including limits as to locality and subject matter.

Subclause 103(2) clarifies that jurisdiction is conferred on the courts of the Northern Territory only to the extent that the Constitution permits.

Subclause 103(3) clarifies that section 15C of the *Acts Interpretation Act 1901*, regarding the jurisdiction of courts, does not apply to civil proceedings under the Bill.

Division 9 – Other matters

Division 9 deals with:

- information about criminal history;
- legal professional privilege;
- application of Northern Territory laws to community stores;
- interaction with other Commonwealth laws;
- Administrative Appeals Tribunal review; and
- powers to request information from and disclose information to public officials.

Subclause 104(1) empowers the Secretary, by written notice given to an individual who is the owner, the manager or an employee of a community store or another person involved in a community store, to request the individual to give to the Secretary any written consent that the Secretary requires to enable criminal records to be checked for the purposes of Part 4 (food security). To establish that a person is of good character, it can be important to look at information about a person's criminal history, outside of spent convictions for matters which may impact on the running of the store or the willingness of people to patronise the store. For example, a person with a history of fraud or dishonesty, intimidation, or offences against children may be considered to not be of good character and may be unsuitable to be involved in the community store.

Subclause 104(2) clarifies that Part 4 (food security) does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Clauses 105 and 106 authorise disclosure of information, including personal information, to the Secretary or by the Secretary to certain government agencies or representatives.

The *Privacy Act 1988* prohibits the disclosure by government officers of personal information except in particular circumstances. One of the circumstances where disclosure of personal information is permitted is when that disclosure is authorised by law. **Subclause 105(1)** empowers the Secretary, by written notice, to request a Department, agency or authority of the Commonwealth, a State or a Territory, or a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory, to give the Secretary information specified in the request that the Secretary considers is reasonably necessary for the purposes of Part 4.

These clauses are necessary as authorised officers will not usually be qualified or authorised to assess compliance with other legislative requirements specific to areas such as food handling, occupational health and safety and compliance with tobacco and other licensing requirements, although the level of compliance can be relevant to the grant of a licence or conditions placed upon the licence. The provision will allow the Secretary to obtain up-to-date information on compliance with other legislation, and it will also enable the Secretary to monitor responses where other agencies have been requested to address particular store issues that are within their responsibility.

Subclause 105(2) clarifies that the disclosure of personal information in response to a request under this clause is taken to be a disclosure that is authorised by law for the purposes of the *Privacy Act 1988.*

Clause 106 sets out when disclosure of information, including personal information, by the Secretary is permitted. The primary purpose of this clause is to put beyond doubt the capacity to exchange relevant information with other agencies responsible for particular aspects of store operations such as food handling, occupational health and safety and tobacco and other licensing arrangements. Authorised officers are not empowered to act on behalf of these agencies although problems can be relevant to the licensing process. Where they observe potential problems related to other Commonwealth and Territory laws this clause allows referral to the relevant agencies to enable investigation of the issue and appropriate follow-up actions including training and support.

Subclause 106(1) provides that clause 106 applies if the Secretary is satisfied that disclosure of information obtained by the Secretary as a result of the performance of functions or the exercise of powers under Part 4 is reasonably necessary for:

- the enforcement of a law of the Commonwealth, a State or a Territory that creates an offence or imposes a pecuniary penalty; or
- the protection of public health or safety.

Subclause 106(2) provides that the Secretary may disclose, or authorise the disclosure of, the information to:

- a Department, agency or authority of the Commonwealth, a State or a Territory; or
- a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or
- the Australian Federal Police; or
- a police force or police service of a State or Territory.

The effect of this provision is that, when the Secretary discloses information in accordance with the provision, then the disclosure of the information (and, subsequently, the recording or use of the information for the purpose for which the information is requested) will be authorised for the purposes of the *Privacy Act 1988*. A record will be kept of all disclosures made under clause 106, consistent with best practice record keeping and Information Privacy Principle 11.3 under the *Privacy Act 1988*.

Clause 107 clarifies that Part 4 does not affect the law relating to legal professional privilege.

With respect to the application of Northern Territory laws to community stores, **clause 108** clarifies that, to the extent that a Northern Territory law is capable of operating concurrently with Part 4 (food security), this Part does not affect the application of the law to a community store or to the owner or manager of a community store. This means Northern Territory legislation such as the *Food Act* still applies.

Clause 109 clarifies the interaction with other Commonwealth laws, in particular the *Competition and Consumer Act 2010*. This provision has been included because, in licensing a community store, there are a number of broad areas where the *Competition and Consumer Act 2010* could potentially limit the Commonwealth's ability to improve the quality of the service provided by particular stores and to assist welfare recipients in managing their income. The exception provisions of the *Competition and Consumer Act 2010* are invoked in this Bill by this clause.

Subclause 109(1) clarifies that Part 4 (food security) has effect despite any other law of the Commonwealth.

Subclause 109(2) is made for the purposes of subclause 51(1) of the *Competition and Consumer Act 2010* and clarifies the following things that are to be regarded as specified in this clause and specifically authorised by this clause:

a) giving an authorisation under subclause 38(5);

b) determining under subclause 41(1) whether the owner of a community store is required to hold a community store licence;

c) making an application for a community store licence under clause 44(1);

d) determining under subclause 45(1) whether to grant a community store licence;

e) determining under subclause 52(1) to impose a condition of a community store licence;

f) making an application to vary a community store licence under subclause 57(1);

g) determining under subclause 58(1) whether to vary a community store licence (including varying or refusing to vary the conditions of the licence);

h) determining under subclause 59(1) to revoke a community store licence;

i) determining under subclause 62(1) that the owner of a community store is required to become registered under the CATSI Act;

j) determining under subclause 65(1) to revoke a community store licence;

k) requiring an authorised officer to assess a community store under clause 67;

l) determining under subclause 74(1) that an area in the Northern Territory is not in the food security area;

m) taking any action in connection with an action referred to in any of the above paragraphs; and

n) taking any action (including an action taken by the Commonwealth, a Commonwealth authority, the holder of a community store licence or a person acting in accordance with a community store licence), being an action that is:

(i) required by a community store licence; or

(ii) authorised by a community store licence; or

(iii) in connection with an action referred to in subparagraph (i) or (ii).

Clause 110 allows for review of certain determinations made by the Secretary under Part 4. The following determinations can be reviewed by the Administrative Appeals Tribunal:

- a determination under subclause 41(1) that a community store licence is required in relation to a community store;
- a determination under subclause 45(1) to refuse to grant a community store licence;
- a determination under subclause 52(1) to impose conditions on a community store licence;
- a determination under subclause 58(1) to refuse to vary a community store licence;
- a determination under subclause 59(1) to revoke a community store licence;
- a determination under subclause 62(1) that an owner of a community store is required to be registered under the CATSI Act; and
- a determination under subclause 65(1) to revoke a community store licence.

Part 5 – Other matters

Summary

Part 5 concerns the miscellaneous provisions of the Bill, including the independent review and sunset of the measures.

Division 1 – Introduction

Clause 111 provides a guide to Part 5 of the Bill.

Division 2 – Miscellaneous

Clause 112 provides an express power of delegation so that the Commonwealth Minister for Indigenous Affairs and the Secretary are able to delegate the functions or powers they have under the Act. This may be appropriate for functions or powers that are of an administrative nature that can be delegated to the Secretary or a Senior Executive Service employee.

Subclause 112(1) allows for the Commonwealth Minister for Indigenous Affairs, in writing, to delegate his or her functions or powers to the Secretary of the Department or a Senior Executive Service employee or acting Senior Executive Service employee under this Act.

Subclause 112(2) allows the Secretary, in writing, to delegate his or her functions or powers to a Senior Executive Service employee or an acting Senior Executive Service employee under this Act.

Clause 113 concerns references in Commonwealth or Northern Territory laws regarding the Act.

Subclause 113(1) provides that a reference in a law of the Commonwealth, or a law of the Northern Territory, to a law of the Northern Territory includes a reference to a law of the Northern Territory as modified by this Act or regulations made under this Act.

Subclause 113(2) is a similar provision to subclause 113(1), except that it refers to references to an offence against a law of the Northern Territory.

Subclause 113(3) provides that references in a law of the Commonwealth, or a law of the Northern Territory, to a law of the Commonwealth does not include a reference to a law of the Northern Territory as modified by this Act or regulations under this Act.

Subclause 113(4) provides that a reference in a law of the Northern Territory to a particular law of the Northern Territory includes a reference to that law as modified by this Act or regulations made under this Act.

Clause 114 provides that, where this Act or regulations made under this Act modify a Northern Territory Act or Northern Territory regulation, the Interpretation Act of the Northern Territory and any other Northern Territory Act of general application apply to this Act and regulations made under this Act.

Clause 115 provides that section 49 of the *Northern Territory (Self-Government) Act 1978* does not apply in relation to this Act.

Clause 116 provides that compensation is payable when there is an acquisition of property, due to the operation of the Act, as set out in paragraph 51(xxxi) of the Australian Constitution.

Subclause 116(1) sets out that subsection 50(2) of the *Northern Territory (Self-Government) Act 1978* and section 128A of the Liquor Act do not apply in relation to any acquisition of property referred to in those provisions due to the operation of this Act.

