



Australian Government  
National Indigenous  
Australians Agency



NIAA

# Stronger Futures in the Northern Territory: Sunset Review



# Table of Contents

Abbreviations .....	3
Stronger Futures in the Northern Territory: Sunset Review .....	5
Executive summary .....	5
Scope of this review .....	6
SFNT Act - Summary of findings and recommendations .....	6
Classification Act - Summary of findings and recommendations .....	8
SFNT Act: Part 1 Preliminary .....	9
SFNT Act: Part 2 Tackling alcohol abuse.....	9
Division 2 and 7 (Alcohol protected areas) .....	10
Division 3 (Licences and permits) .....	15
Division 4 (notices) .....	16
Division 5 (Assessment of licensed premises) .....	16
Division 6 (Alcohol management plans) .....	17
Division 8 (Independent review of Commonwealth and Northern Territory laws relating to alcohol) .....	20
Division 9 (Other matters) .....	21
Summary of Findings .....	21
Recommendations .....	22
SFNT Act: Part 3 Land Reform .....	23
Division 2 (Town camps).....	24
Division 3 (Community living areas) .....	24
SFNT Act: Part 4 Food Security.....	28
Division 2, 3, 4, 6 and 8 (community licensing scheme).....	29
Division 5 – (Requirement to register under the Corporations (Aboriginal and Torres Strait Islander) Act 2006) (CATSI Act) .....	35
Division 7 (areas that are not in the food security area).....	36
Division 9 (other matters) .....	36
Summary of Findings.....	37
Recommendations .....	38
SFNT Act: Part 5 Other Matters.....	39
Division 2 Miscellaneous .....	39
Classification Act: Part 10 Material prohibited in certain areas in the Northern Territory.....	41
Implementation.....	41
Impact.....	42
Finding.....	43
Recommendation .....	43



Conclusion .....	44
Attachment A .....	45
Stronger Futures package of legislation .....	45
Attachment B .....	46
List of community living areas (CLAs) .....	46
Attachment C .....	50
Australian Government leases since 2013 .....	50
Attachment D .....	52
Community store upgrades .....	52
Attachment E .....	53
Definitions .....	53

# Abbreviations

Abbreviation	Definition
AAT	Administrative Appeals Tribunal
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
AMP	alcohol management plans
ANAO	Australian National Audit Office
APA	alcohol protected areas
Associations Act	<i>Associations Act 2003 (NT)</i>
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
CEO	Chief Executive Officer
CLA	community living area
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GRA	general restricted areas
HoRSCIA	House of Representative Standing Committee on Indigenous Affairs
LDM	Local Decision-Making Model
Liquor Act	<i>Liquor Act 2019 (NT)</i>
MUP	minimum unit price
NIAA	National Indigenous Australians Agency
NTRAI	Northern Territory Remote Aboriginal Investment
NT	Northern Territory
NTER	<i>Northern Territory National Emergency Response Act 2007</i>
NTLC	Northern Territory Liquor Commission
ORIC	Office of the Registrar of Indigenous Corporations
SES	Senior Executive Service
SFNT Act	<i>Stronger Futures in the Northern Territory Act 2012</i>



## Stronger Futures in the Northern Territory

Sunset Review © Commonwealth of Australia 2022

ISBN 978-1-925365-09-2 Stronger Futures in the Northern Territory: Sunset Review (online)

### Copyright Notice

With the exception of the Commonwealth Coat of Arms, this work is licensed under a Creative Commons Attribution 4.0 International licence (CC BY 4.0)( <https://creativecommons.org/licenses/by/4.0/> ).



### Third party copyright

Wherever a third party holds copyright in this material, the copyright remains with that party. Their permission may be required to use the material. Please contact them directly.

### Attribution

This publication should be attributed as follows:

© Commonwealth of Australia, *National Indigenous Australians Agency, Stronger Futures in the Northern Territory: Sunset Review*

### Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the following website:

<https://pmc.gov.au/cca>

### Other uses

Enquiries regarding this document are welcome at:

*National Indigenous Australians Agency*

*PO Box 2191*

*Canberra 2600*

# Stronger Futures in the Northern Territory: Sunset Review

## Executive summary

The Stronger Futures legislation package was designed to create a framework for building stronger futures for Aboriginal peoples in the Northern Territory (NT). This review examines legislation in the package which is due to sunset:

- the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) and
- Part 10 of the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act).

The legislation will sunset on 17 July 2022.<sup>1</sup> If the Australian Government does not enact legislation to replace the SFNT Act and Part 10 of the Classification Act, the Australian Government's specific powers will cease, reducing the Australian Government's regulatory role in Aboriginal communities in the NT.

The SFNT Act and Part 10 of the Classification Act replaced elements of the 2007 Northern Territory National Emergency Response package and continued the Australian Government's legislative involvement in tackling alcohol misuse, land reform, food security and prohibited materials as these topics affect Aboriginal communities. The object of the SFNT Act is to 'support Aboriginal peoples in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy.'<sup>2</sup> The object of Part 10 of the Classification Act is 'to protect children living in Indigenous communities in the Northern Territory from being exposed to prohibited material.'<sup>3</sup>

The Australian Government has legislative power to make laws with respect to the NT because the Australian Constitution gives the Australian Government power to make laws for the government of a territory.<sup>4</sup> The Australian Government introduced both Acts as special measures under the *Racial Discrimination Act 1975* to 'address specific Aboriginal disadvantage and help Aboriginal peoples to enjoy their human rights equally with others in the Australian community.'<sup>5</sup>

The Northern Territory National Emergency Response package was consistently criticised for lacking community consultation.<sup>6</sup> In response, the Australian Government undertook extensive consultation with Aboriginal peoples in the NT to inform the development of the Stronger Futures legislation package and the National Partnership Agreement on Stronger Futures in the NT. The consultation process involved over 370 meetings with individuals, groups, and families in almost 100 communities and town camps.<sup>7</sup>

The following reviews assessed the effectiveness of the legislation during its operation:

- 'Food Security in Remote Indigenous Communities' by the Australian National Audit Office (ANAO) in 2015

<sup>1</sup> *Stronger Futures in the Northern Territory Act 2012*, s 118(1); *Classification (Publications, Films and Computer Games) Act 1995*, s 98A.

<sup>2</sup> [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 2.

<sup>3</sup> *Classification (Publications, Films and Computer Games) Act 1995*, s 98A.

<sup>4</sup> The Australian Constitution, s 122.

<sup>5</sup> *Racial Discrimination Act 1975*, s 8(1); [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 2; [Replacement Explanatory Memorandum](#), Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2012.

<sup>6</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2011) [Stronger Futures in the Northern Territory – Discussion paper June 2011](#), FaHCSIA, Australian Government, 1.

<sup>7</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2011) [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), FaHCSIA, Australian Government, 7.

- ‘Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm’ by Minter Ellison in 2015
- ‘Review of Stronger Futures Measures’ by the Parliamentary Joint Committee on Human Rights in 2016
- ‘Review of the Stronger Futures in the Northern Territory Act (2012)’ by KPMG in 2016
- ‘Classification (Publications, Films and Computer Games) Act 1995: Independent review of Part 10 (Material prohibited in certain areas in the Northern Territory)’ by Minter Ellison in 2015.

## Scope of this review

This review is being undertaken by the National Indigenous Australians Agency (NIAA) to assess the impact of the SFNT Act and Part 10 of the Classification Act and identify the implications of them sunset. It also recommends future actions to address aspects of alcohol misuse, land reform, food security and prohibited materials policy ceasing under the legislation that are of continuing relevance. The findings will assist the Australian Government and the NT Government to consider arrangements to address these matters when both pieces of legislation sunset.

The scope of the review is confined to sunseting legislation. The Stronger Futures legislation package included additional legislation, which is not due to sunset, including legislation related to Aboriginal customary law in criminal sentencing proceedings, income management, school attendance and welfare reform (see **Attachment A** for a list of legislation included in the package).

## SFNT Act - Summary of findings and recommendations

This review recommends the Australian Government allows the SFNT Act and Part 10 of the Classification Act to sunset as the Australian Government does not require ongoing legislative instruments to help address community issues associated with alcohol, land reforms (as they relate to community living areas and town camps), food security and prohibited materials. The purpose of the Australian Government’s involvement was to instigate and build momentum for concentrated action in these areas. This review finds the Australian Government has fulfilled this role. The NT Government is well placed to build on this work and deliver its jurisdictional responsibilities with targeted strategies to address alcohol misuse, land tenure issues and food security concerns which continue to have a significant impact on the lives of Aboriginal peoples in the NT. There is ongoing recognition the Australian Government and the NT Government have a mutual interest in improving outcomes for Aboriginal peoples. Both governments are working together to achieve outcomes, ensuring programs and services benefit Aboriginal peoples, particularly in remote area of the NT.

### Alcohol Restrictions

The ‘Tackling alcohol abuse’ measures under the SFNT Act provide a blanket approach to alcohol restrictions in remote areas. While this review finds evidence the restrictions reduced high levels of misuse, it is difficult to quantify the reduction, or assess the unintended consequences (such as the actions of those who left remote areas to avoid the alcohol regulation). It is also difficult to isolate the impact of the Australian Government legislation from the parallel implementation of new measures to address alcohol misuse by the NT Government. In response to the recommendations of the NT Government’s 2017 Alcohol Policies and Legislation Review, the NT Government implemented a suite of measures to reduce alcohol-related harm. The new measures are showing signs of success.<sup>8</sup> The NT Government is building an evidence-base for what works and involving Aboriginal communities in decision-making.<sup>9</sup>

The review identifies a number of communities could be left without a similar level of alcohol restrictions, as currently exist, when the SFNT Act sunsets as alcohol protected areas (APAs) will cease. This could increase the risk of alcohol-related harm

<sup>8</sup> Northern Territory Government (NT Government) (2018) [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019](#), NT Government; Taylor N, Miller P, Comber K, Livingston M, Scott D, Buykx P and Chikritzhs T (2021) ‘[The impact of a minimum unit price on wholesale alcohol supply trends in the Northern Territory, Australia](#)’ Australian and New Zealand Journal of Public Health 45(1) 26.

<sup>9</sup> NT Government, [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019](#), 12 – 15.

in those communities. The review suggests the NT Government’s regulatory and policy framework can address this risk by extending restrictions where appropriate before the SFNT Act sunsets to ensure effective alcohol policies are in place.

This review finds the SFNT Act envisaged “blanket prohibition” alcohol management would change over time through local solutions detailed in local alcohol management plans (AMPs). Under the SFNT Act, this would have supported APAs to be modified by, or transition to, community managed alcohol areas. This aspect of the SFNT Act was not realised. The Australian Government Minister rejected AMPs which included variations to alcohol restrictions because of insufficient evidence to show the AMPs would reduce alcohol-related harm. Current NT Government alcohol reform includes community-driven decision making on alcohol within the framework of the *Liquor Act 2019* (NT). Should the extension of NT regulation to all APA areas recommended by this review be undertaken, Aboriginal communities will have a consistent framework under which to determine effective place-based alcohol management.

#### **Recommendations: Part 2 Tackling alcohol misuse**

1. The Australian Government allows Part 2 ‘Tackling alcohol abuse’ of the SFNT Act to sunset.
2. The Australian Government encourages the NT Government to mitigate the risk of increased alcohol-related harm in areas currently known as alcohol protected areas (APAs) before the sunset of the SFNT Act. This action may include introducing a targeted approach to alcohol controls under the *Liquor Act 2019* (NT).
3. The Australian Government and the NT Government continue to take a coordinated, evidence-based, community-centred approach to policy and program designs to address alcohol-related harm with clear outcomes that align with the principles in the National Alcohol Strategy 2019 - 2028 (National Alcohol Strategy) and shared decision making under the National Agreement on Closing the Gap.

## Land Reform

The impact of the ‘Land reform’ measures is mixed. The SFNT Act gave the Australian Government power to modify land laws in town camps and community living areas (CLAs). The Australian Government exercised its power in relation to CLAs only. As a result of the changes the Australian Government made to CLA land laws based in NT legislation, CLA land holders have greater ability to lease their land for a variety of purposes. This has contributed to improvements in the regulatory environment to facilitate public housing and community store leases.<sup>10</sup> It created a first step towards creating a platform for economic development (although other economic drivers are required to realise economic development).<sup>11</sup> This review recommends the NT Government amends NT legislation to take up the SFNT Act provisions in order to ensure these improvements to CLAs remain in force after the SFNT Act sunsets.

As the SFNT Act powers in relation to town camps have never been exercised the impact of the legislation and of its sunset is difficult to assess. This review finds the SFNT ACT objective of providing greater flexibility of leasing arrangements remains relevant and can be achieved through collaborative processes between the NT Government and town camp owners.

Given mechanisms exist to retain benefits from this aspect of the SFNT Act, the land reform measures should sunset.

#### **Recommendations: Part 3 ‘Land reform’**

4. The Australian Government allows Part 3 ‘Land reform’ of the SFNT Act to sunset.
5. Prior to the sunset of the SFNT Act, the Australian Government encourages the NT Government to introduce primary legislation to ensure the modifications by the Stronger Futures in the Northern Territory Regulation 2013 to the *Associations Act 2003* (NT) remain in force.

<sup>10</sup> Parliamentary Joint Committee on Human Rights (2016) [2016 Review of Stronger Futures measures](#), Australian Government, ix, 14 and 15; KPMG (2016) [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), Department of the Prime Minister and Cabinet (PM&C), Australian Government, 27.

<sup>11</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

6. The Australian Government continues to work in partnership with the NT Government, Land Councils and land holders to ensure CLA and town camp residents have sufficient rights and interests in their land to meet the needs of their communities into the future.

## Food Security

Part 4 of the SFNT Act enacted provisions for a community store licensing scheme to create a regulatory system for remote community stores and improve the governance capacity of store owners and managers. There is evidence the 'Food security' measures have been successful in promoting food security in remote NT Aboriginal communities. Independent reviews present evidence the community store licensing scheme improved the viability and governance of stores and increased the range and quality of food accessible in remote stores. These independent reviews also noted the impact of the SFNT Act special measures on food security in remote Aboriginal communities is difficult to measure due to lack of data.<sup>12</sup> The House of Representative Standing Committee on Indigenous Affairs (HoRSCIA) inquiry into food security found the NT community licensing scheme to be a reasonably effective system for regulating remote community stores for promoting food security.<sup>13</sup> The report recommended community store licensing is continued in the future.<sup>14</sup>

The risk of sunseting this part of the SFNT Act is the removal of regulation of community stores and enforcement of licensing conditions designed to support food security and nutrition outcomes in remote Aboriginal communities through monitoring visits. This could see a reversion to previous store management practises that would not support improved food security and nutrition outcomes of remote NT Aboriginal communities.

As stores licensing is a jurisdictional responsibility, this review recommends the Australian Government encourages the NT Government to enact community store licensing legislation to continue the regulatory regime under NT laws and retain its benefits for remote Aboriginal communities. Such legislation could be seen as supporting and complementing a national strategy and licensing for food security and nutrition for remote Aboriginal communities as recommended by the report of the HoRSCIA inquiry into food pricing and food security in remote Indigenous communities.

### Recommendations: Part 4 'Food security'

7. The Australian Government allows Part 4 'Food security' of the SFNT Act to sunset.
8. The Australian Government encourages the NT Government to introduce a stores licensing scheme under NT legislation. The NT legislation could be modelled on the SFNT Act with an amended provision to allow inspections without prior notice.

## Classification Act - Summary of findings and recommendations

The impact of Part 10 'Material prohibited in certain areas in the NT' is limited. A review of the first seven years of operation was unable to determine its effectiveness due to insufficient evidence. The Classification Act's primary focus is hard copy materials or material accessed on public internet access points. While a number of arrests were made under the Classification Act, the practical impact of the legislation was lessened by the rapid growth of access to mobile phones and the internet in remote communities.

This review suggests the NT Government determine any future legislative approach to Classifications.

### Recommendations: Part 10

9. The Australian Government allows Part 10 of the *Classification (Publications, Films and Computer Games) Act 1995* to sunset.

<sup>12</sup> Australian National Audit Office (ANAO), [Food Security in Remote Indigenous Communities](#), ANAO, Australian Government, 14-15, 19, 63; KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 30-31, 39-40.

<sup>13</sup> House of Representatives Standing Committee on Indigenous Affairs (HoRSCIA) (2020) [Report on food pricing and food security in remote Indigenous communities](#), Australian Government, 52.

<sup>14</sup> *Ibid.*, 53-54.

10. The Australian and NT Governments collate and share regional and community level data on children, young people and family outcomes with each other and with communities, to assess the effectiveness of child-safety, including e-safety measures, in accordance with the recommendations in the Productivity Commission’s report on ‘Expenditure on Children in the Northern Territory’, 2020.

## SFNT Act: Part 1 Preliminary

Part 1 of the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) is the introductory part which includes the object of the Act, provision commencement dates, dictionary, and a guide to other parts of the SFNT Act. The SFNT Act relies on the power granted under the Constitution to the Australian Government to legislate for the government of a territory.<sup>15</sup>

## SFNT Act: Part 2 Tackling alcohol abuse

Part 2 of the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) ‘Tackling alcohol abuse’ is designed to reduce alcohol-related harm for Aboriginal peoples in the Northern Territory (NT).<sup>16</sup> Alcohol-related harm is any harm flowing from risky alcohol consumption or alcohol misuse. Examples include chronic disease, assaults, domestic violence, child abuse and neglect, Foetal Alcohol Spectrum of Disorder, car crashes, suicides, and mental health issues.<sup>17</sup>

The *Northern Territory National Emergency Response Act 2007* (NTER) was the precursor to the SFNT Act. Community consultations found some communities felt safer and experienced less antisocial behaviour as a result of the increased regulation under the NTER. However, alcohol continued to significantly contribute to social and economic harms.<sup>18</sup> Alcohol-related road crashes, deaths and health problems were raised as issues of particular concern.<sup>19</sup> As a result, the Australian Government continued its power to restrict and regulate alcohol supply in the NT through the SFNT Act.

Part 2 modifies the *Liquor Act 2019* (NT) (the Liquor Act) and grants the Minister for Indigenous Australians (the Australian Government Minister) powers in relation to alcohol in the NT. It retains (with some modifications), area-based alcohol bans similar to the NTER which made it an offence to drink, possess or supply alcohol in specified areas.<sup>20</sup> The SFNT Act included a mechanism for alcohol management to change over time through local solutions detailed in alcohol management plans (AMPs).<sup>21</sup> It grants the Australian Government Minister powers to modify alcohol licences, alcohol permits and trigger assessments of licensed premises. It also enables the NT Government to post notices about alcohol-related offences and provides for an independent review of Australian Government and NT liquor laws.

<sup>15</sup> The Australian Constitution, s 122.

<sup>16</sup> [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 1.

<sup>17</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 5 - 6; Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), Australian Government, 23-24.

<sup>18</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2011) [Northern Territory Emergency Response: Evaluation Report 2011](#), FaHCSIA, Australian Government, 180; FaHCSIA, [Stronger Futures in the Northern Territory – Discussion paper June 2011](#), 15; FaHCSIA, [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), 38.

<sup>19</sup> *Ibid.*, 10.

<sup>20</sup> FaHCSIA, [Stronger Futures in the Northern Territory – Discussion paper June 2011](#), 15.

<sup>21</sup> FaHCSIA, [Northern Territory Emergency Response: Evaluation Report 2011](#), 19; [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 1,5; Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 19-20.

## Division 2 and 7 (Alcohol protected areas)

### Implementation

Division 2 inserts provisions into the Liquor Act which make it an offence to possess, supply, consume or bring alcohol into an alcohol protected area (APA).<sup>22</sup> Under complementary legislation, areas that were subject to alcohol prohibitions during the NTER became APAs under the SFNT Act.<sup>23</sup>

Division 7 outlines the framework for prescribing APAs. The Australian Government Minister may prescribe, revoke or vary an APA at their own initiative, following a request from a resident or in response to an AMP.<sup>24</sup> Before making a decision, the Australian Government Minister must make information available on the proposed action and invite residents of the area to make submissions.<sup>25</sup> In making a decision the Australian Government Minister must consider among other things, the experiences and views of people living in the area, whether there is an AMP in place and other relevant matters.<sup>26</sup>

Around two thirds of APAs are also general restricted areas (GRAs) under the Liquor Act i.e. there is parallel coverage under Australian Government and NT Government legislation. There are differences in relation to penalties, defences, and the nature of alcohol restrictions between APAs and GRA. The most significant differences are:

- GRAs contain flexibility to prohibit certain types of liquor, whereas APAs impose a blanket ban on all types of liquor (as defined in the SFNT Act).
- The maximum penalty for most supply and possession related offences is higher under the Liquor Act (200 penalty units or 12 months imprisonment) than the SFNT Act (100 penalty units or 6 months imprisonment). However, the maximum penalty for offences related to supplying liquor where the quantity of ethyl alcohol is more than 1,350 ml is higher under the SFNT Act (680 penalty units or 18 months imprisonment).

The overlap between APAs and GRAs can create challenges. The small but significant number of differences between APAs and GRAs (in terms of processes, penalties and in some cases location) can create additional complexity for policing on the ground.

**Table 1. GRA and APA comparison<sup>27</sup>**

	Alcohol protected areas (SFNT Act)	General restricted areas (Liquor Act)
<b>Type of restriction</b>	Prohibits all liquor (as defined in the SFNT Act)	Prohibits either all or certain types of liquor only
<b>Power to declare / prescribe restrictions</b>	The Minister for Indigenous Australians	The NT Liquor Commission (NTLC)
<b>Offences</b>	Acts associated with the transportation, possession, consumption, and supply of liquor	Acts associated with the transportation, possession, consumption, sale, and supply of prohibited liquor

<sup>22</sup> *Stronger Futures in the Northern Territory Act 2012*, s 8.

<sup>23</sup> *Stronger Futures in the Northern Territory (consequential and transitional provisions) Act 2012*, s 5 - 6.

<sup>24</sup> *Stronger Futures in the Northern Territory Act 2012* s 27(4).

<sup>25</sup> *Ibid.*, s 27(9).

<sup>26</sup> *Ibid.*, s 27(6).

<sup>27</sup> *Stronger Futures in the Northern Territory Act 2012* ss 8, 27; *Liquor Act 2019* (NT), ss 172 – 175.



	Alcohol protected areas (SFNT Act)	General restricted areas (Liquor Act)
<b>Maximum penalty</b>	100 penalty units / 6 months imprisonment  680 penalty units / 18 months imprisonment if quantity of ethyl alcohol for supply and transportation is greater than 1,350 ml	200 penalty units / 12 months imprisonment
<b>Defences</b>	Cases related to recreational boating, commercial fishing, or tourism activities in a national or NT park  The conduct related to an emergency  The conduct was necessary to preserve life, prevent injury or protect property	There is a permit allowing the conduct  The conduct occurred in an emergency and was necessary to protect life or property  The liquor was for the purpose of worship  The liquor was being transported to an area outside the GRA
<b>Consultation</b>	Seeking submissions from the affected community is required	Consultation with the affected community, affected licensees and local council is required

## Impact

In reviewing evidence and commentary on the impact of alcohol restrictions it appears both negative and positive outcomes exist. By continuing alcohol restrictions after the NTER, the Australian Government adopted an internationally recognised ‘precautionary principle’ to avoid serious alcohol-related harm, acknowledging there would continue to be mixed views about the effectiveness of restrictions.<sup>28</sup> While there is strong support for alcohol restrictions by Aboriginal communities, there are also calls for greater community control over the nature of restrictions.<sup>29</sup>

Reviews commissioned by the Department of the Prime Minister and Cabinet found inconclusive evidence to determine whether APAs effectively reduced alcohol-related harm. This is mainly due to limitations in data including the absence of baseline data, unclear data on causes of death, variation in the way each hospital captures data, limited diagnosis of conditions like Foetal Alcohol Spectrum Disorder and a lack of reliable administrative data in remote communities.<sup>30</sup> Further to this, it is difficult to attribute reductions in alcohol-related harm directly to the implementation of the SFNT Act because

<sup>28</sup> [Replacement revised explanatory memorandum](#), Stronger Futures in the Northern Territory Bill 2012, 7, 27.

<sup>29</sup> FaHCSIA, [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), 37; Australian Human Rights Commission (AHRC) (2020) [Wiyu Yani U Thangani \(Women’s Voices\): Securing Our Rights, Securing Our Future](#), AHRC, Australian Government 130.

<sup>30</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 15; Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 29.

the NT Government implemented alcohol harm reduction initiatives in parallel.<sup>31</sup> The number of people who move between remote and urban areas in order to access alcohol and the alcohol-related harm associated with this pattern is also unknown.<sup>32</sup>

The 2015 *Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm* by Minter Ellison (the Minter Ellison review) notes anecdotal suggestions that alcohol restrictions have had some success in improving the circumstances of remote Aboriginal communities in the NT.<sup>33</sup> It cites feedback from the Stronger Futures consultations in 2011 indicating some success from the NTER alcohol measures, including quieter communities with less violence.<sup>34</sup> This is consistent with decades of international research which indicates that restricting the availability of alcohol is associated with reduced alcohol use and associated problems.<sup>35</sup>

The review of the SFNT Act by KPMG in 2016 (the KPMG review) noted some positive changes occurred alongside the introduction of the SFNT Act, however it was not possible to identify whether the SFNT Act contributed to these changes.<sup>36</sup> For example, some data from the NT Department of Business and the National Drug Research Institute, pointed to a decline in safety issues in Alice Springs and Tennant Creek in the first few years of the SFNT Act.<sup>37</sup> However, it was not possible to assess whether this was attributable to the SFNT Act.<sup>38</sup>

The KPMG review found monitoring point of sale location to ensure customers consumed alcohol at an address outside of alcohol restricted areas showed signs of success. This measure was associated with reduced alcohol consumption and a decline in public intoxication and female assault in Alice Springs and Tennant Creek. Evidence indicates strict controls on alcohol can give rise to negative consequences that have a disproportionate impact on vulnerable people such as those experiencing addiction, poverty or unemployment.<sup>39</sup> Negative consequences include people trafficking alcohol into restricted areas, drinking camps appearing outside of restricted areas, urban drift where community members move from remote to urban or other areas where alcohol is available and substituting alcohol with other drugs.<sup>40</sup> In the NT, people have established unsafe drinking camps on highways, close to rivers and far away from family, night patrol or police who could monitor the situation. Car crashes and deaths as a result of people drink driving when returning from these camps or travelling long distances (sometimes hundreds of kilometres) to purchase alcohol is another concern in some communities.<sup>41</sup>

In 2016, the Parliamentary Joint Committee on Human Rights raised concerns about the human rights compatibility of the alcohol measures. It suggested the alcohol measures fell short of a human rights compliant approach because the Australian

<sup>31</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 16 – this reference provides an example of where an increase in the number of alcohol-related hospitalisations occurred alongside the introduction of the SFNT Act and new NT police procedures to take people they pick up for drunkenness in Alice Springs to hospital.

<sup>32</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 27; McNally L and Horn A (8 June 2011) [‘Crime surge blamed on intervention urban drift’](#) ABC, accessed 7 April 2021.

<sup>33</sup> Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 31.

<sup>34</sup> *Ibid.*, 31.

<sup>35</sup> Chikritzhs T and Weeramanthri T (2021) [‘The swinging pendulum of alcohol policy in the Northern Territory,’](#) *Anaesthesia and Intensive Care*, 49: 8; Alcohol and Public Policy Group (2010) [‘Alcohol: No Ordinary Commodity – a summary of the second edition,’](#) *Addiction*, 105(10): 773.

<sup>36</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), ii.

<sup>37</sup> *Ibid.*, 15.

<sup>38</sup> *Ibid.*, 15 – 16.

<sup>39</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), ix, 24 – 27; Robertson J, Fitts M, Clough A (2017) [‘Unintended impacts of alcohol restrictions on alcohol and other drug use in Indigenous communities in Queensland \(Australia\),’](#) *International Journal of Drug Policy*, 41:39; Muhunthan J, Angell B, Hackett M, Wilson A, Latimer J, Eades A, Jan S J (2017) [‘Global systematic review of Indigenous community-led legal interventions to control alcohol,’](#) *BMJ Open*, 7(3): 12.

<sup>40</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 27; Northern Territory Government (2017) [Alcohol policies and Legislation Review: Final Report](#), Northern Territory Government, 74, 77-78.