Subclause 116(2) provides that, if there is an acquisition of property to which paragraph 51(xxxi) of the Constitution applies, and the acquisition was otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person whose property was acquired.

Subclause 116(3) provides that, where an amount of compensation is not agreed upon by the Commonwealth and the person whose property has been acquired, that person has recourse to commence proceedings in a court of competent jurisdiction for the recovery of a reasonable amount of compensation as that court determines.

Subclause 116(4) notes that ***acquisition of property*** and ***just terms*** have the same meaning as provided for in paragraph 51(xxxi) of the Australian Constitution.

Clause 117 legislates for a review of the Act after it has been in force for some time.

Subclause 117(1) provides that the Commonwealth Minister for Indigenous Affairs must facilitate an independent review of the first seven years of operation of the Act.

Subclause 117(2) provides that the review must assess the effectiveness of the special measures in the Act and consider any other matter specified by the Commonwealth Minister for Indigenous Affairs.

Subclause 117(3) provides that the review must be completed, and a report must be prepared, before the end of eight years after commencement.

Subclause 117(4) provides that the persons undertaking the review must give the report of the review to the Commonwealth Minister for Indigenous Affairs.

Subclause 117(5) provides that the Commonwealth Minister for Indigenous Affairs must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving it.

Subclause 118(1) provides for a sunset provision, where the Act will cease to have effect 10 years after commencement. **Subclause 118(2)** states that the regulations may prescribe matters of a transitional nature arising out of this Act ceasing to have effect in accordance with subclause 118(1).

Clause 119 allows the Commonwealth Minister for Indigenous Affairs to make, by legislative instrument, rules required or permitted by this Act or rules that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Clause 120 provides that the Governor-General may make regulations on various matters relating to the Act. This includes those required or permitted by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Stronger Futures in the Northern Territory Bill – Alcohol Proposals
Regulation Impact Statement / Post Implementation Review

Department of Families, Housing,
Community Services and Indigenous Affairs
November 2011

Contents

1. Background

In June 2011 the Government issued the *Stronger Futures in the Northern Territory* Discussion Paper which sought views on options for reducing alcohol consumption and alcohol related harm. These options included retaining the alcohol restrictions established under the *Northern National Emergency Response Act 2007* (NTNER Act). The current Northern Territory Emergency Response (NTER) alcohol restrictions in prescribed areas in remote parts of the Northern Territory (NT) are due to sunset in August 2012.

2. The nature of the problem

The World Health Organisation (WHO) identifies the harmful use of alcohol as a global problem which impacts on both individual and social development. Alcohol related harm extends far beyond the physical and psychological health of the drinker and its impact reaches deep into society. Alcohol is associated with many serious social and developmental issues, including violence, child neglect and abuse, and absenteeism in the workplace. Alcohol is the world's third largest risk factor for disease burden; it is the leading risk factor in the Western Pacific and the Americas and the second largest in Europe. It is a leading factor for disease burden in Australia including in the NT.

What is harmful drinking?

The impact of alcohol consumption on disease and injury is largely determined by two separate but related dimensions of drinking:

- the total volume of alcohol consumed, and
- the pattern of drinking.

A broad range of alcohol consumption patterns, from occasional hazardous drinking to daily heavy drinking, creates significant public health and safety problems in nearly all countries. One of the key characteristics of the hazardous pattern of drinking is the presence of heavy drinking occasions, defined by the WHO as consumption of 60 or more grams of pure alcohol per drinking occasion.

Social environment plays a significant role in both the volume of alcohol consumed and the patterns of drinking engaged in by different groups across populations. In the NT, an important and relevant feature is the high level of drinking across the Territory. In 2007, it was estimated that 88.7 per cent of non-Indigenous adults in the NT had consumed alcohol in the previous 12 months, compared to 84.6 per cent of the rest of Australians. As in other places, there are local drinking patterns and different groups engage in different volumes and patterns of drinking. A 2006 estimate of drinking patterns showed that 55 per cent of urban Territorians over 18 years drank regularly. Of these 77.7 per cent did not drink on more than one or two days in a week. On days when they did drink the level of consumption was more

than five standard drinks. Overall, the proportion of NT non-Indigenous alcohol drinkers is greater than the national average in all age groups.

Among adults in the NT who consumed alcohol, 30 per cent reported drinking alcohol at a risky or high risk level. Men in the age group 45 years and above (40 per cent) and women in the age group 35-44 (39 per cent) were more likely to consume alcohol at risky or high risk levels than other groups.

Alcohol prevalence among Indigenous people in the NT living in remote and non-remote areas differs significantly. Remote area Indigenous residents (45 per cent) were less likely to consume alcohol than non-remote residents (66 per cent). Of those who consumed alcohol, the level of risk differed by gender. In remote areas, Indigenous women were more likely (22.8%) to consume alcohol at risky levels than Indigenous men (14.1%). In non-remote areas, the consumption at risky levels is similar for Indigenous men and women (22.7% and 21.2%, respectively). Conversely, more Indigenous men in remote areas consumed alcohol (14.8%) at high risk levels than in non-remote areas (10.4%), and Indigenous women in remote areas (7.6%) were less likely to consume alcohol at high risk levels than in non-remote areas (8.9%).

This illustrates the different drinking levels by age and gender and suggests that there are a wide range of patterns and responses that policy needs to take into account to be effective.

Who is at risk from harmful use of alcohol?

The degree of risk for harmful use of alcohol varies with age, gender and other characteristics of the consumer. In addition the level of exposure to alcoholic beverages and the setting and context in which the drinking takes place also play a role. For example, alcohol is the world's third largest risk factor for disease burden. It is the leading risk factor for disease burden in the Western Pacific. Alcohol consumption by an expectant mother may cause foetal alcohol syndrome and pre-term birth complications, which are detrimental to the health and development of the unborn child. These effects continue through a child's life affecting education, employment and social relationships.

The figure below shows the global risk factors by income with alcohol use third from the top.

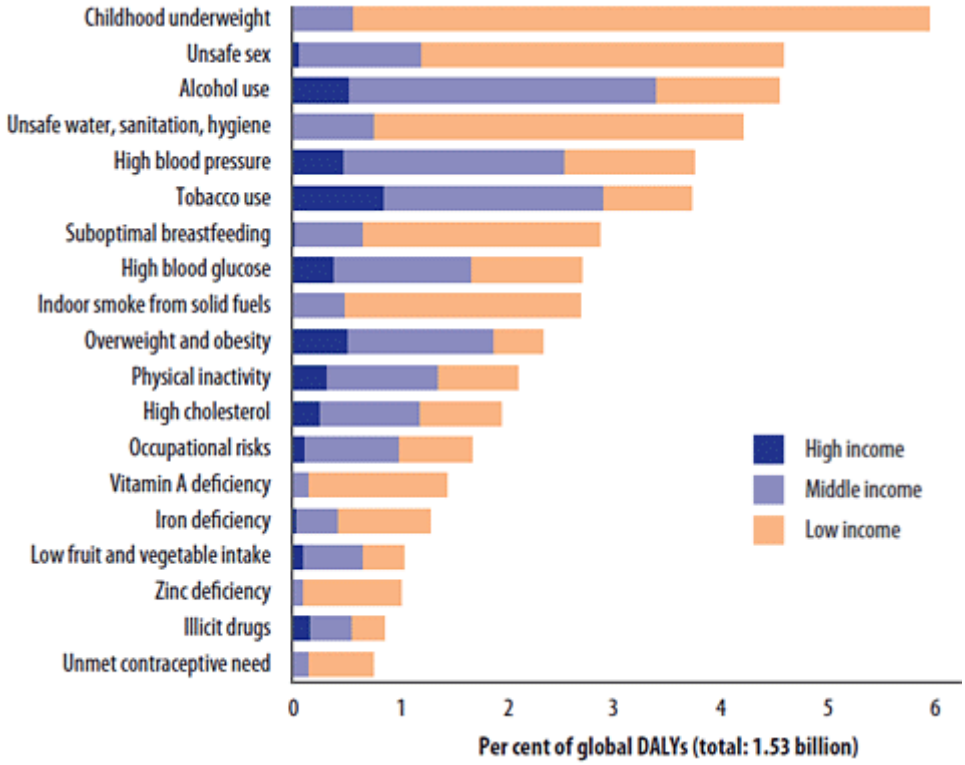

Figure: Global percentages of DALYs (1) attributed to 19 leading risk factors by income group. Source: Global Health Risks (2009)

The long term risk associated with regular daily patterns of alcohol consumption is defined by the total amount of alcohol typically consumed per week. A 2007 survey showed 17.2 per cent of non-Indigenous NT adults consumed alcohol in quantities that were considered risky or of high risk to health in the long-term. These levels are considerably higher than the national average of 10.6 per cent.

The short-term risk associated with given levels of drinking on a single day assumes that overall drinking patterns remain within levels set for long term risk. In the NT, 28.7 per cent of non-Indigenous adults were reported as drinking at a risky or high risk level for harm in the short-term. This was greater than the national average (20.4 per cent). Overall, one in three NT non-Indigenous men (33 per cent) and almost one in four women (23.6 percent) are at risk of short-term alcohol related harm.