<sup>41</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

Government was unable to demonstrate the measures were effective or proportionate to the legitimate objective of reducing alcohol-related harm.<sup>42</sup>

The alcohol restrictions introduced by the NTER and continued through the SFNT Act, extended alcohol prohibition over large areas of the NT and responded to significant support for alcohol restrictions within communities. During the consultations preceding the SFNT Act there was a range of views expressed in regard to alcohol restrictions, including a split between those who wanted to continue restrictions and those who did not.<sup>43</sup> Alcohol was seen as a source of several problems including contributing to the escalation of arguments, child neglect, school absenteeism (because children could not get enough sleep), property damage and deaths.<sup>44</sup>

This review recognises while there is strong support for alcohol restrictions, the method of imposing restrictions under the SFNT Act is subject to criticism. Over the last few decades women have led a range of initiatives including calling for locally supported alcohol restrictions to address the harmful effects of alcohol.<sup>45</sup> The 'Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report' commissioned by the Aboriginal and Torres Strait Islander Social Justice Commissioner, asserts the importance of a holistic and community-led approach. It states, 'any form of [alcohol] intervention and ongoing response to harms must be Aboriginal and Torres Strait Islander led and community controlled and should never be a blanket ban imposed by government.'<sup>46</sup>

The Minter Ellison review noted while the SFNT Act contributed to an effective method of regulating alcohol supply, regulating supply was not a sufficient means of addressing alcohol misuse (in and of itself).<sup>47</sup> It references the three pillars of the National Drug Strategy – reducing supply, reducing demand and reducing harm as a holistic approach to addressing the determinants of alcohol misuse.<sup>48</sup> Similarly, the World Health Organization recognises 10 focus areas for national action to address the harmful use of alcohol – '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, monitoring and surveillance.'<sup>49</sup>

An important factor when considering alcohol control is the wider environment shaped by NT Government alcohol policy, which has changed over time. In response to the 2017 Alcohol Policies and Legislation Review, the NT Government introduced the NT Alcohol Policies and Legislation Reform.<sup>50</sup> The reforms included a re-write of the Liquor Act, reinstating an independent liquor commission, a minimum unit price (MUP) on alcohol to reduce the consumption of cheap wine products, the Banned Drinkers Register and Police Auxiliary Liquor Inspectors.<sup>51</sup> The review notes the NT Government's decision to pass legislation to circumvent the Northern Territory Liquor Commission's (NTLC) authority and approve an application for a Dan Murphy's store in Darwin may have served to undermine public confidence in the NT Government's prioritisation of harm minimisation.<sup>52</sup> However, on balance the reforms are demonstrating signs of success and include a sound legislative framework for managing alcohol.

<sup>42</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 32.

<sup>43</sup> FaHCSIA, [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), 37.

<sup>44</sup> *Ibid.*, 36 - 37.

<sup>45</sup> Australian Human Rights Commission (AHRC) (2020) [Wiyi Yani U Thangani \(Women's Voices\): Securing Our Rights, Securing Our Future](#), AHRC, Australian Government 130.

<sup>46</sup> *Ibid.*, 130.

<sup>47</sup> Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 5.

<sup>48</sup> *Ibid.*, 32.

<sup>49</sup> World Health Organisation (WHO) (2019) '[10 areas governments could work with to reduce the harmful use of alcohol](#),' WHO, accessed 23 March 2021.

<sup>50</sup> Northern Territory Government (NT Government) (2021) '[Northern Territory Alcohol Policies and Legislation Reform](#),' NT Government, accessed 7 May 2021.

<sup>51</sup> NT Government, [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019](#).1,8, 10-11, 15.

<sup>52</sup> Henry Zwartz (13 November 2020) '[Rushed NT Government legislation for proposed Dan Murphy's store condemned by Liquor Commission](#)' ABC, accessed 7 May 2021.

A variety of mechanisms exist under the Liquor Act to regulate alcohol and respond to different community circumstances. There are different categories of controlled areas underpinned by different types of alcohol restrictions, including total alcohol bans in public areas and restricted premises, time-limited restrictions for urgent matters and restrictions on certain types of alcohol in GRAs.<sup>53</sup> While GRAs are comparable to APAs under the SFNT Act, the NTLC has flexibility to prohibit or not prohibit certain types of alcohol rather than imposing a blanket ban on all alcohol (although the latter is still possible). For example, the NTLC could prohibit all alcohol in a GRA except low strength beer.<sup>54</sup> The NTLC can also revoke or vary a GRA declaration in response to an application or on its own initiative.<sup>55</sup> There is also scope for people to apply for permissions and permits to have alcohol in some of the controlled areas.<sup>56</sup>

As part of the reforms the NT Government committed to significantly improving research, data, and evaluation in this area.<sup>57</sup> Research to date suggests the reforms are showing signs of success. For example, the volume of cheap wine, especially cask wine sold in the NT, almost halved in the first 12 months of the MUP.<sup>58</sup> This is significant because cheap wine is 'linked to excessive drinking and serious negative health, social and economic impacts.'<sup>59</sup>

Through its Local Decision-Making Model (LDM), the NT Government has a framework for working collaboratively with Aboriginal communities to develop local, targeted approaches to alcohol management.<sup>60</sup> The NT Government has also expressed support for consulting with communities on the future management of alcohol in APAs after the SFNT Act sunsets and applications for licensed community clubs.<sup>61</sup> The review notes that communities are likely to have a variety of views on alcohol restrictions and some may remain united in opposing alcohol returning to communities.

## Finding

The Liquor Act provides flexibility to implement targeted, community driven solutions to regulate alcohol supply and reduce alcohol-related harm and demand.

Given the significant impact of alcohol-related harm in Aboriginal communities in the NT, the Australian Government should continue to work in partnership with the NT Government to reduce alcohol-related supply, demand, and harm. This could involve sharing resources, data, and where appropriate continuing to fund effective safety and wellbeing programs. The NT Government should have a reciprocal responsibility to continue reviewing the effectiveness of its policies. The NT Government should ensure any future decisions regarding access to alcohol reflect community aspirations and do not lead to an increase in alcohol related harm.

There are a number of communities and large areas of land that are only covered by APAs (as there is no overlap with GRAs). In the absence of further action, these communities will cease to have a similar level of alcohol restrictions as they currently have, when the SFNT Act sunsets. This could result in an increase in alcohol-related harm in those communities. The NT Government could mitigate this risk by ensuring equivalent alcohol restrictions under the Liquor Act are in place before the SFNT Act sunsets to address the risk of alcohol-related harm in these areas.

<sup>53</sup> *Liquor Act 2019* (NT), ss 170 – 199.

<sup>54</sup> *Ibid.*, s 172(4).

<sup>55</sup> *Ibid.*, s 180

<sup>56</sup> *Ibid.*, ss 200 – 207.

<sup>57</sup> *Ibid.*, ss 12 - 15.

<sup>58</sup> Taylor et al., '[the impact of a minimum unit price on wholesale alcohol supply trends in the Northern Territory, Australia,](#)' 45(1) 26.

<sup>59</sup> *Ibid.*, s 45(1) 30.

<sup>60</sup> Northern Territory Government (NT Government) (2021) *Local Decision Making Model - 'About LDM'* and '*Information,*' NT Government, accessed 19 April 2021; Northern Territory Government (2019) [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019: August 2019 update](#), Northern Territory Government, 11.

<sup>61</sup> Northern Territory Government (2019) [Table of Recommendations: NT Government Position on Alcohol Policies and Legislation Review Final Report's Recommendations – August 2019 Update](#), Northern Territory Government, 26 – 27.

## Division 3 (Licences and permits)

### Implementation

This Division imposes some statutory conditions on licences and permits and allows the Australian Government Minister to impose certain conditions and to vary the conditions of NT liquor licences and liquor permits held in APAs. The Australian Government Minister may determine a licensee cannot sell or allow the consumption of alcohol on, at or away from the licensed premises and may vary the conditions on a licence or permit to reflect this. Under the Liquor Act the NTLC can vary licence conditions should it choose to do so. The Australian Government's approach to date has been to refer requests to vary licence conditions of NT social clubs to the NTLC for consideration and decision. If a decision by the NTLC results in an increase in alcohol-related harm the Australian Government Minister can intervene. The Australian Government Minister may give notice to a permit holder that determines the permit does not authorise a person to bring alcohol into, possess, control, or consume alcohol within an APA. The Australian Government Minister has not used this power. This Division also imposes a condition on licensed premises in APAs that the licensee must not sell takeaway alcohol unless the buyer has a permit. This is a continuation of the NTER alcohol regulation.

To date the Australian Government Minister has not directly varied licensing conditions under Division 3. Messaging by Australian Government Ministers has supported decisions regarding alcohol licensing being made in consultation with relevant communities and not leading to an increase in alcohol-related harm.

### Case Study

On 23 March 2014, the Chairman of the Tiwi Land Council sought approval from the Australian Government Minister to amend liquor licences of premises in the Pirlangimpi, Wurrumiyanga and Milikapiti communities on the Tiwi Islands to allow the sale of takeaway alcohol in the Tiwi Island APA. The Chairman contended profits were being taken away from local venues as Tiwi Island residents were purchasing takeaway alcohol from Darwin venues and having it delivered by the regular barge service. The Australian Government Minister referred the decisions about the changes to these liquor licences to the NTLC, noting he did not, in principle, approve of changes that would increase alcohol-related harm and he wanted to be kept informed and provided data on the impact of licence changes on Tiwi Islands. The NT Government informed the Australian Government Minister of their decision to first amend the Milikapiti Sport and Social Club (Milikapiti Club) licence to allow the sale of takeaway alcohol to customers with a liquor permit on a 12-month trial basis. On conclusion of the trial, if it was determined the change did not increase alcohol-related harm then the Pirlangimpi, Nguiu and Ranku communities' clubs' licences would be amended on a 12-month trial, respectively. The Milikapiti Club licence was amended to allow the sale of take-away alcohol at the end of 2015. After the Milikapiti 12-month trial concluded, the NTLC consulted NT police and community and determined alcohol-related harm had increased on the Tiwi Islands. However, the increase in alcohol-related harm could not be attributed to the amendment of the Milikapiti Club's licence and was more likely due to the alcohol being bought in through the barge. The final report was finalised in late 2015 and was provided to the Australian Government Minister for information. The NT Director-General of Licensing determined the Milikapiti Club would continue to hold an authority to sell takeaway alcohol. In November 2020, the NTLC amended the Pirlangimpi Community Club's licence to allow the sale of takeaway alcohol. The NTLC will consider amending the other licensed venues (in the Nguiu and Ranku communities) when the Pirlangimpi trial is complete.

### Impact

To date although the Australian Government Minister has not made a determination to amend a liquor licence or liquor permit within an APA, the Australian Government Minister was able to oversee alcohol licence changes.

### Finding

The NTLC has responsibility to determine liquor licence and liquor permit changes with regard to minimising alcohol-related harm. Commonwealth powers are duplicative of this function and no Australian Government Minister has used this power to intervene in the NTLC's decision during the 10 years of the SFNT Act. In response to community calls for changes to liquor

licences and liquor permits, the review suggests the Australian Government continue to support the harm minimisation approach by the NT Government including to continue trialling changes that reflect community aspirations.

## Division 4 (notices)

### Implementation

Division 4 provides the NT Licensing Commission (now the NTLC) may determine whether alcohol restriction notices should be displayed along access routes into an APA, this includes departure locations for aircrafts flying into an APA. The NTLC may also cause a notice to be published in a newspaper and circulated in the district where an APA is situated. Notices should inform the public it is an offence to bring alcohol into the area, possess, control, consume, sell, or otherwise dispose of alcohol within an APA. It may also set out other information the NTLC considers appropriate. The NTLC must consult with people living in the area and ensure the wording of notices are respectful to Aboriginal peoples.

The NTER introduced notices to inform residents and visitors of the new laws relating to alcohol and prohibited materials. Aboriginal communities critiqued the notices due to the lack of consultation and because the notices of alcohol and prohibited materials brought shame to residents.<sup>62</sup> The SFNT Act recognises the need to continue to advise the public where alcohol restrictions apply. Some Aboriginal communities were consulted about the wording of notices and in some places, communities designed artwork for the notices.<sup>63</sup> The SFNT Act Regulation Impact Statement recommends the NTLC consider the following when making decision on notices:<sup>64</sup>

- place signs where there is evidence of high traffic and/or an incidence of alcohol-related crime, where the placement of signs would be warranted
- NT police and other relevant agencies should provide advice on the consequences of not having signs at particular locations for the proper enforcement of the new alcohol restrictions
- consult with affected communities on the content and wording of the notices, to ensure they are respectful.

### Impact

There has not been a formal evaluation of the impact of these notices.

### Finding

When the Australian Government's powers in relation to APAs cease the NTLC will not require legislative power for APA notices. There are provisions in the Liquor Act to support public understanding of alcohol restrictions. The NTLC must warn the public about alcohol restrictions on entry to a GRA or at a departure location for vessels or aircraft (such as an airport or ferry terminal).<sup>65</sup> There are already requirements to warn the public of alcohol restrictions in other controlled areas.<sup>66</sup>

## Division 5 (Assessment of licensed premises)

### Implementation

This Division allows the Australian Government Minister to request an assessment of a licensed premises where they believe the sale or consumption of alcohol at or from the premises is causing alcohol-related harm to an Aboriginal community. The Australian Government Minister can request the relevant NT Minister to appoint an assessor to undertake an assessment of a licensed premises. One such request has been lodged under the SFNT Act. In June 2015 the Australian Government

<sup>62</sup> FaHCSIA, [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), 43, 49.

<sup>63</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 13.

<sup>64</sup> [Explanatory memorandum](#), Stronger Futures in the Northern Territory Bill 2012, Appendix A, 1.

<sup>65</sup> *Liquor Act 2019* (NT) s 181.

<sup>66</sup> *Ibid.*, ss 186, 196.

Minister lodged a request for an assessment related to concerns changes to a premises' operating model had adversely impacted people going to work, and children attending school and resulted in an increase in alcohol-related violence outside the premises. The NT Chief Minister advised the Australian Government Minister the NT Department of Business was already working closely with the club and investigating several potential breaches. No formal assessments were undertaken in response to the request.

## Impact

The Division has had minimal impact. The Australian Government Minister has requested one assessment, which was resolved through ministerial discussion.

## Finding

There is a process under the Liquor Act for monitoring and investigating compliance with the Liquor Act. Police and inspectors have regulatory compliance powers, including the power to inspect licensed premises at any time the premises are in use.<sup>67</sup> The Director of Liquor Licensing has power to monitor compliance, conduct investigations, handle complaints and other matters.<sup>68</sup> The Director of Liquor Licensing must conduct investigations in response to complaints it accepts and requests from the Chairperson of the NTLC.<sup>69</sup> In the event of non-compliance, it can refer matters to the NTLC for disciplinary action or accept enforceable undertakings from a licensee.<sup>70</sup>

## Division 6 (Alcohol management plans)

### Implementation

This Division gives the Australian Government Minister power to approve or refuse alcohol management plans (AMPs). AMPs are community-led agreements aimed at reducing demand, harm, and supply of alcohol. They are developed in partnership and agreed between government and community representatives. Often communities establish an Alcohol Reference Group made up of community members and local stakeholders to oversee the development, implementation, and monitoring of the AMP.<sup>71</sup> The then Australian Government Department of Families, Housing, Community Services and Indigenous Affairs developed five minimum standards to facilitate the development of AMPs.<sup>72</sup> The minimum standards are:<sup>73</sup>

- consultation and engagement ensuring the views of vulnerable groups, community members and interest groups are incorporated
- governance arrangements describing the roles and responsibilities of each of the agencies and participants
- strategies to reduce supply, demand, and harm
- measurable outcomes and how ongoing strategies will be monitored
- clear geographical boundaries of the applicable area.

<sup>67</sup> *Ibid.*, s 155 (1).

<sup>68</sup> *Ibid.*, s 10(1)(a).

<sup>69</sup> *Ibid.*, s 158 (1)

<sup>70</sup> *Ibid.*, s 159, 166.

<sup>71</sup> NT Government, [Alcohol policies and Legislation Review: Final Report](#), 76.

<sup>72</sup> Smith K, Langton M, d'Abbs P, Room R, Chenhall R and Brown A (2013) [Alcohol Management Plans and Related Alcohol Reforms](#), Indigenous Justice Clearinghouse, Australian Government, 3.

<sup>73</sup> *Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013*, Schedule 1 – Minimum Standards.

The Australian Government Minister may approve an AMP if they are satisfied the plan meets these standards. If the Australian Government Minister approves an AMP, the area becomes a community managed alcohol area and the Australian Government Minister must consider revoking or varying an APA.<sup>74</sup>

The intention of AMPs is to allow communities to participate in tailoring solutions to reduce alcohol-related harm in their community.<sup>75</sup> The SFNT Act Explanatory Memorandum explains AMPs were designed to work as part of a two-stage approach with APAs for alcohol management – ‘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.’<sup>76</sup>

During the SFNT Act, around eight AMPs were developed and submitted to the Australian Government Minister and one was approved. The approved AMP is for the Titjikala community, it includes a range of activities and initiatives to curb alcohol-related harm to community including a remote alcohol and other drug worker. It did not include a request to allow alcohol in the community. Many of the rejected AMPs included amendments to the APA often to establish a managed drinking area close to community to resolve unsafe drinking habits which arose in response to blanket alcohol bans.<sup>77</sup> The Australian Government Minister rejected these AMPs as there was insufficient evidence to show the AMPs would reduce alcohol-related harm, noting concerns that in some cases the proposed changes could result in an increase to alcohol-related harm.<sup>78</sup>

In 2015, the Australian Government and NT Ministers agreed to reshape the approach of community initiatives for reducing alcohol misuse. Alcohol Action Initiatives are examples of community-led programs to reduce alcohol-related harm in communities. Alcohol Action Initiatives are short-term funded community driven projects developed under the National Partnership on Northern Territory Remote Aboriginal Investment (NTRAI).<sup>79</sup> They are agreed in line with the current evidence base for harm minimisation, targeting alcohol demand, supply, and harm reduction.<sup>80</sup> Unlike AMPs, Alcohol Action Initiatives do not allow for changes to alcohol restrictions.

## Impact

It is difficult to determine the impact of AMPs under the SFNT Act as it appears the design intention was not realised in the implementation of this aspect of the SFNT Act. The design of APAs and AMPs was to provide the opportunity for a two-stage approach to alcohol management in Aboriginal communities.<sup>81</sup> Initially, full prohibition under an APA provided blanket coverage with options for the Australian Government Minister to approve community-based approaches to vary alcohol restrictions through AMPs.<sup>82</sup> This two staged approach did not materialise as AMPs were assessed as not meeting the minimum standards for approval.

There has been no evaluation of the impact of the Titjikala AMP and it is not possible to determine whether the AMP reduced alcohol-related harm in this location. While this review relates only to AMPs generated under the SFNT Act, there is some evidence to suggest AMPs introduced prior to the SFNT Act and outside the NT have been successful at addressing alcohol-related harm.<sup>83</sup> Some research on AMPs from the NT, Queensland and Western Australia suggests

<sup>74</sup>Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 36; *Stronger Futures in the Northern Territory Act 2012*, s 26, s 27(3b).

<sup>75</sup> [Revised explanatory statement](#), *Stronger Futures in the Northern Territory Bill 2012*, 2.

<sup>76</sup> *Ibid.*, 2.

<sup>77</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), ix, 33.

<sup>78</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 10.

<sup>79</sup> NT Government, [Alcohol policies and Legislation Review: Final Report](#), 76.

<sup>80</sup> Department of Prime Minister and Cabinet (2016) *Community Safety Implementation Plan*, [unpublished operation manual – internal document], 22.

<sup>81</sup> [Revised explanatory statement](#), *Stronger Futures in the Northern Territory Bill 2012*, 2; Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 19-20.

<sup>82</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 19-20; [Revised explanatory statement](#), *Stronger Futures in the Northern Territory Bill 2012*, 2.

<sup>83</sup> Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 36.

involving community in the development of alcohol management approaches results in the most effective strategies.<sup>84</sup> Although minimum standards needed to be adhered to, successful AMPs were driven by local context and tailored to individual communities. This ensured AMPs effectively addressed local issues and were culturally appropriate, which is essential for the success of AMPs.<sup>85</sup> Overall, locally tailored community-led approaches continue to be recognised globally as an essential mechanism for managing alcohol.

The SFNT Act AMP process hampered the successful implementation of this mechanism. The NT Government and Menzies School of Health Research suggested improvements to the SFNT Act process of assessing and approving AMPs as well as supporting community to take on responsibility of alcohol-related issues.<sup>86</sup> Common complaints about the AMP process included:

- complex, time consuming process of developing AMPs due to the high benchmark for Commonwealth Ministerial approval<sup>87</sup>
- difficulty enforcing AMPs
- delays in responses to AMPs submitted to the Commonwealth Minister for approval
- difficulty meeting expectation to provide extensive evidence made it difficult to meet AMP criteria.<sup>88</sup>

## Finding

This review recommends APA provisions including Australian Government Ministerial approval of AMPs be allowed to sunset. Aboriginal communities in the NT will continue to have the ability to request changes to alcohol restrictions and design and implement community alcohol management plans under existing provisions of the Liquor Act and NT policy on community decision making.

The NT Government's LDM represents a potential new way of working with Aboriginal communities on alcohol management. It is a 10-year plan to empower communities to gradually take control of government services and programs, through a co-design process.<sup>89</sup> It includes community facing tools to help communities identify what they need to consider to engage in the LDM process and make well-informed decisions about the future of their communities.<sup>90</sup> It also includes government facing tools to facilitate inter-agency collaboration and assist the government to work authentically and flexibly with Aboriginal communities.<sup>91</sup> Sharing community level data and evidence is an important part of this process.<sup>92</sup> This emphasis on shared decision-making and access to data is consistent with the National Agreement on Closing the Gap.

The LDM may give rise to innovative, locally driven solutions. This is consistent with the National Alcohol Strategy 2019 - 2028 (National Alcohol Strategy) recommendations to:<sup>93</sup>

<sup>84</sup> Smith et al, *Alcohol Management Plans and Related Alcohol Reforms*, 1; House of Representatives Standing Committee on Indigenous Affairs (HoRSCIA) (2015) *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, Australian Government, 49.

<sup>85</sup> HoRSCIA *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, 49.

<sup>86</sup> Minter Ellison, *Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm*, 36.

<sup>87</sup> Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures*, 31.

<sup>88</sup> HoRSCIA, *Alcohol, hurting people and harming communities: Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities*, 48-49; Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures*, 30.

<sup>89</sup> Northern Territory Government (NT Government) (2021) *Local Decision Making Model - 'About LDM' and 'Information'*, NT Government, accessed 19 April 2021.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Department of Health (2019) *National Alcohol Strategy 2019 – 2028*, Australian Government, 12.

- supplement standardised approaches with targeted, people centred approaches recognising disproportionate risks across different communities
- implement innovative approaches to prevent and minimise alcohol-related harm when best practices approaches are lacking.

## Division 8 (Independent review of Commonwealth and Northern Territory laws relating to alcohol)

### Implementation

Division 8 sets the requirement for the Australian Government and NT Ministers to cause an independent review of Part 2 of the SFNT Act and NT liquor and alcohol laws. The review must assess the effectiveness of the laws in reducing alcohol-related harm and determine amendments or repeals that would increase the effectiveness.

The review report was required before the end of three years after commencement of the SFNT Act. Minter Ellison was engaged on 20 July 2015 to conduct the review. Minter Ellison conducted a desktop review and the final report was tabled in both Houses of Parliament on 16 September 2015.

### Impact

As a result of data issues, the Minter Ellison review was unable to determine whether alcohol-related harm to Aboriginal peoples in the NT had reduced or whether changes would improve the effectiveness of the legislation.<sup>94</sup> This caused the Parliamentary Joint Committee on Human Rights to suggest that the review did not meet the requirements of Division 8.<sup>95</sup>

The Minter Ellison review noted the legislative framework (including the SFNT Act and relevant NT legislation) is effective for regulating the supply of alcohol. However, it did not consider this to be a sufficient means of addressing alcohol misuse (in and of itself).<sup>96</sup> It suggested a more holistic approach to addressing the determinants of alcohol misuse and references the three pillars of the National Drug Strategy – reducing supply, reducing demand, and reducing harm.<sup>97</sup>

The NT Government demonstrated a commitment to improving research, data, and evaluation in regard to alcohol management policies in the Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019.<sup>98</sup> It recently (2020) evaluated the impact of MUPs and conducted a 2019 demand study of alcohol treatment services to assess the adequacy of current treatments and identify areas for additional focus.<sup>99</sup>

### Finding

The NT Government has demonstrated an ongoing commitment to reviewing NT legislation and policies on reducing supply, reducing demand, and reducing harm.<sup>100</sup>

<sup>94</sup> Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 5.

<sup>95</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 23.

<sup>96</sup> Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#), 5.

<sup>97</sup> *Ibid.*, 32.

<sup>98</sup> NT Government, [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019](#), 12 – 15.

<sup>99</sup> Coomber, K, Miller, P, Taylor, N, Livingston, M, Smith, J, Buykx, P, Clifford, R, Scott, D, Clifford, S, Chikritzhs, T, Nambiar, D, Moayeri, F (2020) '[Investigating the introduction of the alcohol minimum unit price in the Northern Territory – Summary Report](#),' Geelong Australia, *Deakin University*, iii; Stephens, D., Clifford, S., Mellor, R., van de Ven, K., Ritter, A., Smith, J.A., d'Abbs, P., Stevens, M., Dyal, D. & Christie, B. (2019) '[Demand Study for Alcohol Treatment Services in the Northern Territory](#),' Darwin, *Menzies School of Health Research*, 7.

<sup>100</sup> NT Government, [Northern Territory Alcohol Harm Minimisation Action Plan 2018 – 2019](#), 12 - 15.

## Division 9 (Other matters)

### Implementation

This Division includes miscellaneous provision of the ‘Tackling alcohol abuse’ part. These provisions provide:

- the NTLC or the Director of Liquor Licensing must provide information relevant to the operation of Part 2 of the SFNT Act, if requested by the Australian Government Minister
- the Liquor Act and NT Liquor regulations apply subject to any modifications made by, or under, Part 2 of the SFNT Act while the SFNT Act is in effect
- applications can be made to the Administrative Appeals Tribunal (AAT) for review of determinations made under Part 2 of the SFNT Act, this includes decisions made regarding AMPs, and liquor permits and licences.

The Australian Government Minister has requested information and data from the NT Government in relation to liquor licences and alcohol management on occasion. For example, the Australian Government Minister requested the NT Government provide information on the amendment of liquor licences of some Tiwi Islands licensed premises, as discussed at Division 3 above.

The NIAA is not aware of any applications to the AAT regarding a determination made under the SFNT Act.

### Impact

The most significant impact flowing from this Division is the dialogue between the NT Government and the Australian Government on specific alcohol licensing matters in the NT.

### Findings

Sunsetting this Division does not prevent the Australian Government Minister from requesting information from the NT Government.

Legislative provisions allowing individuals to apply to the AAT to review determinations made under Division 3 and Division 6 of Part 2 ‘Tackling alcohol abuse’ should be allowed to sunset with those accompanying Divisions.

## Summary of Findings

The impact of Part 2 is mixed. Three formal reviews of the SFNT Act concluded it is unclear whether Part 2 reduced alcohol-related harm for Aboriginal peoples in the NT due to a lack of reliable and comprehensive data.<sup>101</sup> There is support for alcohol restrictions within communities and anecdotal feedback that restrictions reduced alcohol-related harm.<sup>102</sup> However, people continue to bring alcohol into communities and calls for lawful access to alcohol also exists.<sup>103</sup> Some reports suggest blanket alcohol restrictions have contributed to vulnerable people engaging in more risky, life-threatening behaviours to circumvent restrictions and consume alcohol.<sup>104</sup>

In some cases, the overlap between NT and Australian Government legislation on alcohol restrictions has caused confusion over the location and boundaries of APAs. While the Australian Government engaged in dialogue with the NT Government about alcohol licences, alcohol permits and assessments of licensed premises, it has not used its powers to intervene in these matters. For the most part, attempting to achieve local solutions to alcohol management through the Australian Government

<sup>101</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#); Minter Ellison, [Independent Review of Northern Territory and Commonwealth laws in reducing alcohol-related harm](#); Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#).

<sup>102</sup> FaHCSIA, [Stronger futures in the Northern Territory – Report on Consultations October 2011](#), 37.

<sup>103</sup> *Ibid.*, 10, 37 – 38.

<sup>104</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

Minister's approval process for AMPs was time consuming and inefficient for communities, noting only one AMP (for Titjikala) has been approved by the Australian Government Minister.

The review recognises the NT Government's substantial work in reforming alcohol policies and legislation which is demonstrating signs of success. The LDM supports the objectives of the National Alcohol Strategy by facilitating shared decision making, promoting innovation and people centred approaches.<sup>105</sup>

Since 2015 the Australian Government and the NT Government have agreed to work with local communities to develop practical initiatives to reduce alcohol-related harm through Alcohol Action Initiatives, funded under the NTRAI. Alcohol Action Initiatives have become a vehicle for community-led and targeted alcohol-related harm and reduction measures.