[1] The disability-adjusted life year (DALY) extends the concept of potential years of life lost due to premature death to include equivalent years of "healthy" life lost by virtue of being in states of poor health or disability.

Guidance for policy

There is a substantial evidence-base that exists for policy makers on the effectiveness and cost effectiveness of a range of strategies directed to reducing alcohol related harm. These strategies include:

- regulating the marketing of alcoholic beverages (in particular to younger people);
- regulating and restricting availability of alcohol;
- enacting appropriate drink-driving policies;
- raising awareness and support for policies;
- providing accessible and affordable treatment for people with alcohol-use disorders; and
- implementing screening programmes and brief interventions for hazardous and harmful use of alcohol.

In 2010, the World Health Assembly approved a resolution to endorse a global strategy to reduce the harmful use of alcohol. The resolution urged countries to strengthen national responses to public health problems caused by the harmful use of alcohol.

The policy options and approaches identified by the World Health Assembly for national action can be grouped into ten recommended target areas, which are mutually supportive and complementary. These areas are:

- leadership, awareness and commitment;
- health services' response;
- community action;
- drink–driving policies and countermeasures;
- availability of alcohol;
- marketing of alcoholic beverages;
- pricing policies;
- reducing the negative consequences of drinking and alcohol intoxication;
- reducing the public health impact of illicit alcohol and informally produced alcohol; and
- monitoring and surveillance.

The Global Information System on Alcohol and Health (GISAH) has been developed by the World Health Organisation (WHO) to present data on levels and patterns of alcohol consumption, alcohol-attributable health and social consequences and policy responses at all levels.

There are also a range of popular approaches as leading measures for reducing alcohol related harm for which there is not a significant evidence base. These approaches include school based education, public education, warning labels, and advertising restrictions. These approaches are used to change knowledge, attitudes and behaviours. The evidence indicates that such measures may have some indirect impact, improve knowledge, and raise public awareness if they are part of a wider context of community action

(Edwards et al. 1995, p. 208). There are also areas where research is emerging or not yet being conducted.

Mass media campaigns have some effect in changing public opinion about harmful alcohol consumption but there is little research that indicates that campaigns have had a significant impact on behaviour.

Approaches to harmful drinking

There are many reasons why people drink alcohol. There are also many reasons why drinking alcohol becomes addictive for some people. As indicated above there is a growing body of evidence about the range of policy interventions. However, success in achieving and sustaining substantial reductions in alcohol related harm has been partial and difficult to achieve. In the face of uncertainty and the limitations of the available research, policy-makers internationally and nationally have adopted the "precautionary principle" to guide approaches to alcohol harm reduction. The precautionary principle involves acting to avoid serious or irreversible potential harm, even where there may be limited scientific certainty as to the likelihood, magnitude or causes of that harm. Approaches based on the precautionary principle are concerned with the prevention of harmful risk, shifting the burden of proof to those who promote a harmful activity, and offering broadly based policy options directed to the public interest and the protection of the vulnerable.

The NTER alcohol restrictions which were applied in the prescribed areas under the NTER legislation followed on a range of NT-wide and local alcohol reforms over the past two decades. Many of the communities which fall within the prescribed areas to which the NTER restrictions apply were "dry" communities before the NTER began. The NTER restrictions, however, applied to a number of communities that did not previously have restrictions and to areas of land beyond the boundaries of the communities. More information is provided on the NTER alcohol restrictions below.

3. Evidence on the magnitude of the problem

The social and economic costs of alcohol consumption in the NT are higher than in other states and territories.

Harms

The NT has the highest rate of alcohol-attributable deaths and hospitalisations in the country. Alcohol-attributable deaths occur in the NT at about 3.5 times the rate they do nationally. It is estimated that there were 120 and 119 alcohol-attributable deaths in the NT in 2004-05 and 2005-06 respectively, at corresponding age-standardised rates of 7.2 and 7.8 per 10,000 adult population. Rates for non-Aboriginal people in the NT are about double the national rate, while they were 9 to 10 times higher in Aboriginal people (Skov, Chikritzhs, Li, Pircher and Whetton 2010).

The NT stands out for the high proportion of road deaths associated with alcohol consumption with 55 per cent of road deaths associated with high risk drinking (Northern Territory Department of Transport and Infrastructure 2004). Sixty per cent of all assaults and 67 per cent of domestic violence incidents in the NT are alcohol related. Across the NT in 2009 there were 54,000 incidents of people taken into police protective custody due to alcohol misuse (NT Government 2010).

There were 2,319 and 2,544 alcohol-attributable hospitalisations in the NT in 2004-05 and 2005-06 respectively, at corresponding rates of 146.6 and 157.7 per 10,000 population (more than twice the national rate) (Skov et al. 2010). While not NT specific, recent analysis by the Cancer Council shows an association between cancer and long-term alcohol consumption. Overall, researchers conducting the analysis attributed 5 per cent of cancers to longer-term alcohol consumption.

There is extensive research establishing links between alcohol and drug abuse and child maltreatment (Dawe, Harnett and Frye 2008). In recent inquiries, substance abuse, particularly alcohol abuse, has been noted as a principal factor contributing to child abuse and neglect (Aboriginal Child Sexual Assault Taskforce 2006; Anderson & Wild 2007; Gordon et al. 2002; Robertson 2000; Bath 2010).

Maternal alcohol consumption can lead to a debilitating condition known as Foetal Alcohol Spectrum of Disorders (FASD). From 2003 to 2006, approximately one in twelve non-Indigenous pregnant women and nearly one in eight Indigenous pregnant women reported consuming alcohol at the time of their first antenatal visit. By 36 weeks, the proportion of women consuming alcohol had fallen in both populations, by approximately 40 per cent among Indigenous women to between 8.0 and 8.7 per cent, and by approximately 60 per cent in non-Indigenous women to between 3.6 and 4.7 per cent. As the incidence of FASD has been shown to be higher among Indigenous peoples this may disproportionally affect the NT more than other jurisdictions (Tew 2010).

There are also substantial harms and costs due to alcohol beyond those referred to above and which are less apparent and more difficult to quantify. These are the psychological and emotional harms that arise within families, particularly towards children, as a result of alcohol related family violence. It is well known that children who grow up in such highly dysfunctional and violent environments have lower educational and employment outcomes and higher rates of involvement in crime both as juveniles and adults, all of which incurs very real costs to society. The findings of the *Little Children are Sacred* inquiry and the *Growing them strong, together* Report, by the NT Board of Inquiry into child protection in the NT underline the detrimental impact of alcohol on NT children, including Indigenous children.

Alcohol consumption levels

Rates of alcohol consumption are significantly higher in the NT than in the rest of Australia, with 17 per cent of the adult population drinking at a risky or high risk rate in terms of long term harm, and 18 per cent of the population consuming alcohol at a rate which risks short term harm on at least one occasion per month (based on 2001 National Health and Medical Research Council guidelines).

Adults in the NT on average consumed 15.07 litres of pure alcohol in 2004-05, 53 per cent above the national average. Indigenous consumption in 2004-05 is estimated to have been 16.9 litres and non- Indigenous consumption, 14.5 litres. If the NT were a country then it would be amongst the countries with the highest rates of per capita alcohol consumption in the world. Studies have identified a correlation between high levels of alcohol consumption in countries and shortened life expectancy outcomes.

While Aboriginal and Torres Strait Islanders are less likely to consume alcohol than non-Indigenous people, those who do are more likely to drink at risky levels.

Since 2002, total alcohol supply in the NT increased at a compound annual rate of 2 per cent. From 2008 to 2009, supply increased by 1 per cent, while the drinking age population increased by 3 per cent. On average since 2002, beer has accounted for 50 per cent of total supply. Total beer supply has increased by 12 per cent since 2006. Since 2002, the total supply of spirits increased at a compound annual rate of 4 per cent and this rate remained steady in 2008 and 2009. The supply of standard spirits has increased by 18 per cent since 2007. Since 2002, Darwin and Alice Springs have accounted for around 60 per cent of the NT wholesale alcohol supply.

Costs

The Menzies School of Health Research published the *Harms from and costs of alcohol consumption in the Northern Territory* report in 2009 (the Menzies study). This appears to be the most recent evidence available on which to estimate the costs of alcohol consumption in the NT. The objective of this

study was to develop a robust estimate of the value of harm occurring in the NT due to the consumption of alcohol and to support the development of effective future NT government public policies designed to reduce the harms and costs due to alcohol consumption in the NT. This report attempts to quantify the social and economic costs of alcohol harm in the NT. Estimated costs information is outlined below:

- the total social cost of alcohol is estimated at $642 million in 2004-05, with tangible costs of $406 million, and intangible costs of $236 million;
- this represents an estimated cost per adult of $4,197, substantially higher than the national level of $943 per adult estimated by Collins and Lapsley (2008);
- partially offsetting this is an estimated $71 million in additional taxation revenue raised on NT alcohol sales (only $0.14 million of which flows directly to the NT government);
- there were an estimated 95 net deaths caused by alcohol (120 deaths caused and 25 deaths averted);
- alcohol attributable hospitalisations accounted for 4.6 per cent of the NT total;
- crime caused by alcohol accounted for 41 per cent ($55.2 million) of the cost of policing;
- the NT represents seven per cent of Collins and Lapsley's estimated national alcohol-attributable policing costs of $747.1 million;
- the majority of alcohol-related policing costs were due to violent crime (65 per cent), followed by drink driving (just under 20 per cent);
- just over fifty per cent of the tangible costs of alcohol falls on households, with the NT government and businesses each bearing one quarter of the costs;
- households bear all of the intangible costs of alcohol;
- ninety-three per cent of the costs are estimated to arise from drinking by those consuming at risky or high risk levels; and
- it is estimated that $76 million of the tangible, and $32 million of the intangible, costs of alcohol could be avoided through a feasible harm reduction policy.