The SFNT Act should be allowed to sunset without the Australian Government enacting legislation to replace the alcohol measures. It is timely to return full responsibility for alcohol management to the NT Government to determine the future of NT alcohol policy in close consultation with local communities and relevant NT stakeholders. This will bring the NT Government's responsibility for alcohol regulation into line with other states and territories. The review recommends this on the basis the NT Government is committed to addressing alcohol misuse and building an evidence base for what works. The NT Government also requires scope for a coordinated territory wide approach to minimising alcohol misuse for both Aboriginal and non-Aboriginal people in the NT. Alcohol use and alcohol-related harm (including alcohol-related deaths) is significantly higher per capita in the NT than any other state or territory and affects both Aboriginal and non-Aboriginal people.<sup>106</sup> The total social cost of alcohol-related harm was estimated to be around \$1,386.8 million in 2015–16.<sup>107</sup>

Although this review recommends the SFNT Act should sunset, reducing alcohol-related harm for Aboriginal peoples in the NT continues to be a priority for the Australian Government. Not with-standing the early progress of the NT Government's new measures, alcohol-related harm continues to have a disproportionate impact on Aboriginal peoples in the NT. Aboriginal peoples in the NT accounted for around 51 per cent of alcohol attributable premature deaths in the NT in 2017, while making up around 30 per cent of the population.<sup>108</sup> This review recommends the Australian Government and the NT Government continue working together on evidence-based, community-centred approaches to minimising alcohol-related harm.

## Recommendations

### Tackling alcohol misuse recommendations

1. The Australian Government allows Part 2 'Tackling alcohol abuse' of the SFNT Act to sunset.
2. The Australian Government encourages the NT Government to mitigate the risk of increased alcohol-related harm in areas currently known as alcohol protected areas (APAs) before the sunset of the SFNT Act. This action may include introducing a targeted approach to alcohol controls under the *Liquor Act 2019* (NT).
3. The Australian Government and the NT Government take a coordinated evidence-based, community-centred approach to policy and program designs to address alcohol-related harm, with clear outcomes that align with the principles in the National Alcohol Strategy 2019 - 2028 (National Alcohol Strategy) and shared decision making under the National Agreement on Closing the Gap.

<sup>105</sup> Australian Government (2020) [National Agreement on Closing the Gap: At a Glance](#), Australian Government, accessed 5 March 2021; Department of Health [National Alcohol Strategy 2019 – 2028](#), 12.

<sup>106</sup> Taylor et al., ['The impact of a minimum unit price on wholesale alcohol supply trends in the Northern Territory, Australia,'](#) 26; Australian Bureau of Statistics (ABS) (2018) [Deaths Due to Harmful Alcohol Consumption in Australia](#), ABS, accessed 13 February 2021 - In 2017, the NT experienced 16.7 alcohol-related deaths per person. All other states and territories had a rate between four to nine alcohol-related deaths per 100,000 persons.

<sup>107</sup> Smith J, Whetton S, d'Abbs P (2019) ['The Social and economic costs and harms of alcohol consumption in the NT,'](#) *Menzies School of Health Research*, 8 -9. Note limitations in this comparison due to 'changed understandings about the impact of alcohol and more sophisticated approaches to measurement.'

<sup>108</sup> *Ibid.*, 17.

## SFNT Act: Part 3 Land Reform

Part 3 of the *Stronger Futures in the Northern Territory Act 2012* (the SFNT Act) grants the Australian Government power to modify particular laws of the Northern Territory (NT) in relation to the use of land in town camps and community living areas (CLAs). The land reform measure was designed to facilitate both the granting of individual rights and interests in land and economic development in town camps and CLAs.<sup>109</sup> It was intended to create opportunities for secure tenure and long-term leases, creating a platform for economic development, home ownership and improved community and public services.<sup>110</sup>

A CLA is a small portion of land excised from a pastoral lease and granted to an Aboriginal community as conditional freehold.<sup>111</sup> There are over 100 CLAs in the NT where Aboriginal peoples with historical connections to pastoral lands reside (see **Attachment B** for major CLAs).<sup>112</sup>

Town camps are communities in the NT situated around towns and cities including Darwin, Alice Springs, Tennant Creek, Adelaide River, Pine Creek, Katherine, Elliot, Mataranka, and Borroloola.<sup>113</sup> They were originally established by people who had barriers to permanent accommodation after arriving in a town, eventually developing temporary structures into permanent dwellings. There are 47 town camps held under different land tenure arrangements. Twenty-one are special purposes leases in perpetuity, 16 are crown leases in perpetuity, three are on Aboriginal freehold land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) and three are freehold.<sup>114</sup> The SFNT Act only applies to the town camps held through special purposes leases and crown leases.

Prior to the SFNT Act, there were significant differences between the property rights of CLA and town camp owners and traditional owners of land held through the ALRA. Some of these differences still exist. Under the ALRA, traditional owners can enter into a variety of long-term leases and land councils must provide assistance. In contrast, CLA and town camp owners had (and in some cases continue to have) less freedom to use their land for economic development and other purposes.<sup>115</sup>

The SFNT Act relates to town camps on land, existing at the time the SFNT Act commenced, leased primarily for residential, community or cultural purposes for Aboriginal peoples under the *Crown Lands Act* of the NT or the *Special Purposes Leases Act* of the NT.<sup>116</sup> Land dealings are restricted, particularly for sub-division and economic development. This means people in town camps do not have the same rights as other Australians to own their homes or run businesses.

Prior to the SFNT Act in many cases CLA owners needed consent from the relevant NT Minister to issue leases. Land dealings for commercial development, individual home ownership and some government services were restricted.<sup>117</sup> This made it difficult for CLAs to ensure their communities' needs were met and create opportunities into the future.

Under the *Northern Territory National Emergency Response Act 2007* (NTER), the Australian Government implemented five-year mandatory leases in CLAs and town camps. While this gave the Australian Government the land tenure needed to deliver services as part of the NTER, there was criticism it undermined community control.<sup>118</sup> The SFNT Act was intended to

<sup>109</sup> [Revised explanatory statement](#), *Stronger Futures in the Northern Territory Bill 2012*, 2.

<sup>110</sup> [Revised explanatory statement](#), *Stronger Futures in the Northern Territory Bill 2012*, 2.

<sup>111</sup> FaHCSIA, [Stronger Futures in the Northern Territory – Discussion paper June 2011](#), 1.

<sup>112</sup> Jenny Macklin MP and Warren Snowdon MP (2013) '[Discussion paper on community living area land reform](#)' [media release], *Parliament of Australia*, 1.

<sup>113</sup> Deloitte (2021) [Living on the edge, Northern Territory Town Camps Review \(2017\)](#), Department of Local Government, Housing and Community Development, Northern Territory Government.

<sup>114</sup> *Ibid.*, 32.

<sup>115</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 20.

<sup>116</sup> Deloitte, [Living on the edge, Northern Territory Town Camps Review](#), 47.

<sup>117</sup> Jenny Macklin MP and Warren Snowdon MP '[Discussion paper on community living area land reform](#),' 1.

<sup>118</sup> Gray, S (2015) '[The Northern Territory Intervention: An evaluation](#),' Castan Centre for Human Rights Law, Monash University, 43.

expand the purposes by which town camps and CLAs could voluntarily choose to lease their land.<sup>119</sup> For this reason, the Parliamentary Joint Committee on Human Rights considered this measure to engage the right to self-determination.<sup>120</sup>

## Division 2 (Town camps)

### Implementation

Under Division 2 of the land measure, the Governor-General may make a regulation to modify particular laws of the NT relating to the use of land in town camps.

When the SFNT Act was introduced, land dealings in town camps were restricted, particularly for sub-division and economic development. Mortgages and other security type restrictions necessary to enable economic development, were prohibited.<sup>121</sup> This measure was designed to overcome these impediments to land dealings, planning and infrastructure, in order to unlock opportunities for private homeownership, more flexible land tenure and economic development.<sup>122</sup>

The SFNT Act requires the Minister for Indigenous Australians (the Australian Government Minister) to consult with the NT Government and town camp lease holders before modifying laws in the NT in relation to town camps. The Australian Government has not used this measure because town camps did not request Australian Government involvement. This may stem from controversy surrounding the Australian Government's actions in 2009 when it executed long term leases for housing in Alice Springs town camps and compulsorily acquired one Alice Springs town camp to convert into ordinary freehold following infrastructure upgrades. These actions have been criticised for being coercive and undermining community control.<sup>123</sup>

### Impact

This Division has not had an impact because the Australian Government has not used its power under this Division.

### Findings

Land tenure issues that can inhibit town camps from progress are ongoing. These should be addressed through community driven approaches as the conditions and aspirations across town camps vary.<sup>124</sup> The NT Government could achieve the policy intent of the SFNT Act to unlock leasing opportunities and broader reforms in town camps through collaborative processes between the NT Government and town camp owners under the *Crown Lands Act* of the NT or the *Special Purposes Leases Act* of the NT.

## Division 3 (Community living areas)

### Implementation

Under Division 3, the Governor-General may make regulations to modify particular laws of the NT relating to the use of land in CLAs. Before modifying any law in this way, the Australian Government Minister must consult with the NT Government, the owner of the relevant land (where the owner requests to be consulted) and the relevant land council.

<sup>119</sup> [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 2; Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 15 - 17.

<sup>120</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), 17.

<sup>121</sup> [Revised explanatory memorandum](#), Stronger Futures in the Northern Territory Bill 2012, 22.

<sup>122</sup> *Ibid.*, 2, 20.

<sup>123</sup> ABC (25 May 2009) '[Town camps takeover illegal: lawyer](#),' ABC, accessed 14 April 2021; Deloitte [Living on the edge, Northern Territory Town Camps Review](#), 333-334.

<sup>124</sup> Deloitte, [Living on the edge, Northern Territory Town Camps Review](#), 29.

The Australian Government used this power when it introduced the Stronger Futures in the Northern Territory Regulation 2013 (the 2013 Regulation) to create a more usable and flexible leasing system. The 2013 Regulation modified the *Associations Act 2003* (NT) (the Associations Act),<sup>125</sup> by expanding the purposes for which CLA land holders could grant leases and licences to include any purpose related to a use or development allowed under the NT Planning Scheme, including commercial, infrastructure and public purposes. It also enabled landholders to grant a lease or licence for particular purposes for 10 years or less without the NT Minister's consent.<sup>126</sup> Prior to the SFNT Act, CLAs owned by Incorporated Associations were required to obtain the NT Minister's consent to grant a lease that had a term of more than 12 months.<sup>127</sup> CLAs owned by Aboriginal and Torres Strait Islander corporations were required to obtain the NT Minister's consent in all land dealings.<sup>128</sup>

Through the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*, the Australian Government also made a complementary change to the *Aboriginal Land Rights (Northern Territory) Act 1976* in 2012, to enable land councils to assist CLA owners with land dealings, when requested.<sup>129</sup> The Australian Government provided additional funding to land councils to support this change.

Prior to implementing the 2013 Regulation, the Australian Government consulted with 16 CLAs, cattle station owners and land councils.<sup>130</sup> There was widespread support for reforms, particularly from CLAs, the Central Land Council and the Northern Land Council, although some stakeholders noted broader reforms were still required. The NT Cattlemen's Association requested a legislative right for adjoining pastoralists to be consulted on new leasing and development proposals, this was not adopted.<sup>131</sup>

## Impact

The 2013 Regulation was intended to create a better environment for economic development, service delivery and government investment in infrastructure through secure land tenure in CLAs, particularly in the 15 larger CLAs.<sup>132</sup>

In 2016, the Parliamentary Joint Committee on Human Rights found the land reform measures to be consistent with human rights. It noted they are capable of supporting Aboriginal peoples' right to self-determination and the rights of people to 'freely pursue economic, social and cultural development' in accordance with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>133</sup>

The reforms have had a practical impact on housing availability and living conditions. Prior to the 2013 Regulation, people in CLAs generally entered informal arrangements with housing providers, without the rights, responsibilities, and protections of a tenancy agreement. Following the reforms, the Australian Government entered into several primary leases, sublet to the NT Government for public housing (see examples of leases at **Attachment C**).<sup>134</sup> Residents can now enter into tenancy agreements with housing providers and benefit from the apportionment of responsibility between tenants and property owners (for example while tenants have possession and must pay rent, property owners must ensure properties are safe and liveable).

<sup>125</sup> The reforms modified section 110 of the *Associations Act 2003* (NT).

<sup>126</sup> [Explanatory statement](#), Select Legislative Instrument 2013 No. 184, 1.

<sup>127</sup> *Associations Act 2003* (NT), s 110(1).

<sup>128</sup> *Ibid.*, s 110(7).

<sup>129</sup> *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*, sch 2; *Aboriginal Land Rights (Northern Territory) Act 1976*, s 23(eb).

<sup>130</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2013) *Community Living Area Land Reform the Northern Territory Outcomes Paper*, FaHCSIA, Australian Government, 4.

<sup>131</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 24 – 25.

<sup>132</sup> Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2013) [Discussion paper on community living area land reform](#), FaHCSIA, Australian Government, 1.

<sup>133</sup> Parliamentary Joint Committee on Human Rights, [2016 Review of Stronger Futures measures](#), ix, 14 and 15.

<sup>134</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

Another significant outcome is the enhancements to community stores and the corresponding impact this has had on food security in CLAs. The ability to enter into long-term, commercial leases enabled community stores to access the Aboriginals Benefit Account community stores infrastructure project which upgraded a number of stores across the NT from 2013 to 2017.<sup>135</sup> As a result, community stores and houses were constructed and upgraded in four CLAs in 2015 and 2016 to support the retention of experienced store staff (see **Attachment D** for details).

There has been a modest increase in government investment in CLAs which was not possible before the reforms. This includes Australian Government leases for staff housing and early childhood centres (see examples of leases at **Attachment C**).<sup>136</sup>

The reforms removed legislative barriers to economic development by expanding the ability of CLA landholders to issue leases for a variety of purposes. However, realising economic development is dependent on other demographic, financial, policy and economic factors.<sup>137</sup> As a result of the ongoing absence of economic drivers in CLAs, there has not been a significant increase in commercial activity.<sup>138</sup>

The 2013 Regulation achieved the objectives of the SFNT Act by increasing opportunities for CLA land holders to exercise control over their land and opening up the land to more investment opportunities. Residual differences between ALRA land and CLA land continue to exist and could influence future reforms. This review recognises the NT Government could enact further reforms or statutory models to further opportunities for CLAs to deal in their land. These actions could be achieved through partnership between the Australian Government, the NT Government, Land Councils and CLA owners.<sup>139</sup>

## Findings

The 2013 Regulation achieved the objectives of the SFNT Act and had a positive impact. The review finds it likely changes to the Associations Act by the 2013 Regulation may cease when the SFNT Act sunsets. This means no new leases or licences could be granted under the 2013 Regulation inserted into the Associations Act. Leases and licences granted during the period of the SFNT Act will not be affected. The Associations Act will revert back to restrictions which make it difficult for CLA owners to deal in their land for commercial development, home ownership and government services. Aboriginal and Torres Strait Islander corporations that are CLA owners will again need ministerial consent for all land dealings. Incorporated associations that are CLA owners will again need ministerial consent to issue leases for more than 12 months. The reforms to the ALRA enabling land councils to assist CLAs will remain in force after the SFNT Act sunsets, until they are amended again or repealed by the Commonwealth Parliament.

This review recommends the NT Government introduce primary legislation to amend the Associations Act to preserve the modifications made by the 2013 Regulation beyond the SFNT Act sunset date (noting the NT Government will continue to have the ability to further amend or repeal these modifications). This will restore responsibility for land laws relating to CLAs to the NT Government.

Alternatively, the Australian Parliament could pass legislation to preserve the operation of the existing modifications by the 2013 Regulation beyond the sunset date. Additionally, it could pass new legislation to provide the Australian Government with an express power to make further modifications to CLAs and town camps beyond the sunset date.

<sup>135</sup> National Indigenous Australian's Agency (NIAA), [ABA Stores Infrastructure Project](#), NIAA, accessed 8 February 2021.

<sup>136</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

<sup>137</sup> *Ibid.*, 26.

<sup>138</sup> *Ibid.*, 27.

<sup>139</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 28; FaHCSIA, *Community Living Area Land Reform the Northern Territory Outcomes Paper*, 7.

## Summary of Findings

The Australian Government has not used the measure under Part 3 to modify any laws in relation to town camps because town camps have not requested Australian Government involvement. This may stem from negative perceptions surrounding the Australian Government's involvement in changing town camp tenure arrangements during the NTER.<sup>140</sup>

The Australian Government used the measure under Part 3 to modify laws in relation to CLAs once in 2013. In effect, this removed legislative impediments and made it easier for CLAs to issue leases for a variety of purposes. The Australian Government also made changes to allow CLAs to access support from land councils. As a result, there has been significant improvements in public housing and community stores. Economic development continues to be limited by an absence of underlying economic drivers in remote communities.<sup>141</sup>

The sunseting of the land measures is unlikely to have an impact on residents in town camps because the Australian Government has not used its power to modify town camp land laws. Although there continue to be barriers for town camp owners to deal in their land, the NT Government is well placed to work with town camp residents on any future reforms.

The sunseting of the land measures is likely to remove the Australian Government's changes to NT legislation related to CLAs and the corresponding ability of CLA owners to lease their land for a particular range of purposes. Leases and licences issued during the SFNT Act period will remain in force until the end of their term. Either the Australian Government or the NT Government could introduce primary legislation before the SFNT Act sunsets in order to preserve these beneficial changes to NT legislation. This review recommends the NT Government is best placed to do this.

On sunseting of the SFNT Act, no further action by the Australian Government is required. The NT Government is best placed to execute potential future changes through existing or reformed legislation, in partnership with the relevant land owners.

## Recommendations

### Land reform recommendations

4. The Australian Government allows Part 3 'Land reform' of the SFNT Act to sunset.
5. Prior to the sunseting of the SFNT Act, the Australian Government encourages the NT Government to introduce primary legislation to ensure the modifications by the Stronger Futures in the Northern Territory Regulation 2013 to the *Associations Act 2003* (NT) remain in force.
6. The Australian Government continue to work in partnership with the NT Government, Land Councils and land holders to ensure CLA and town camp residents have sufficient rights and interests in their land to meet the needs of their communities into the future.

<sup>140</sup> Deloitte, [Living on the edge, Northern Territory Town Camps Review](#) 333-334.

<sup>141</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 27.

## SFNT Act: Part 4 Food Security

The object of Part 4 of the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) is to enable special measures to promote food security for remote Aboriginal communities in the Northern Territory (NT), in particular to enhance the contribution made by remote community stores (see **Attachment E** for definition of community stores). Food security is defined in the SFNT Act as 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.’<sup>142</sup>

The ongoing viability of stores and quality of produce is integral to maintaining food security. Estimates suggest between 90 and 95 per cent of food eaten in remote Aboriginal and Torres Strait communities is purchased from community stores, with traditional foods now contributing only a small portion of communities’ dietary intake.<sup>143</sup>

The special measures put in place by Part 4 of the SFNT Act include a community store licensing scheme and registration of some stores with the *Corporation (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). Under Part 4, the urban areas of Darwin, Howard Springs, Humpty Doo and Palmerston and the regional centres of Katherine, Tennant Creek, Alice Springs, and Nhulunbuy are excluded. The community store licensing scheme does not apply in these areas because of the level of competition, choice in retail outlets and a higher level of consumer awareness.

Prior to the *Northern Territory National Emergency Response Act 2007* (NTER), there was a wide variation in retail services and professional standards across community stores. Aboriginal and Torres Strait Islander peoples in remote communities are more likely to experience food insecurity than people living in urban areas.<sup>144</sup> Poor retail practices of community stores contribute to food insecurity in remote communities.<sup>145</sup> This can be experienced through limited and variable range of food, higher cost, and lower quality of healthy food in remote community stores.

The NTER introduced community store licensing to enhance community stores’ contribution to promoting food security in remote Aboriginal communities by improving retail services and standards. Community consultations about the NTER in 2011 determined the community store licensing scheme should be continued as it had been successful in increasing the service standards, range and quality of food in remote community stores, but it needed redesigning to resolve issues.<sup>146</sup> Some of the standard licence conditions were considered inflexible and not fit for purpose for some community stores.<sup>147</sup> The SFNT Act introduced a streamlined licensing regime including a risk-based approach to regulation, to ensure stores already providing good service and a good range of quality grocery items have less onerous licensing conditions.<sup>148</sup>

All 91 stores licensed under the NTER were transitioned to the SFNT Act licensing framework. As of 30 April 2021, 101 stores held licences, 3 of which are not currently trading but may reopen.<sup>149</sup> Since the majority of stores obtained licences during the NTER and improvements in the quality, quantity and range of healthy food were noted during this time, improvements after the transition to the SFNT Act may have had less impact on food security.

<sup>142</sup> *Stronger Futures in the Northern Territory Act 2012*, s 118(1).47.

<sup>143</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2009) [Everybody's Business: Remote Aboriginal and Torres Strait Community Stores](#), Australian Government, 6.

<sup>144</sup> HoRSCIA, [Report on food pricing and food security in remote Indigenous communities](#), 57.

<sup>145</sup> *Ibid.*, 38-39.

<sup>146</sup> FaHCSIA, [Stronger Futures in the Northern Territory – Discussion paper June 2011](#), 20-21.

<sup>147</sup> Cultural and Indigenous Research Centre Australia (CIRCA) (2011) [Evaluation of the Community Store Licensing Program](#), Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), 33.

<sup>148</sup> Department of Prime Minister and Cabinet (2016) *Stronger Futures in the Northern Territory Food security and community store licensing fact sheet: Overview of community store licensing*, [unpublished operation manual – internal document], 1-2.

<sup>149</sup> National Indigenous Australians Agency (NIAA) (2021) *Summary – Community Store Licensing (NT) – 1 March to 30 April 2021* [unpublished summary report - internal document], 1.

## Division 2, 3, 4, 6 and 8 (community licensing scheme)

### Implementation

Divisions 2, 3, 4, 6 and 8 form the community store licensing scheme. The intent of the five Divisions is to create a regulatory environment which supports the viability of stores and increases individual store capacity to supply a sufficient range of quantity and quality produce for remote Aboriginal communities. The licensing scheme also committed to creating an expected operational standard.

Division 2 provides an owner or manager of a community store in a food security area (see **Attachment E** for definition) must not operate the store without a licence if they have been notified they require a licence. Division 3 provides the relevant delegate (currently the Chief Executive Officer (CEO) of the National Indigenous Australians Agency (NIAA)) may, at any time, determine whether the owner of a community store is required to hold a community store licence. Division 4 allows the owner of a community store, or someone acting on the owner's behalf, to apply for a community store licence and provides for the process in dealing with this application, conditions on licences and the variation and revocation of community store licences. Division 6 provides assessments or monitoring visits on community stores. Division 8 deals with enforcement.

The NIAA CEO has delegated decision-making functions within these Divisions to all NIAA Senior Executive Service (SES) positions based in the NT. The CEO also delegated functions under Part 4 to several national office SES positions. In practice, the decision maker for most licensing decisions is the NIAA Regional Manager for the NT region in which a store is located. The CEO appoints trained and experienced NIAA authorised officers to gather information on community stores for the purpose of regulation and implementation under the SFNT Act.

A Regional Manager must give written notice to the community storeowner and manager if an assessment is due to be undertaken to determine whether a store requires a licence. When determining whether a licence is required, Regional Managers must have regard to:

- the objective of Part 4 of the SFNT Act, to improve food security in remote Aboriginal communities
- store assessments
- owner or manager submissions
- the circumstances and views of people serviced by the store
- the capacity of a store to contribute to food security of an Aboriginal community
- the location of the store (must be in the food security area)
- whether the store is an important source of food, drink, or grocery items for an Aboriginal community.

A Regional Manager must give written notice to the community store owner and manager advising a determination has been made that they need to apply for a licence. The notice should include information on the application process and inform the owner and manager if they do not make an application the store may be prohibited from operating or they could face civil penalties. Once issued, licences are valid until the SFNT Act sunsets, unless circumstances of the store change, including change of ownership or they are revoked due to breaches of licence conditions.

Under Division 4, Regional Managers can place conditions on licences to improve aspects of stores' operations. Under the SFNT Act, some mandatory licence conditions are imposed on all licences. Mandatory licence conditions include requirements for store owners and managers to 'allow an authorised officer to enter the premises of the store for the purposes of auditing or monitoring compliance with the conditions of the licence' and 'if requested to do so – give an authorised officer documents relevant to auditing and monitoring compliance.'<sup>150</sup> In addition, Regional Managers can apply pertinent licence conditions on a case-by-case basis with consideration of the local environment and issues of the store. For example, conditions could include prohibiting book-up or requiring stores to promote nutritional and healthy foods. Book-up also known as book-down is an informal credit offered by stores or other traders for the purchase of goods and services, it is a wide-spread issue for remote communities and stores.<sup>151</sup>

<sup>150</sup> *Stronger Futures in the Northern Territory Act 2012*, s 54 (1a), s 54(1c).

<sup>151</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 8.

Licensed community stores are critical in supporting the health and nutritional requirements of their customers. Some community stores are expected to develop a nutrition policy as a condition of their licence. The policy could involve pricing, placing, and promoting healthy food in a way that has a positive influence on consumer preferences and behaviour. The NIAA does not stipulate what should be in a nutrition policy. Although the NIAA can provide a template, most stores have chosen to develop their own policy. During store visits authorised officers check the strategies in the store's nutrition policies are being followed. A nutrition policy and on-going promotion of good nutrition and healthy products are important in maximising opportunities to encourage customers to make healthier food choices and promote better nutritional outcomes.

Regulatory practices are crucial for compliance and risk management and supporting the continued effectiveness of the licensing scheme.<sup>152</sup> Authorised officers conduct assessments of community stores, for the purpose of:<sup>153</sup>

- determining whether a community store licence is required
- determining whether to grant a community store licence
- determining whether to impose, vary or revoke conditions on a community store licence
- determining whether to revoke a community store licence
- monitoring compliance with Part 4.

Practices such as monitoring compliance visits are used to ensure stores are meeting the requirements of the SFNT Act and identify resolutions where licence conditions are not being met. Between 2012 and 2013, authorised officers from the Community Store Section in the then FaHCSIA NT State Office conducted monitoring and assessment checks on community stores to ensure they were abiding by licence conditions. Following the establishment of the Department of the Prime Minister and Cabinet, Indigenous Affairs Group Regional Network (now NIAA regional offices), this responsibility is conducted by engagement staff from the regional offices.

Regional managers gained a greater range of enforcement provisions under the SFNT Act. In administering the licensing scheme, NIAA's approach has been to work with stores to address performance issues, rather than pursuing legal remedies or applying penalties which could impact on a store's ongoing viability and subsequently food security. To date no stores have been prohibited from operating or prosecuted under the SFNT Act. For example, there have been cases where stores were licensed but due to change in ownership the licence was no longer valid, however, neither previous or new owners advised Regional Managers of this change in circumstances. This is a breach of licence conditions. Rather than issuing a penalty Regional Managers resolved the issue by reminding owners they must advise the agency of a change in ownership or management so the agency can conduct an assessment to determine whether a new licence is required. By adopting a risk-based approach, the NIAA concentrates its efforts on higher risk stores and monitoring ongoing compliance with licensing requirements with a view to building stores' ongoing capacity to support food security.

## Impact

Part 4 'Food security' has been subject to three independent reviews. Two were reviews of the whole SFNT Act led by KPMG (2015) and the Parliamentary Joint Committee on Human Rights Commission (2016) while the Australian National Audit Office (ANAO) (2015) conducted a performance audit of Part 4 only. In 2020 the House of Representatives Standing Committee on Indigenous Affairs (HoRSCIA) conducted an inquiry on food insecurity and pricing in remote Aboriginal and Torres Strait Islander communities across Australia which included discussion on store governance and licensing.

KPMG found anecdotal feedback from stakeholders was broadly positive. The review noted stakeholders believed improvements in store regulation, governance and management likely improved food security but the impact of the community store licensing on food security in remote regions could not be quantified.<sup>154</sup> Stakeholders expressed support for inclusion of the CATSI Act registration contributing to improvement in governance practices and financial management of stores, suggesting stores perform better than before the NTER community store licensing was introduced. Fewer reported

<sup>152</sup> Ibid., 18, 60.

<sup>153</sup> *Stronger Futures in the Northern Territory Act 2012*, s 67(1).

<sup>154</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 30, 40-41.

problems in relation to finances and government as well as cleanliness, hygiene, stock management.<sup>155</sup> The review noted authorised officers reported store owners and managers were more likely to work with the NIAA to resolve issues due to the enforceable conditions, which were broadened under the SFNT Act community store licensing scheme.<sup>156</sup>

The Human Rights Commission found the 'Food security' measures of the SFNT Act are consistent with human rights and 'are likely to promote the right to adequate standard of living (including the right to food).'