Overall, the total NT costs per adult are estimated at 4.5 times greater than Collins and Lapsley's national cost estimates. The total social costs arising from alcohol consumption in the NT in 2004-05 are summarised in the following tables.

Total social costs of alcohol consumption

	Northern Territory		Australia	
	Total ($ million)	Per adult ($)	Total ($ million)	Per adult ($)
Tangible	405.9	2,654	10,829.5	667
Intangible	235.9	1,543	4,488.7	276
Total	641.8	4,197	15,318.2	943
Additional taxation revenue	-70.9	-464	-5,112.5	-315
Total net of taxation revenue	570.9	3,733	10,205.7	628

Tangible costs

	Northern Territory		Australia	
	Total ($ million)	Per adult ($)	Total ($ million)	Per adult ($)
Labour in the workforce				
Reduction in workforce*	121.5	795	3,210.7	198
Absenteeism	9.5	62	367.9	23
Total	131.1	857	3,578.6	220
Labour in the household				
Premature death*	36.9	241	1,423.9	88
Sickness	6.2	41	146.9	9
Total	43.1	282	1,570.8	97
Consumption resources saved from premature death	nc	nc	-1,611.3	
Total paid and unpaid labour costs	174.2	1,139		
Healthcare (net)		0		
Hospital*	13.3	87	662.2	41
Other Medical	15.1	364	540.7	33
Nursing homes	0.7	18	401.2	25
Pharmaceuticals	8.5	56	297.6	18
Ambulances	2.0	13	74.8	5
Total healthcare	39.7	538	1,976.7	122
Road crashes n.e.i.	36.6	239	2,202.0	136
Crime n.e.i.				
Police	55.2	361	747.1	46
Criminal courts	6.0	39	85.8	5
Prisons	14.6	96	141.8	9
Property	3.0	20	67.1	4
Insurance administration	0.6	4	14.3	1
Productivity of prisoners	11.9	78	368.0	23
Total crime	91.4	598	1,424.0	88
Resources used in abusive consumption	64.0	419	1,688.8	104
Total	405.9	2,654	10,829.5	667

Note: * Indicates that the method of calculation differs substantially between this study and Collins and Lapsley, making direct comparisons of limited value.
nc Not calculated

Intangible costs

	Northern Territory		Australia	
	Total ($ million)	Per adult ($)	Total ($ million)	Per adult ($)
Loss of life*	225.4	1,474	4,135.0	255
Pain and suffering (road crashes)	7.0	46	353.6	22
Pain and suffering (assaults) *	3.5	23	nc	nc
Total Intangible Costs*	235.9	1,543	4,488.6	276

Note: * Indicates that the method of calculation differs substantially between this study and Collins and Lapsley, making direct comparisons of limited value.
nc Not calculated

Source: Menzies School of Health Research, 2009. *Harms from and costs of alcohol consumption in the Northern Territory*, Report prepared by the South Australian Centre for Economic Studies, Adelaide and Flinders University, pp. v-vi.

A certain proportion of various types of cancers are attributable to drinking at low levels according to National Health and Medical Research Council guidelines. This indicates that the costs of alcohol consumption are not confined to high levels of consumption. Further, a person may drink to the point where their blood alcohol concentration is above 0.05 grams per litre and depending on their behaviour, this may be considered reasonable and responsible. However, if that person drove a car and had a crash then it would be considered a harm attributable to alcohol. This illustrates that there is ambiguity in the distinctions between reasonable and responsible drinking and excessive and irresponsible drinking depending on context and consequences.

Benefit

The Menzies study identified two potential sources of social benefit which could partially offset the social costs of alcohol:

- net GST revenue to the NT Government from alcohol sales in the NT is estimated at $0.14 million (with other state and territory governments receiving $2.76 million from alcohol expenditure in the NT);
- Excise and Wine Equalisation Tax revenue to the Commonwealth on alcohol sold in the NT is estimated at $68.0 million; and
- combining these two sources of taxation, the total additional taxation revenue from alcohol consumption in the NT is $70.9 million.

4. Current strategies in place aimed at minimising alcohol related harm

Current arrangements

The NT *Liquor Act* and Liquor Regulations are the principal regulatory instruments governing the regulation of licensing and alcohol supply in the NT. The *Liquor Act* provides for the regulation of the sale, provision, promotion and consumption of liquor in the NT.

The NT Licensing Commission (the Licensing Commission) is an independent statutory authority with powers to regulate and enforce the Territory's racing, gaming and licensing legislation. The Commission operates as an independent tribunal with responsibility for licensing and related matters covering liquor control, kava management, private security, escort agencies and gaming machines.

The objects of the *NT Liquor Act* are quoted below:

> "3 Objects
>
> (1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:
>
> (a) so as to minimise the harm associated with the consumption of liquor; and
>
> (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.
>
> (2) The further objects of this Act are:
>
> (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
>
> (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the NT; and
>
> (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community."

The NT *Liquor Act* sets out the rules in relation to licences, complaints and objections, special licences, control of conduct of licensees, guidelines for licensees, restricted areas, permits for alcohol consumption on restricted areas, powers of entry, search and seizure, restricted premises, offences, obligations of licensees, banning notices and exclusion orders.

Historically, the NT licensing framework has been less onerous than other state and territory jurisdictions. For example, the NT *Liquor Act* requires only a one-off fee of $200 to be paid when a full liquor licence is first granted, or a $20 fee for special liquor licences and liquor wholesalers. There is no risk or social costs based fee structure as in some other jurisdictions.

However, there is a lengthy history of localised restrictions in the NT, in addition to the *Liquor Act* restrictions. For example, many remote Indigenous communities have themselves decided that the consumption of alcohol within their boundaries should be prohibited and applied NT processes to declare

themselves ‘dry’ - often as a response to alcohol-related violence. The evidence suggests that such prohibitions result in reductions in alcohol-related harm (National Drug Research Institute (NDRI) 2007).

Over the last decade, the NT Government has progressively moved to strengthen their commitment to addressing unacceptably high levels of alcohol related harms in the NT culminating in the recent *Enough is Enough* package of reforms which imposes strident new arrangements targeted at problem drinkers.

On 5 May 2011, the NT Legislative Assembly passed a package of Bills comprising the *Enough is Enough* strategy including the Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Bill 2011, Alcohol Reform (Prevention of Alcohol Related Crime and Substance Misuse) Bill 2011 and Alcohol Reform (Liquor Legislation Amendment) Bill 2011.

The laws introduce new bans for problem drinkers, mandated treatment, and a Banned Drinker Register at all takeaway liquor licences across the Territory to enforce bans at the point of sale. The legislation extends the Banned Drinkers Register and the ID scanner system that previously applied in specific locations across the NT and significantly increases penalties for selling alcohol to minors, sly-grog sales and ‘book-up’ of alcohol purchases and introduces an infringement notice system for licensees who breach their conditions. The reforms focus on problem drinkers and other offenders and provide for a referral link to income management where people cannot manage their drinking.

Implementation of the reforms is well advanced. Although significant numbers of people have already been listed on the Banned Drinkers register, the full impact of the changes is yet to be demonstrated.

This far reaching package builds on initiatives to combat alcohol which have been pursued or supported by the Northern Territory Government over the last ten years.

In 2004, the NT Government released the NT Alcohol Framework aimed at achieving alcohol reform.

Initiatives introduced under the 2004 reforms included:

- Alcohol Management Plans;
- targeted trading hour and product restrictions;
- electronic alcohol management enforcement (ID) systems;
- Alcohol Court reforms;
- increased rehabilitation and sobering up facilities;
- new laws including precinct restrictions, on the spot fines and bans targeting alcohol fuelled violence;
- a new awareness campaign;
- more police and night patrols;

- requirement for plastic glasses in some venues;
- mandatory Responsible Service of Alcohol training for all employees;
- moratorium on takeaway licences for a fixed period (now ended);
- support for liquor accords; and
- announcement of intention of NT Government to buy-back three liquor licences in Alice Springs.

Alcohol Management Plans (AMPs) have been introduced into regional centres outside of the Darwin region and to some remote areas. AMPs contain tailored supply, demand and harm reduction strategies to meet the particular needs of the local or regional area and its community. The NT Government reported that there are ten AMPs in operation. There are more than twenty AMPs in the process of being developed or implemented in communities across the NT.

In a number of these communities AMPs have resulted in a reduction in alcohol related harm such as incidents of alcohol related crime, anti-social behaviour and serious assaults. As such AMPs can be a valuable tool for designing and implementing locally tailored harm reduction strategies to address the needs and circumstances of each community. To be effective the development of an AMP needs to be a community-driven process and this is particularly important in terms of harnessing community engagement and commitment. The concept of AMPs is, therefore, a bottom up approach and inclusive of all interests (suppliers, consumers, service providers, drinkers and non-drinkers). By their very nature AMPs have to be negotiated against the backdrop of the local context.

The Electronic Alcohol Management Enforcement Systems are ID systems which were initially introduced in Katherine, Alice Springs, Nhulunbuy and Groote Eylandt as a tool to enforce bans, alcohol prohibition orders, supply restrictions and to manage the enforcement of individual permit restrictions. These systems have now been expanded Territory wide in the implementation of the *Enough is Enough* reforms.

Amendments to the *Liquor Act* provided for liquor accords and protection against competition laws to strengthen the capacity of the alcohol industry to enter into voluntary accords around such issues as restrictions on cask wine sales and multi-venue barring of people who cause alcohol-fuelled violence and anti-social behaviour. Accords are in place in areas such as Casuarina Shopping Precinct and Alice Springs.

In 2007, the *Little Children Are Sacred* report found that alcohol abuse was ‘destroying communities’ and was the ‘gravest and fastest growing threat to the safety of children’. Alcohol restrictions were therefore seen as a necessary part of the NTER by the Australian Government in order to protect children, make communities safe and create a better future for Indigenous people in the NT.

The NTER alcohol restrictions were linked to the establishment of prescribed areas. Within the prescribed areas it is an offence to take, possess, drink or supply alcohol. The NTER restrictions also include an offence for any alcohol outlet that does not record the name, address and place of consumption for purchases over 1,350 ml of alcohol (around three cases of beer). These changes were additional restrictions to those already in place under the NT *Liquor Act*. Prescribed areas include all Aboriginal land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976*; all community living areas granted under the *Lands Acquisition Act* (NT), town camps declared by the Commonwealth Minister, and any other area of the NT declared by the Commonwealth Minister.

Evaluation of effect of current arrangements

The numerous reforms, initiatives and restrictions over time and in different places in the NT make it difficult to attribute impacts to any single policy or set of policy changes. Per capita consumption of alcohol in the NT appears to have peaked in 2005, and has been slowly decreasing each year since. It decreased by 2.6 per cent from 2008 to 2009. Whether this is attributable to the NT's 2004 alcohol reforms, the NTER alcohol restrictions or increased enforcement or other factors is uncertain.

There has been a reduction in cask wine sales of 53 per cent since 2006. This coincides with the introduction of several initiatives that limited the sale of cask wine in various regions around 2006. However, the NT Department of Justice statistics suggest that this reduction is being undermined by increasing sales of very cheap two-litre cask and bottled wine. A 42 per cent increase in cask wine sales and an 18 per cent increase in bottled wine sales between 2007 and 2009 in Alice Springs is attributed to cut-price wine sales (NT Department of Justice undated).

Since 2007 there has been a reduction in the supply of pre-mixed spirits by 28 per cent. This may be associated with the introduction of the "Alco-pops Tax" in April 2008.

Comments from community members in the 2009 consultations for the redesign of the NTER to reinstate the *Racial Discrimination Act 1975* indicated that there was less violence and communities were quieter as a result of the NTER restrictions. Women identified these benefits slightly more frequently than men.

Women in particular saw benefit in the NTER restrictions and some expressed concerns that there would be a return to violence and abuse if they were removed without a robust framework to replace them. In the Stronger Futures in the NT consultations there was a strong call for communities that were dry to remain dry. Surveys report that people consider that there is less drinking in remote communities than three years ago.

Alcohol abuse remains, however, both a major cause and symptom of Indigenous disadvantage in the NT. Addressing alcohol abuse is critical to

progress both in remote communities and towns across the NT. There have been some anecdotal reports that people are moving into Darwin and the towns to avoid the NTER alcohol restrictions in prescribed areas. However, the movement of people from communities to regional centres including Darwin is not new.

There have been some local achievements through AMPs. For example, Groote Eylandt has seen a reduction in alcohol related harm through its AMP. Between 2004/05 and 2008/09:

- anti-social behaviour incidents decreased by 74 per cent;
- property crime decreased by 68 per cent;
- commercial break ins decreased by 79 per cent;
- protective custody incidents decreased by 90 per cent; and
- the level of aggravated assaults decreased by 68 per cent.

As d'Abbs et al. (2008) suggest, the success of this AMP was due to the high level of engagement between the key stakeholders and the community and the efforts put into the effective coordination of a response including the active involvement on the part of the NT Licensing Commission which, at the request of community leaders, conducted several hearings and meetings on the island prior to formalising the management system.

AMPs have resulted in significant reductions in alcohol consumption in some other locations. Since the AMPs and/or supply restrictions have been introduced, reductions in pure alcohol consumption have included:

- Nhulunbuy – 22 per cent;
- Alice Springs – 18 per cent;
- Katherine – 14 per cent (though this result was not sustained) (NT Government 2010).

Reductions in the hours of trading for licensed premises have been effective in reducing alcohol consumption and related harm. Such measures include reducing the hours of the day in which takeaway alcohol can be purchased and prohibiting the sale of full-strength beverages for on-premises consumption before midday (NDRI 2007).

In addition, there are measures in the NT *Liquor Act* which have been identified in research in other locations as being effective measures. These include laws against the sale of alcohol to minors, serving intoxicated persons, and driving under the influence of alcohol. The effectiveness of such laws depends in large part upon enforcement (Loxley et al. 2004 pp. 145-146; NDRI 2007) and enforcement needs to be sensitive to local social and cultural contexts (Gray et al. 2010, pp. 1-3). It should also be noted that in some communities there is a preference for enforcement by police from "outside", as their roles are not compromised by various socio-cultural obligations.

There are also some measures that have been reported in the literature as not being as effective as intended. Voluntary alcohol accords have limited effect. On their own, education and persuasion programs have limited impact and need to be used in conjunction with other measures. Measures which stigmatise alcohol users are counter-productive. Measures which focus on dependent users, and ignore episodic 'binge' users, have limited impact.

An evaluation of the Alice Springs AMP indicated that some local people were confused about AMPs, the goals of AMPs and there were difficulties and delays in reaching agreement when community views about solutions were strongly held and divided (Senior, Chenhall, Ivory & Stevenson, undated).

Illicit alcohol supplies are monitored in the NT through measures such as the Substance Abuse Intelligence Desks (SAIDs). The SAIDs coordinate a multi-jurisdictional partnership involving police in the Northern Territory, South Australia and Western Australia, to reduce the supply of licit and illicit substance in the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Lands, the Top End and Central Australia. The SAIDs act as focal points for collating intelligence and coordinating policing activities, principally in detecting and disrupting drugs, petrol, solvents, kava and alcohol.

The successes of the SAIDs are as a result of high profile enforcement activities in areas that have been identified by SAID intelligence analysis as being known 'hotspots' for the trafficking or use of certain illicit substances. It is not necessarily the case that there has been an increase in the amount of illicit substances and alcohol in remote areas, but the Police have a greater capacity to identify, manage and target offenders, resulting in significant seizures of illicit substances.

The SAID have developed an extensive intelligence network throughout the Cross Border regions and beyond. This network did not exist prior to SAID and now allows for comprehensive information/intelligence sharing across remote areas. The network also allows these officers to work efficiently and proactively in remote areas which would not otherwise be so extensively serviced with such an intra-jurisdictional capability.

5. Objectives

The Australian Government's objective is to continue to work with the NT Government to reduce the harm associated with alcohol misuse.

6. Options

Successive Northern Territory and Commonwealth Governments have considered a wide range of regulatory and non-regulatory options to tackle alcohol abuse in the Northern Territory.

A range of options have been considered and consulted upon in the development of the Stronger Futures in the Northern Territory legislation with

a view to reducing the harm that continues as a result of alcohol misuse in the Northern Territory.
The range of options were canvassed in the Stronger Futures in the Northern Territory consultations process, a series of community consultations held in more than 100 communities and stakeholder and public meetings. The options are listed below.

(Option a) Replicate and strengthen the NTER alcohol restrictions

This option would involve the replication and strengthening of the alcohol restrictions under the *Northern Territory National Emergency Response Act 2007* (NTNER Act). The object of reducing harm, all of the alcohol offences and penalties, the defences to prosecution, and all of the Commonwealth Minister's powers to impose conditions on liquor licences and permits in prescribed areas and to make declarations would continue.

Measures under this option would be strengthened by increasing the maximum penalty for the supply, transportation or possession of less than 1,350 millilitres of liquor in a prescribed area; supporting greater community involvement and responsibility for alcohol management as an alternative control measure to the restrictions; and changing the name of the prescribed areas.

Current restrictions received considerable support from people in the community consultations and additional concerns were raised about the practice of 'grog-running'. As a result, this option is being proposed in the Stronger Futures in the Northern Territory legislation. New and strengthened provisions around the Alcohol Management Plans are also proposed on the basis that communities should be able to develop tailored long term solutions to the problems of alcohol abuse in remote communities. As such, new and strengthened Alcohol Management Plans will enable communities to ultimately take responsibility for safe alcohol consumption practices.