The ANAO performance audit, based on stakeholder interviews and surveys, of the first three years of Part 4 of the SFNT Act found many of the licence conditions were successful in improving food security for Aboriginal peoples in remote regions in the NT.<sup>157</sup>

The HoRSCIA inquiry found food insecurity was still an issue in 2020 in many remote Aboriginal and Torres Strait communities around Australia.<sup>158</sup> The HoRSCIA reported its findings, along with 16 recommendations for future food security initiatives in the *Report on food pricing and food security in remote Indigenous communities*. The HoRSCIA found '... effective governance and oversight of community stores will be a vital part of any future solutions to food pricing and food security in remote communities.'<sup>159</sup> The inquiry concluded the SFNT Act licensing scheme is a reasonably effective system for regulating remote community stores.<sup>160</sup> The HoRSCIA's report recommended community store licensing should be a future strategy for curbing food insecurity in remote Aboriginal and Torres Strait Islander communities and the establishment of a national community store licensing scheme.<sup>161</sup>

In addition, the then NT Department of Health and Community Services developed a survey to monitor food quality, quantity, cost, and availability in remote community stores across the NT. The survey also collects information on store management, employment of Aboriginal peoples and existence of a store nutrition policy. This survey is called the NT Market Basket Survey and is conducted annually. The 2019 NT Market Basket Survey engaged 58 stores, 86 per cent of these stores hold community store licences under the SFNT Act. This review has used the 2019 NT Market Basket Survey as it provides evidence across years, on different measures of food security, such as variety, quality, and governance. The 2019 NT Market Basket Survey shows an increase in the range of fruit and vegetables and stores with nutrition policies; however, it is not possible to attribute this to the Australian Government community store licensing schemes.

The following sections provide further information on the impact of the SFNT Act on the elements of food security defined in the SFNT Act as 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.'

## Variety of food

To improve the variety and availability of healthy food in remote community stores the NIAA imposes a licence condition on store managers to maintain a minimum range of healthy food, depending on the store size, turnover and with consideration of the community needs. The evidence about whether this licence condition has been effective is inconclusive. The ANAO performance audit indicated the majority of licensed stores were stocking the required products and stakeholders were generally positive about the availability of healthy foods.<sup>162</sup> The results of the 2019 NT Market Basket Survey show there has been an increase in the range of fruit and vegetables since the licensing scheme was introduced under the NTER (see graph below).<sup>163</sup> However, the NT Government notes there has been a steady increase since 2000, 7 years before the NTER and 12

<sup>155</sup> Ibid., 39-40.

<sup>156</sup> Ibid., 38.

<sup>157</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 19, 63.

<sup>158</sup> HoRSCIA [Report on food pricing and food security in remote Indigenous communities](#), 1, 3.

<sup>159</sup> Ibid., 52.

<sup>160</sup> Ibid., 53.

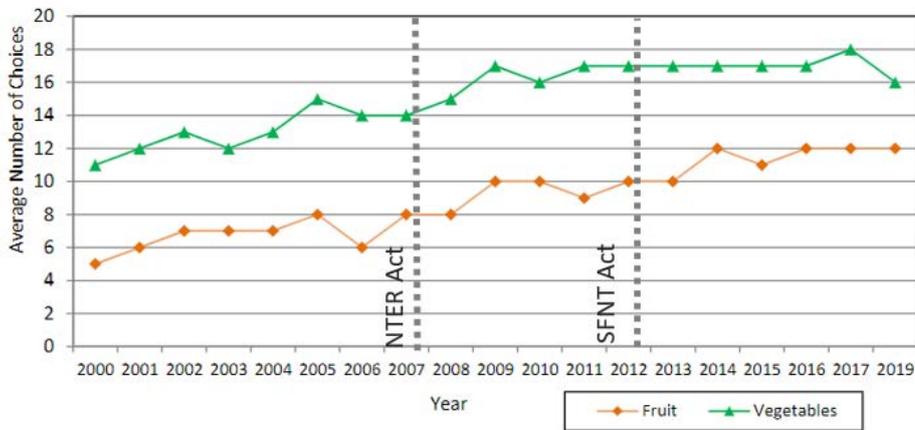
<sup>161</sup> Ibid., 4.

<sup>162</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 63.

<sup>163</sup> Northern Territory Department of Health (2020) [2019 NT Market Basket Survey](#), Northern Territory Department of Health, Northern Territory Government, 13.

years before the SFNT Act.<sup>164</sup> Since there was already an upward trajectory prior to a stores licensing scheme being enacted a direct attribution of the increase in food variety to licence conditions is not possible.

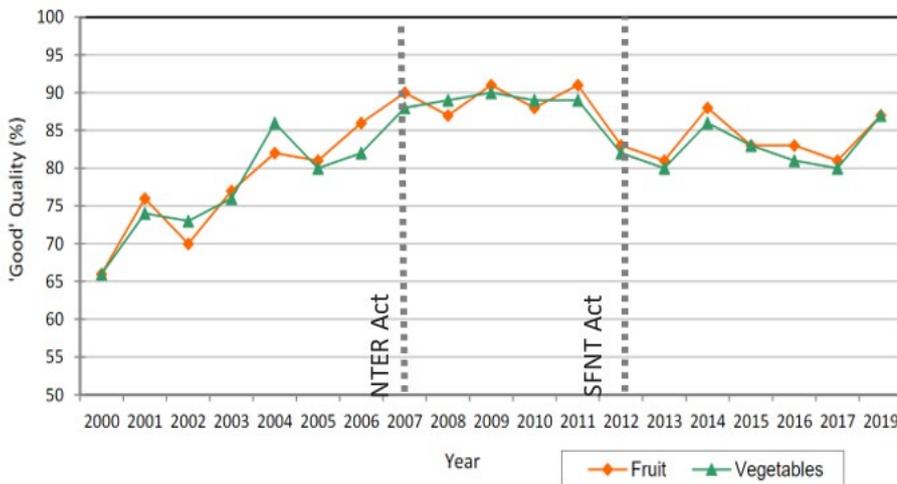
Graph 1. 2019 NT Market Basket Survey<sup>165</sup>



### Quality of food

Data on the changes to quality of fresh produce during the SFNT Act have been varied. The ANAO reported stakeholders were generally positive about the improvement in the quality of produce in community stores.<sup>166</sup> However, data in the 2019 NT Market Basket Survey shows the quality of fresh produce has varied between 2000 and 2019 (see graph below) and there was no significant trend to show the licensing scheme had an impact on the quality of produce available.<sup>167</sup>

Graph 2. 2019 NT Market Basket Survey<sup>168</sup>



### Governance and staffing

Skills and knowledge of business management are essential for the successful governance of community stores.<sup>169</sup> Governance and financial practice difficulties have been a recurring problem in community stores with resulting impacts on

<sup>164</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 63.

<sup>165</sup> NT Department of Health, [2019 NT Market Basket Survey](#), 13.

<sup>166</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 63.

<sup>167</sup> NT Department of Health, [2019 NT Market Basket Survey](#), 13-14.

<sup>168</sup> *Ibid.*, 13.

<sup>169</sup> HoRSCIA, [Report on food pricing and food security in remote Indigenous communities](#), 37.

food security.<sup>170</sup> The primary cause of poor governance is because store owners or managers have limited experience or training in business management.<sup>171</sup> To help address this the NIAA offers guidance to store owners and managers to address issues related to store governance, employment, management and financial practices. Consultations conducted by the ANAO concluded store owners believed focus on good governance and business management practices had improved store retail management practices.<sup>172</sup>

Assessments conducted by authorised officers have impacted the governance and management of many stores by identifying and supporting the rectification of problematic practices. Monitoring visits and assessments by authorised officers can hold store owners and managers accountable to abiding by licence conditions and conducting good operational practices. Over the duration of the SFNT Act authorised officers have identified a stores with poor operational practices such as misuse of BasicsCards and Centrepay, use of lay-by systems as a suspected vehicle for book-up, stocking items past the used-by dates and not notifying the NIAA of change in ownership or management. NIAA Regional Managers have remedied poor store operations by working with store owners and managers or on four occasions, by varying licence by adding conditions which prohibited and penalised problematic practices.

From June 2016 the NIAA began collating data on stores' risk ratings. Risk is assessed on a store-by-store basis with ratings determined by the level of risk store operations pose to food security. Assessments conducted from June 2016 until February 2021 show an increase in the number of stores rated as low risk and decreases in the number of stores rated as extreme, high, and moderate risk, see in table below. This is likely due to the higher frequency in monitoring and assessment checks conducted by authorised officers on stores with high-risk ratings. During monitoring visits authorised officers identify problem areas and assist store owners and managers to identify solutions, with follow up by the officer on their next visit.

**Table 2. Risk ratings of stores<sup>173</sup>**

Risk level	June 2016	April 2021
Low risk	66	75
Moderate risk	24	16
High risk	9	7
Extreme risk	3	0
Total stores	102	98

Since the NTER community store licensing scheme began, the number of stores with a nutrition policy has increased. While part of this increase is due to the Australian Government's community store licensing schemes, it is largely due to the increase in stores engaging store groups. Store groups such as Outback Stores and Arnhem Land Progress Aboriginal Corporation provide retail management services and support for stores who engage them - nutritional policies are part of their business model.<sup>174</sup> The 2019 NT Market Basket Survey shows a significant jump of stores with nutrition policies in 2009

<sup>170</sup> Ibid., 38-39.

<sup>171</sup> HoRSCIA, [Report on food pricing and food security in remote Indigenous communities](#), 38-39; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs [Everybody's Business: Remote Aboriginal and Torres Strait Community Stores](#), 79.

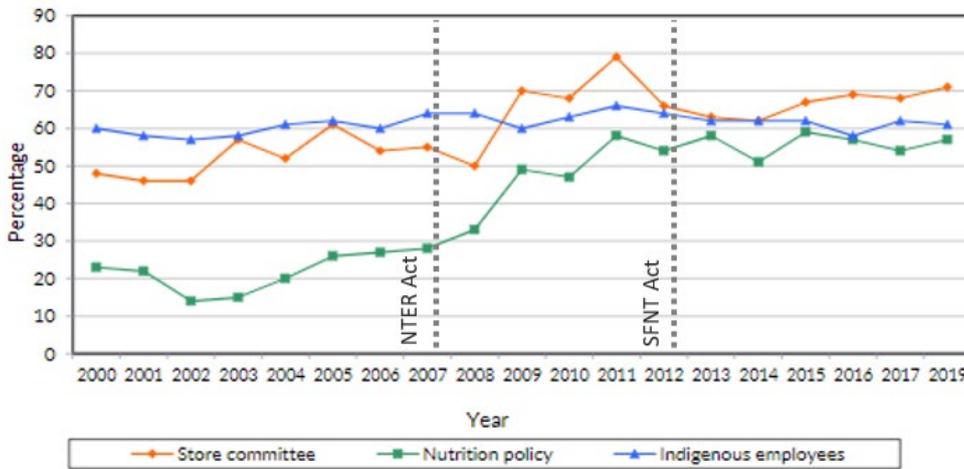
<sup>172</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 63.

<sup>173</sup> Department of the Prime Minister and Cabinet (PM&C) (2016) *Community Store Licensing – six-month activity report – ALGE Region 1 July 2016 to 31 December 2016*, [unpublished progress report - internal document]; Department of the Prime Minister and Cabinet (PM&C) (2016) *Community Store Licensing – Transition Update report – CA Region 1 July 2016 to 31 December 2016*, [unpublished progress report - internal document]; Department of the Prime Minister and Cabinet (PM&C) (2016) *Community Store Licensing – Transition Update report – TETI Region 30 June 2016 to 31 December 2016*, [unpublished progress report - internal document]; National Indigenous Australians Agency (NIAA) (2021) *Summary – Community Store Licensing (NT) – 1 March to 30 April 2021* [unpublished summary report - internal document].

<sup>174</sup> NT Department of Health, [2019 NT Market Basket Survey](#), 12, 19.

(two years after the licensing scheme was introduced under the NTER) and it has remained above 50 per cent since the SFNT Act was enacted (see in graph below).<sup>175</sup>

Graph 3. 2019 NT Market Basket Survey<sup>176</sup>



Of the stores surveyed in the 2019 NT Market Basket Survey 92.86 per cent of the stores managed and/or owned by a store group had a nutrition policy.<sup>177</sup> Compared to 41.67 per cent of privately owned stores and 11.11 per cent of stores owned and managed by community or Aboriginal corporation.<sup>178</sup>

Table 3. Stores (surveyed for the Market Basket survey) with a Nutrition Policy at 2019<sup>179</sup>

Ownership type	Yes	No	Unknown	Total remote stores
Owned and managed by community or Aboriginal corporation	5	5	2	12
Privately owned	2	13	3	18
Owned and/or managed by store group	26	2	0	28

### Pricing of food

Reviews of the pricing of healthy food in remote community stores since the introduction of store licensing do not show an impact on pricing. The SFNT Act does not provide powers to the Australian Government to set prices in licensed stores, but stores can be required to have pricing policies through licence conditions. The 2019 NT Market Basket Survey shows the gap between the cost of a healthy food basket (see **Attachment E** for definition) in remote and urban regions is widening, with the greatest difference occurring in 2017.<sup>180</sup> The HoRSCIA’s inquiry into food security did not find systematic price gouging in remote communities and determined higher costs for food was representative of the higher operational costs of community stores.<sup>181</sup> Since the SFNT Act did not have a focus on decreasing stores’ operational costs any impact on pricing from store licences is likely minimal.

<sup>175</sup> Ibid., 12.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid., 31-33.

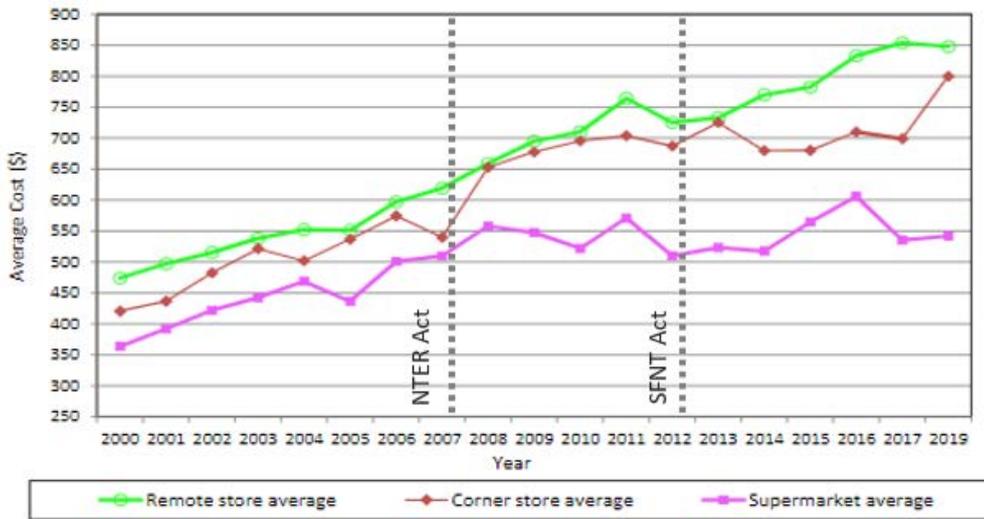
<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid., 15-16.