(Option b) Minimum Pricing of Alcohol

Under this option, a minimum price at which a unit of alcohol can be sold would be set. Under this approach, price increases would be targeted at alcohol that is sold cheaply. This approach would target the supply of alcohol rather than the demand.

A floor price specifically for the Northern Territory alone was raised during the consultations.

The Australian Government has asked the National Preventative Health Agency to undertake preliminary work to consider a national floor price, for consideration by all states and territories. The preferred approach is to consider the issue of a floor price on a national basis.

(Option c) Capacity of Commonwealth Minister to request the appointment of a licensing assessor

One option to emerge from the consultations was to allow the Commonwealth Minister to draw the operations of a licensed premises to the attention of the Northern Territory Minister, in the event there were concerns that its operations were associated with high levels of alcohol-related harm.

Under this option, the Commonwealth Minister could request the Northern Territory Minister to appoint an assessor under section 14 of the *Liquor Act* (NT) which provides for the Northern Territory Minister to "appoint such persons as he thinks necessary to be assessors to advise the Northern Territory Liquor Commission, within the terms of their appointments, regarding any matter concerned with the administration or operation of this Act or the regulations."

This option is being proposed in the Stronger Futures in the Northern Territory legislation.

(Option d) Enforcement and reporting on the new alcohol measures

The success of alcohol reforms depends in large part on the effectiveness of arrangements that are in place to enforce compliance. A range of potential measures to complement and reinforce the Northern Territory Government's regulation and monitoring of licensed premises were canvassed in the consultations.

These potential measures included:

- stipulating in legislation the circumstances under which a significant breach of licence conditions must be prosecuted in court, as opposed to being dealt with by the Licensing Commission;
- determining that appropriate follow up action must occur with licensed premises that have been successfully prosecuted, to ensure their compliance with any conditions imposed by the court and appropriate improvements in business practices occur;
- requiring the Licensing Commission to provide regular reports on the impact of the alcohol reforms under the new legislation against key outcome indicators including rates of alcohol-caused deaths and serious road injuries, numbers of people placed in protective custody, incidences of alcohol-related assaults and family violence, general indicators of improvements in community safety, health, school participation, education and employment rates;
- providing for unclassified information and intelligence to be shared with victim support agencies, police and the criminal justice systems. This would facilitate the centralised collection, collation and timely dissemination of information and intelligence for tracking the impact of AMPs and other initiatives under the Act, ensuring they are fully integrated with broader community safety measures.

The proposed legislation will require that the Licensing Commission provide information to the Minister on request.

(Option e) National legislation to strengthen Income Management/ welfare reforms

Over the past four years, successive consultations with people in remote Aboriginal communities in the Northern Territory have identified support for income management as a tool to ensure that welfare payments are spent on food and other essentials.

Income management is seen by the Australian and Northern Territory Governments as an important policy tool to complement its own alcohol reforms and support the goal of reducing the effects of alcohol misuse on families and the community. A Commonwealth amendment would give effect to the intention of both governments.

To strengthen harm reduction measures, alcohol and substance abuse could become a trigger for compulsory income management. This would bring into operation the provision which has been included in Northern Territory law to link alcohol misuse or other related substance abuse to income management.

This option is being proposed in amendments to the *Social Security (Administration) Act 1999* separately from the Stronger Futures legislation.

(Option f) Joint review of the Commonwealth and Northern Territory legislation relating to alcohol in the Northern Territory

The Northern Territory Government has implemented new measures to curb problem drinking under its *Enough is Enough* reforms.

To consider the inter-operation of these reforms, the Australian Government's reforms and existing liquor licensing measures, a joint review could be undertaken to continue efforts to tackle alcohol abuse and build the evidence base.

A review would consider the effectiveness of the Stronger Futures alcohol reforms, the recent Northern Territory *Enough is Enough* reforms and the liquor licensing framework.

To ensure the capacity of a review to consider the landscape of alcohol reform measures, it should be conducted jointly by the Australian and Northern Territory Governments. This approach would provide a more comprehensive basis for consideration of future reform of the regulation of alcohol in the Northern Territory.

This option is being proposed in the Stronger Futures in the Northern Territory legislation and its potential impact is discussed further below.

7. Assessment of the expected impacts of key elements of the alcohol measure proposed

As mentioned above, since the release of the *Stronger Futures in the NT Discussion Paper* in June 2011, extensive consultations with people in the Northern Territory were undertaken, from June to mid-August including on a range of measures proposed to tackle alcohol abuse.

The consultation feedback indicates strong support for communities that have alcohol restrictions to remain 'dry'. This support is also reflected in the findings of the Community Safety and Wellbeing Research Study, part of the Northern Territory Emergency Response Whole of Government Evaluation, that while excessive drinking remains a major problem in communities, people say they are feeling safer than they were three years ago and a substantial number are saying that there is less drinking than three years ago. While this result cannot be attributed to the alcohol restrictions alone, there is evidence to suggest that sustained and additional measures to tackle alcohol abuse are both welcome and necessary to improve personal and social outcomes in the Northern Territory.

In addition, many participants who spoke at the Stronger Futures in the Northern Territory consultations said they wanted to see alcohol and heavy drinking subject to stronger regulation and enforcement through policing and night patrols.

Discussion of each of the key elements, including expected and possible impacts for consumers, business, government and the community of the options considered by Government are assessed below.

Replication and strengthening of NTER alcohol restrictions

To the extent that existing NTER alcohol restrictions are replicated, there are expected to be no additional impacts on consumers or businesses. This will have the effect of limiting alcohol consumption by restricting the ability to bring alcohol into more than 100 communities, and restricting the drinking of alcohol in certain places at certain times. The continuing prohibition is expected to improve health outcomes in the longer term.

Increased penalties

The increase in the penalty for bringing under 1,350 mls is not expected to have any regulatory impacts on business.

The proposed maximum penalty for liquor offences under 1,350 millilitres would be increased to include the option of six months imprisonment.

The NTNER Act currently deals with the 1,350 millilitres penalties as infringement notices. Giving an option of imprisonment will allow an unintended consequence of the NTNER Act to be rectified, whereby a lesser penalty was applied in the prescribed areas than applied to similar offences

under the NT *Liquor Act*. There have been some critical comments about the penalties for this offence only being able to be dealt with as infringement notices. This was seen as not being as strong, and therefore less of a deterrent (particularly for repeat offenders), than the penalties for similar offences in General Restricted Areas of the *Liquor Act*.

While bringing the penalties for this offence on parity with the Northern Territory Government's penalties, the option of imprisonment gives police the power to make an arrest or detain someone pending further investigations. Under the current rules, people charged with a misuse of alcohol or other drugs related criminal offence can be referred to the Substance Misuse Assessment and Referral for Treatment Court. The proposal would allow offenders to be referred to, the Substance Misuse Assessment and Referral for Treatment Court which can defer sentencing, refer people for a clinical assessment, and divert people into community based treatment and rehabilitation.

Alcohol management plans

In the successive consultations that have occurred in the Northern Territory Aboriginal communities since the NTER review in 2008, communities and individuals have indicated that they need and want to be integral to efforts to reduce alcohol harm, levels of drinking and alcohol supply.

Alcohol Management Plans (AMPs) have become the accepted and community-driven way of achieving this in the Northern Territory. To be effective, AMPs need to be well-planned and focused on harm minimisation strategies that work.

To better assist communities under this option, the establishment of minimum criteria or standards for AMPs is proposed to be facilitated by the legislation through a rule-making power. These standards are intended to ensure that AMPs are directed at reducing alcohol related harm in communities.

Including minimum criteria for AMPs closely aligns with community feedback to preserve 'dry' communities while still allowing people the option of moving towards greater self-management of alcohol. It is proposed that the Commonwealth Minister will approve all AMPs against the minimum criteria. The alcohol restrictions could be lifted by declaration by the Commonwealth Minister where an approved AMP is in place and its terms could include the lifting of restrictions. The restrictions would be able to be reimposed by declaration in the event that it becomes clear the AMP is no longer operating as an effective alternative control measure.

Implementing minimum standards in alcohol management plans is intended to make the AMPs more effective as a community-driven tool for managing alcohol consumption and alcohol related harm. Their impacts will vary according to each community that has an AMP. Requiring minimum standards for AMPs provides a clear framework for communities to apply in developing localised AMPs. Minimum standards will help ensure that objective scientific

and social research informs best practice for AMPs. In particular, setting minimum standards ensures that AMPs have harm reduction as their primary focus and that effective governance arrangements support the steps to be taken locally under each AMP to minimise alcohol-related harm. Any possible reduction in flexibility is therefore offset by better quality AMPs across the NT.

There will be no reduction in the capacity of AMPs to be developed to cater for individual community circumstances within the overriding objectives of harm minimisation.

Size and name of the prescribed areas

For flexibility to effectively administer restrictions in the future, the Commonwealth Minister could be provided with the power to establish and vary prescribed areas. By so doing, the Commonwealth Minister could declare other areas encountering problems with alcohol such as in major urban centres or regional towns.

It is also proposed that the name of the prescribed areas be replaced with "alcohol protected areas", to align with legislation being put forward for re-enacting the pornography restrictions. It is proposed, however, that communities within these "alcohol protected areas" that have approved AMPs in place should be identified as "community managed alcohol areas". This will ensure these communities are clearly differentiated from the rest of the other alcohol protected areas, as operating under alternative alcohol control measures.

Respectful signage

Following the enactment of the NTNER Act in August 2007, the roll out of the highway (that is, prescribed area) signs commenced and took approximately 12 months to complete. Signs were also posted at the entry points to communities in the prescribed areas. In the majority of cases, this occurred where roadways intersected with prescribed areas and in a limited number of cases beside alternative significant tracks where people would traverse. The signs said "no liquor" and "no pornography" and stated the offences and penalties for breaching the alcohol and pornography restrictions. The alcohol and pornography signs have attracted significant criticism. In light of the feedback from the consultations about the importance of communities remaining "dry", under this option the restrictions continue and, therefore, the future of the signs needs to be considered.

Providing for respectful signage is intended to be more effective in reinforcing community norms about healthy drinking limits and thereby influencing consumption patterns to safer and healthier levels.

Under this option, the existing discretions of the NT Licensing Commission (the Licensing Commission) on signage under the NTNER Act will be re-enacted. In so doing, it is recommended to also require any decisions made

by the Licensing Commission on signs to be informed by the following considerations:

- evidence of locations where there is high traffic and/or incidences of alcohol related crime, where the placement of signs would be warranted;
- advice from NT Police, the Licensing Commission and other relevant agencies on the consequences of not having signs at particular locations for the proper enforcement of the new alcohol restrictions; and
- the outcomes of consultations with affected communities on the content and wording of the signs, to ensure they are respectful.

Having a new measure that requires the Licensing Commission to consult, should will give confidence that any decisions on signs will follow proper engagement with communities, and give due consideration of advice from relevant government agencies and authorities. This will ensure that these signs are respectful and appropriate to local community needs, while still meeting legislative requirements.

Commonwealth Minister able to request appointment of an assessor of NT licensed premises where there are concerns about alcohol related harm

This would allow the Commonwealth Indigenous Affairs Minister to request the Northern Territory Government to appoint an assessor under the Northern Territory *Liquor Act* to examine the practices at a licensed premises and to recommend changes. The NT Minister would be required to give the Commonwealth Minister a copy of the assessor's report. The NT Minister is able to decline the request if it would place an undue financial burden on the NT Government or if it is inappropriate. If the Northern Territory Minister declines to appoint an assessor as requested, the NT Minister must publish a statement of reasons.

There are already provisions in the NT *Liquor Act* relating to the appointment of assessors. Providing the Commonwealth Minister with a power to request an assessment would add weight to any assessment conducted after such a request and permit the Commonwealth Minister to draw the NT Minister's attention to premises of concern. The provision does not add in any way to the regulatory burden on licensees, though it would give community residents or consumers an additional avenue if they were concerned about the conduct of a licensee or the management and operation of their premises.

Notice periods and the facility for the NT Minister to decline a request, would minimise the impact of this measure on the operations and resourcing of the NT Government. Transparency is ensured by requiring the statement of reasons for declining a request to be published.

Reporting

The new legislation proposes that the Commonwealth Minister be provided with a power to request information from the NT Licensing Commissioner that is relevant to the development of policy and practice to tackle alcohol related harm.

National legislation to strengthen Income Management/welfare reforms

Heavy drinkers and their families are expected to benefit from national legislation to strengthen income management/welfare reforms, with corresponding benefits for the community.

Expected Impacts Table

The table below provides a brief assessment of the expected impacts of the options being put forward in the proposed legislation.

Overall summary of impacts

A summary of the feasible options is included below. **Key elements of proposal**	**Assessment of expected impacts**
(a) Replicate and strengthen the NTER alcohol restrictions including, replication of the existing boundaries of the restrictions, continuing all of the alcohol offences, penalties, defences to prosecution, and all of the Commonwealth Minister's powers to impose liquor licences and permits and to make declarations. Plus - increase penalty for bringing under 1,350 millilitres in to a prescribed area; - provide minimum standards for Alcohol Management Plans - provide for respectful signage.	**Consumers** - maintain current alcohol consumption levels; - limits ability to bring alcohol into over 100 communities; - limits ability to drink alcohol in certain places and at certain times; - improve health outcomes in longer term; **Business** - licensed premises continue to operate and able to seek permits for service of alcohol related to tourism and fishing to be exempt from restrictions; - better business opportunities if communities safe, clean, no violence.

	Government - continuation of a function that would have ceased in 2012; - minimal changes in administration and enforcement though both Governments will need to provide for continuation of these provisions. **Community** - women and children feel safer; - certainty about rules with restrictions continued; - continued mixed views about effectiveness of restrictions as cannot isolate the effect of restrictions from other measures, for example, police; - stronger capacity for AMPs to be an effective institution for community-driven alcohol control; - AMP impacts will vary with each community; - possible concerns if signs not adequately respectful.
(b) Power for Commonwealth Minister to request that the Northern Territory Minister appoint an assessor under the Northern Territory *Liquor Act* in relation to certain licensed premises	**Consumers** - could provide an additional avenue to raise concern about unscrupulous licensed operators. **Business** - The NT Government reports around 500 licensed premises operating in the NT in September 2010. This covers a mix of large and small businesses. - No additional regulatory impacts.

	- Request from a Commonwealth Minister would add to the gravity of an assessment and signals how seriously the Government considers alcohol-related harm and the appropriate conduct of licensees. **Government** - If an assessment would place undue financial burden on the NT Government or the NT Licensing Commission, the NT Minister could decline to undertake the assessment. **Community** - Provides an additional avenue for community residents to request that issues be inquired into about the operation of a particular licensed premises that may be connected with serious alcohol-related harm.
(c) Require an independent review to determine the effectiveness of alcohol-regulation legislation in reducing alcohol-related harm among Aboriginal people in the Northern Territory. The review would cover the Northern Territory Government's *Enough is Enough* reforms, the Stronger Futures alcohol restrictions and the Northern Territory *Liquor Act*. The terms of reference of the review will be determined by the Commonwealth Minister in consultation with the Northern Territory Government and the report will be tabled in the Federal Parliament within three years.	**Consumers** - limited impact on consumers at this stage. **Business** - limited impact but may create some uncertainty about future operating environment. **Government** - limited – would be a joint review ; - limited impact for Australian Government agencies at this stage. **Community** - sets expectations for continued improvement of NT alcohol laws to be effective in addressing alcohol related harm.

(d) Strengthened reporting - Commonwealth Minister able to request information from NT Licensing Commissioner	**Consumers** - minimal impact for consumers. **Business** - minimal impact for businesses; - reduced offence rates over time as government responds to indicators. **Government** - increased requirement for NT Government to collect, maintain and report on a range of indicators; - greater transparency and improved accountability of licensees, NT Government agencies; - medium level of impact for NT Government. **Community** - improved confidence in restrictions, AMPs, licensing effectiveness; - improved confidence in Australian and NT Government capacity to reduce alcohol related harms; - medium level of impact for community.
(e) National legislation to strengthen income management and welfare reforms	**Consumers** - would impact heavy, problem drinkers who are referred by the NT Alcohol and Other Drugs Tribunal. **Business** - no significant new impacts as income management/Basics cards arrangements established with merchants.

	Government - This is an additional income management trigger to be added to the already established national income management arrangements. **Community** - Protection for children and families from loss of welfare income diverted to alcohol and gambling so that children are fed and clothed. - There are already established reports of acceptance of income management and that children are better fed and clothed and people can manage better.

8. Small Business Impact

The continuation of current restrictions, improved reporting and the alcohol misuse trigger for a referral to income management are elements of the alcohol proposals which are unlikely to result in new impacts for small business. The capacity for the Commonwealth Minister to request an assessment could impact on small business operators and licensees who promote irresponsible and binge drinking or engage in illegal transport and supply of alcohol. If community safety and alcohol restriction proposals are effective in reducing excessive drinking and anti-social behaviour, this could make it more attractive for small business to invest in local communities.

9. Consultation statement

NT Government Consultations

The Australian Government has worked closely in the development of the Stronger Futures alcohol proposals. Both Governments share a desire to reduce the unacceptable levels of violence, harm and community dysfunction caused by alcohol abuse in Indigenous communities.

The NT Government has sought the Commonwealth's agreement for appropriate policy and legislative changes to the income management arrangements to facilitate referrals from the NT Alcohol and Other Drugs Tribunal.

Community consultations

Over 400 meetings were held with Indigenous communities and individuals between June and August 2011.

The feedback from those consultations indicates that there is strong support to maintain dry communities. There is significant concern about alcohol abuse and about the risks and dangers to people who drink excessively and about the links between drinking and driving. Many communities have experienced death and violence as a result of alcohol misuse. There is strong support for constraints on heavy drinkers through regulation, policing and night patrols as well as better care and support through drug and alcohol rehabilitation. The road signs notifying the alcohol and pornography restrictions do not attract as much attention as in previous consultations. There continue to be mixed views about the signs.

Other Key Stakeholders

Public meetings

Public meetings were held in Darwin, Alice Springs, Katherine, Tennant Creek and Nhulunbuy. The issue of people moving to towns to drink was raised at some meetings. Some people at these meetings called for much tighter alcohol restrictions across the NT, the need to target suppliers of illegal alcohol, and to target problem drinkers. Local solutions such as the licensing inspectors now stationed in Katherine as a result of the NTER were mentioned as important in managing local problems and achieving more community involvement and commitment to solutions. The need for enforceable boundaries around communities was also mentioned in the Katherine public meeting as an important element in enforcing the restrictions.

People attending public meetings commented that NT publicans paid little for an alcohol licence compared to licensees in other states. Views were expressed that publicans were not subject to the same obligations and levels of enforcement as in other jurisdictions. The cost of this in terms of alcohol-related crime, violence and abuse was borne by the community. While tougher restrictions on drinkers and tougher rules for sellers of alcohol were called for, people were also concerned that heavy drinkers had access to support and rehabilitation and that they were also kept safe from harming themselves as well as others.

Service providers and community organisations

A range of service provider organisations, advocacy groups, including the People's Alcohol Action Coalition (the Alcohol Coalition), and local Indigenous and community leadership groups have made input through meetings with Commonwealth officers and in correspondence.

There is a spectrum of views expressed depending on the interests the groups represent. The spectrum is from removing the current restrictions and

adopting local controls to tougher NT-wide restrictions and stronger enforcement.

The Stronger Futures in the Northern Territory consultations follow on a range of community and Indigenous stakeholder consultations which have been initiated by the Government over the past three years with NT Indigenous communities.

Consultations have taken place in the NT on the NT Government's *Enough is Enough* alcohol reforms which were passed in the Legislative Assembly in May 2011. There have also been consultations on the NTER alcohol restrictions in 2008 for the Review of the Northern Territory Emergency Response and in 2009 for the redesign of NTER measures. The 2009 consultations were some of the most extensive undertaken with Indigenous people in the NT.

The NTER Review Board commented on the NTER alcohol restrictions in the following terms:

> "Among other things, the NTER introduced a general ban on the possession, transportation, sale and consumption of alcohol in prescribed areas, and modified Northern Territory legislation relating to alcohol restrictions and police powers regarding the apprehension of intoxicated people.
>
> Before the NTER, legislation and other initiatives such as dry areas and alcohol management plans were already in place. According to the Northern Territory Government submission to the Review, the NTER legislation overlaid the Northern Territory *Liquor Act* resulting in confusion and frustration at poorly targeted and ineffective restrictions.
>
> Numerous submissions report that large numbers of people have continued to drink outside the prescribed areas. Some people from remote communities have travelled into larger regional towns to escape the restrictions on drinking, bringing their families with them. This has resulted in increased demand on shelters and community organisations to care for women and children when the money runs out.
>
> Some communities have also expressed increased safety concerns for children when parents are moving further away to drink and leaving their children for longer periods. In some instances parents are taking their children with them to unsafe drinking areas.
>
> Other submissions report that income management has had more impact on reducing alcohol consumption than the alcohol restrictions, by requiring a proportion of income be spent on food and essentials and directed towards children.
>
> There is also anecdotal evidence that the Commonwealth declaration of prescribed communities has resulted in drinking camps shifting

further away from community boundaries (as the prescribed areas are larger than the communities themselves), with some communities welcoming the resulting reduction in noise and anti-social behaviour.

In many communities the Board heard that an increase in illicit drug use, especially cannabis had gone hand in hand with the stronger restrictions on alcohol supply and carriage, and urged that specific strategies dealing with the supply and use of illicit drugs also be put in place. Some people commented that cannabis is the 'new currency' in Aboriginal communities and concerns about increasing mental health problems are rising.

Various submissions have highlighted the importance of simultaneous strategies of supply, demand and harm reduction and claim that the NTER measures are not enough to effectively deal with drug and alcohol use and its impact on community safety and wellbeing.

Despite the shortcomings of the current legislative arrangements restricting the supply of alcohol to remote communities in the Northern Territory, the Board believes that those restrictions should remain in place."

The Report on the Northern Territory Emergency Response Redesign Consultations noted that:

"The main benefits of the NTER alcohol restrictions identified in the consultations were less violence and quieter communities. Women identified these benefits slightly more frequently than men.

It keeps old people and kids safe.

Women and children are safe with no alcohol.

People are sleeping better and children are going to school.

It is quieter in the community on pay weeks - no drunks walking around in the community drinking and causing trouble.

Good for the health problems of people in the community….It was good the police are in the community to deal with any alcohol that sneaks its way into the community.

People not bringing in grog to the community. No fighting in the community. People happy and they stick together to keep out drunks from the community. Less accidents on the roads.

Domestic violence has decreased and there are fewer Domestic Violence Orders. There are fewer fights in the community - nearly all disturbances are over family matters and alcohol is not involved. There are fewer after hours health centre callouts.

Less blind drunk people in the community. Better for people's health. Old people look better in their faces, they're healthier. No more problems with drunk people in the store."

Problems indentified included more illegal alcohol trafficking (that is, 'grog running'), dangerous drinking outside town boundaries, invasion of personal privacy and breaches of rights, increased road accidents and personal injury due to unsafe drinking practices, and poor relationships between communities and the police. Dangerous drinking outside the boundary of the prescribed area was raised more frequently by northern communities than by southern communities, and by communities that were not dry before the NTER.

"People are still bringing grog into the community.

People bring grog in behind our backs since the new rules came its worse here.

[Alcohol restrictions] are not working and the situation is getting worse with drunks, grog running and anti-social behaviour increasing."

The 2011 Stronger Futures in the Northern Territory consultations provided an opportunity for people in remote communities and the regional towns to talk about their views on the NTER alcohol restrictions and a broad range of possible strategies to reduce alcohol related harm.

Respondents commented frequently about wanting their communities to remain dry.

"Yes. We want the laws to stay, no grog here.
The No Grog laws should stay. It controls everybody and stops the visitors.
We like the community with 'no grog'. Police should be out more. We don't want grog but people still bring it in.
There was only a small amount of discussion about alcohol in the meeting, with community members stating that they would like alcohol restrictions to stay in place.
People thought that there should be no alcohol in any of the town camps so that children can attend school the following day and people could sleep at night.
We don't want bloody beer."

Views were evenly split between those who saw benefit in continuing the restrictions and those who did not.

Few respondents mentioned raising the price of alcohol. There was only limited support for encouraging sales of low and medium strength alcohol or limiting the sale of particular types of alcohol to reduce supply. In response to suggestions that higher prices might be an option, a few people suggested that the levels of addiction of some heavy drinkers might be so serious

that they would be prepared to pay very high prices to get alcohol. Others suggestions included the need to control supply into communities by enforcement.

> *"Put the price up, no cheap grog.*
> *The Government should not allow the sale of any boxed wine to anyone (Indigenous and non-Indigenous).*
> *At [hotel] you can buy rum for $100 a bottle. They don't care how much it costs.*
> *They'll always get it if they want it.*
> *We can reduce the supply of alcohol, including very cheap alcohol by getting the police to stop it from coming into community."*

10. Conclusion

Over time the social and economic costs of alcohol abuse in the NT runs to the billions of dollars. A complex array of measures developed over the past half century after alcohol prohibitions were lifted in the NT in the 1960s have been directed at this issue with limited success. People across a wide cross-section of the NT consider alcohol a major problem in their communities and a cause of social harm.

The alcohol measures proposed when taken together with the NT Government's *Enough is Enough* reforms represent a stronger, more comprehensive and concerted effort between both the Commonwealth and the NT Governments to continue to address the issue. Individuals, families and consumers stand to see positive impacts in terms of improved personal safety, and less violence and abuse. Consumers stand to see health improvements from reduced consumption. There is expected to be minimal impact from these proposals on businesses that comply with the law and which act to reduce alcohol related harm from their operations.

The challenge, however, of tackling alcohol in the NT is not to be underestimated. The proposed legislated alcohol measures continue and build on earlier reform aimed at tackling the serious alcohol related issues in the NT. While the proposals are informed by evidence, their effectiveness once implemented will depend on a range of factors not all of which are within government's control. Some individuals will respond to the measures as intended and as predicted by the evidence, but others may respond in ways not yet foreseen and not yet indicated by the evidence.

11. Strategy to implement and review the proposals

The replication and continuation of the alcohol restrictions should minimize the implementation challenges that may have arisen with an alternative strategy. The administration, enforcement and governance arrangements for the alcohol restrictions are in place. The arrangements relating to the request for assessment by the Commonwealth Minister, strengthening Alcohol Management Plans and reporting and review will be developed in consultation with the NT Government.

As indicated, the proposed Stronger Futures in the Northern Territory legislation will require an independent review to determine the effectiveness of alcohol-regulation legislation in reducing alcohol-related harm among Aboriginal people in the Northern Territory. The review is intended to cover the Northern Territory Government's *Enough is Enough* reforms, the Stronger Futures alcohol restrictions and the Northern Territory *Liquor Act*. The review will commence in two years from commencement of the legislation and the report will be tabled in the Federal Parliament within three years.

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