<sup>181</sup> HoRSCIA, *Report on food pricing and food security in remote Indigenous communities*, 2.

Graph 4. 2019 NT Market Basket Survey<sup>182</sup>



### Findings

The evidence suggests a stores licensing and compliance regime in the Northern Territory has had a positive impact on food security in remote Aboriginal communities and should be retained to safeguard effective governance and oversight of community stores and prevent reintroduction of pre-NTER practices.

Evidence presented at the HoRSCIA by community and ownership groups shows support for continuation of stores licensing.

As in the transition between NTER and SFNT, some adjustments to the scheme may be warranted. For example, incorporation of the HoRSCIA inquiry recommendation to remove the provision requiring prior notice be given to store owners before conducting a monitoring visit.

This review suggests the most appropriate option is for the NT Government to enact NT community store licensing legislation modelled on the SFNT Act in order to continue the licensing regime once the SFNT Act sunset and provide certainty to remote communities and the stores sector. Stores licensing is a state and territory responsibility. This could build on the existing NT Government annual Market Basket Survey.

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

### Implementation

Under Division 5 the relevant delegate (currently the CEO of the NIAA) can require the owner of a community store to register under the CATSI Act. The CATSI Act is administered by the Office of the Registrar of Indigenous Corporations (ORIC). ORIC provides registered community stores experiencing governance or financial difficulties with support to improve their governance practices, financial position and build the capacity of members and directors to run a corporation effectively. The CEO cannot require a community store to register under the CATSI Act unless the owner holds a community store licence for the store.

To date the CEO has not used this power under the SFNT Act. Most of the current licensed stores were registered under the CATSI Act during NTER. The few stores licensed during the SFNT Act were not identified as requiring further assistance from ORIC.

<sup>182</sup> NT Department of Health, [2019 NT Market Basket Survey](#), 15.

## Impact

The intended impact of this Division was to boost the viability of stores, particularly those with poor operational processes or finances. Since the CEO has not to date exercised this power, the impact of this Division cannot be assessed. Community stores registered under the CATSI Act during the period of the SFNT Act did so voluntarily or because Outback Stores and Arnhem Land Progress Aboriginal Corporation in their management role encouraged stores which employ them to register.

## Findings

The sunseting of Division 5 will not impact the option for community stores to register under the CATSI Act or impact community stores currently registered under the CATSI Act.

## Division 7 (areas that are not in the food security area)

### Implementation

Division 7 permits a legislative instrument to be made that excludes areas of the NT from the food security area. The excluded areas are urban areas of Darwin, Howard Springs, Humpty Doo and Palmerston and the regional centres of Katherine, Tennant Creek, Alice Springs, and Nhulunbuy. The licensing scheme does not apply in these areas because of the level of competition, choice in retail outlets and a higher level of consumer awareness.

### Impact

Division 7 ensured the Australian Government targeted resources towards remote Aboriginal communities at greater risk of experiencing food insecurity.

### Findings

There is no evidence the targeting of Part 4 was misaligned or required amendment.

## Division 9 (other matters)

### Implementation

Division 9 includes the following miscellaneous provisions:

- The NIAA CEO may request written consent from store owners or managers to enable criminal records checks.
- The NIAA CEO may request information from a department, agency or authority of the Australian Government, a state or territory.
- The NIAA CEO may disclose information to public officials if considered reasonably necessary.
- An application may be made to the Administrative Appeals Tribunal for review of the particular determinations under the SFNT Act by the NIAA CEO.

These provisions create the opportunity for information sharing and enhance transparency with the effect of supporting officials to make informed decisions on community stores licensing. The NIAA CEO delegated these powers to Regional Managers. Regional Managers may use their delegated authority to request criminal record checks for new managers and owners where their character and behaviour has raised issues. While the existence of a criminal history does not necessarily exclude the store owner from being considered for a licence, Regional Managers may take it into consideration when making a store licensing decision. Regional Managers have seldom requested criminal records checks as most stores have tobacco licences which requires store owners to undergo a police history check.

Examples of action under this division have included:

- A delegate disclosing information about a store to ORIC due to concerns about their financial situation and because it was likely the store was operating while insolvent which is an offence under the *Corporations Act 2001*. Information disclosed to ORIC triggered actions to improve the financial performance of the store.
- A delegate requesting information from the NT Department of Health (Environmental Health) in response to several environmental health risks of a store's takeaway kitchen. The store manager left the business and the new managers adopted recommendations from the NT Department of Health.
- A delegate requested information from the then NT Department of Business about a store's tobacco retailer licence, as it was considered the store had been breaching conditions. Soon after the store registered for a tobacco retailer licence.

## Impact

Regional Managers triggering criminal record checks created an additional safeguard for ensuring store owners and managers could effectively operate a store and promote food security. Since none of the criminal records identified fraud or other concerning behaviour, the review cannot assess how this would have influenced the licensing decisions. Authorised officers noted the introduction of criminal history checks resulted in a number of store managers leaving the industry in the NT.<sup>183</sup>

This Division supported the sharing of information between agencies of the NIAA and the NT Government. This allowed relevant agencies to provide support to stores to resolve issues and bring them to expected standards.

## Findings

If it is agreed to sunset Part 4 'Food security' of the SFNT Act (recommendation 7), this Division will be rendered obsolete, and the Australian Government will no longer require the above provisions.

## Summary of Findings

Over the last 20 years there have been multiple influences on change in the remote food sector in addition to the SFNT Act. This includes monitoring and regulation by the NT Government and a professionalisation of the sector by store groups such as Outback Stores and Arnhem Land Progress Aboriginal Corporation.

The evidence suggests a stores licensing and compliance regime in the NT has had a positive impact on food security in remote Aboriginal communities and should be retained to safeguard effective governance and oversight of community stores and prevent reintroduction of pre-NTER practices.

Evidence presented to the HoRSCIA by community groups shows support for continuation of community store licensing if shortcomings are addressed. Community groups such as APONT, Central Australia Health Service and Miwatj Health Aboriginal Corporation noted improvements should be made in regard to:

- compliance monitoring <sup>184</sup>.

<sup>183</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), 40.

<sup>184</sup> Aboriginal Peak Organisations Northern Territory (APONT) (2020) *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60*, APONT, 3-4,11; Central Australia Health Service (2020) *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, Central Australia Health Service, 1-3; Miwatj Health Aboriginal Corporation (2020) *Inquiry into food pricing and food security in remote Indigenous communities – Submission 91*, Miwatj Health Aboriginal Corporation,4.

- store operational and quality standards<sup>185</sup>
- nutrition standards<sup>186</sup>
- complaint mechanisms for community<sup>187</sup>
- training and ongoing development of store directors and managers<sup>188</sup>
- price regulation.<sup>189</sup>

As in the transition between NTER and SFNT, some adjustments to the scheme may be warranted. For example, incorporation of the HoRSCIA inquiry recommendation to remove the provision requiring prior notice be given to store owners before conducting a monitoring visit. The HoRSCIA inquiry also found prices reflect higher operational costs of running a remote community store, rather than price gouging. This review recognises, while out of scope for the SFNT Act, future activity could look to mechanisms to lower operational costs to improve pricing in remote regions as a companion piece to regulation.

Stores licensing is a state and territory responsibility. This review suggests the most appropriate option is for the NT Government to enact NT community store licensing legislation modelled on the SFNT Act in order to continue the licensing regime once the SFNT Act sunsets and provide certainty to remote communities and the stores sector. This could build on the existing NT Government annual Market Basket Survey and aligns with the NT Department of Health responsibility for food safety and regulation of NT food businesses.

## Recommendations

### Food Security recommendations

7. The Australian Government allows Part 4 'Food security' of the SFNT Act to sunset.
8. The Australian Government encourages the NT Government to introduce a stores licensing scheme under NT legislation. The NT legislation could be modelled on the SFNT Act with an additional provision to allow inspections without prior notice.

<sup>185</sup> APONT, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60*, 4-5; Central Australia Health Service, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, 2-4.

<sup>186</sup> Aboriginal Peak Organisations Northern Territory (APONT) (2020) *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60 Supplementary Submission*, APONT, 2; Central Australia Health Service, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, 2.

<sup>187</sup> APONT, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60*, 11-12; Central Australia Health Service, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, 6.

<sup>188</sup> APONT, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60 - Supplementary Submission*, 2; Miwatj Health Aboriginal Corporation, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 91*, 12-13; Central Australia Health Service, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, 2.

<sup>189</sup> APONT, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 60*, 4, 11; Miwatj Health Aboriginal Corporation, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 91*, 5; Central Australia Health Service, *Inquiry into food pricing and food security in remote Indigenous communities – Submission 105*, 2.

# SFNT Act: Part 5 Other Matters

## Division 2 Miscellaneous

### Implementation

Part 5 of the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) provides miscellaneous provisions. Most of these do not require an analysis of their implementation or impact, including:

- rules on interpreting Australian Government or Northern Territory (NT) laws that have been modified by, or under, the SFNT Act
- the relationship between NT laws modified under the SFNT Act and NT legislation related to general application and interpretation
- Section 49 of the Northern Territory (Self-Government) Act 1978, which provides that trade and commerce between the NT and the States, is free, does not apply in relation to the operation of the SFNT Act
- provision for compensation for acquisition of property that may occur as a result of the operation of the SFNT Act
- provision for the SFNT Act to sunset
- power for the Minister for Indigenous Australians (the Australian Government Minister) and Secretary to delegate any of the functions or powers within the SFNT Act
- provision for an independent review of the SFNT Act of the first three years of the operation
- power for the Australian Government Minister to make rules under the SFNT Act by legislative instrument
- power of the Governor-General to make regulations under the SFNT Act.

The following list outlines how these provisions were implemented:

- The Secretary, currently the CEO of the NIAA, delegated all the functions and powers under Part 4 'Food security' to Senior Executive Service (SES) employees.
- In 2015, the Department of the Prime Minister and Cabinet engaged KPMG to undertake an independent review of the first three years of the SFNT Act special measures.
- The Secretary enacted two rules, The Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 and the Stronger Futures in the Northern Territory (Food Security Areas) Rule 2012.
- The Governor-General made one regulation under Part 3 'Land reform' of the SFNT Act – Stronger Futures in the Northern Territory Regulation 2013.

### Impact

It was beneficial for the Secretary to delegate functions and powers of an administrative nature to appropriate SES, such as Regional Managers. This ensured greater efficiency of these functions of the SFNT Act.



Several of the findings from the KPMG review have already been discussed and informed this review. In summary, it found the land reforms and food security reforms created ‘a legislative and policy framework in which beneficial results can occur.’<sup>190</sup> However, it noted insufficient data to assess the impact of alcohol reforms.<sup>191</sup>

This review has already discussed the impact of the rules and regulations stated above, in the ‘Tackling alcohol abuse,’ ‘Land reform’ and ‘Food security’ parts.

## Findings

Part 5 provides enabling provisions for the SFNT Act which should cease to have affect when the SFNT Act sunsets.

---

<sup>190</sup> KPMG, [Review of the Stronger Futures in the Northern Territory Act \(2012\)](#), i.

<sup>191</sup> Ibid.

# Classification Act: Part 10 Material prohibited in certain areas in the Northern Territory

The purpose of Part 10 of the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act) is ‘to allow special measures to be taken to protect children living in Aboriginal communities in the Northern Territory (NT) from being exposed to ‘prohibited material’ that is, or would likely be, Refused Classification or classified X18+.’<sup>192</sup>

Part 10 allows the Minister for Indigenous Australians (Australian Government Minister) to determine by legislative instrument an area in the NT is a ‘prohibited material area’ and subject to prohibitions on the possession, control and supply of certain publications, films, games, and advertisements. Prohibited material areas align with the prescribed areas previously provided for under the *Northern Territory National Emergency Response Act 2007*.<sup>193</sup>

Since the introduction of this legislation the manner and format in which prohibited material is distributed has changed significantly due to technological advances. Whilst the legislation may have fulfilled its intention in restricting hard copies of prohibited materials in remote Aboriginal communities, technology has become the enabler for prohibited materials to be shared more readily and with a wider audience. The enforcement of the possession and distribution of prohibited materials in Aboriginal communities has become much harder due to the accessibility of material on mobile devices.

The review considers Part 10 of the Classification Act should be allowed to sunset without enacting legislation to replace it. The NT Government should determine a future legislative approach to classifications. The Australian Government could continue to prioritise child safety nationally and in remote Aboriginal communities in the NT, through developing and implementing strategies under the National Strategy to Prevent Child Sexual Abuse.

## Implementation

Part 10 was added to the Classification Act as part of the NT Government’s National Emergency Response package in 2007 and continued with further amendments under the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.<sup>194</sup> The most significant amendments added a sunset and review date.<sup>195</sup> Part 10 ceases to have effect on 17 July 2022, ‘10 years after the day section 3 of the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) commences.’<sup>196</sup>

There are four divisions in Part 10. Division 1 sets out preliminary content such as the objective of the part, definitions, and the ability of the Minister to determine that an area is a prohibited material area. Division 2 creates offences for the possession or control and supply of prohibited materials. Division 3 relates to police officer power to seize prohibited materials. Division 4 contains miscellaneous provisions including providing for a review of the operation of part 10 and a sunset provision.

State and territory governments each have varying classification schemes about how films, computer games and publications can be distributed, shown, and advertised. The NT Government enacted the *Classification of Publications, Films and Computer Games Act 1985* (NT) (NT Classification Act).<sup>197</sup>

Some provisions in the NT legislation are similar to Part 10 of the Classification Act in relation to offences for supply of different categories of prohibited material but there are no equivalent possession offences in the NT legislation which duplicates the possession offences under Part 10 for prohibited material areas.

<sup>192</sup> *Classification (Publications, Films and Computer Games) Act 1995*, s 98A; [Replacement Explanatory Memorandum, Stronger Futures in the Northern Territory \(Consequential and Transitional Provisions\) Act 2012](#), 12.

<sup>193</sup> *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*, sch 3, item 15.

<sup>194</sup> *Ibid.*

<sup>195</sup> [Revised explanatory statement](#), Stronger Futures in the Northern Territory Bill 2012, 2.

<sup>196</sup> *Classification (Publications, Films and Computer Games) Act 1995*, s 116.

<sup>197</sup> *Classification of Publications, Films and Computer Games Act 1985* (NT).

## Impact

Although Part 10 of the Classification Act had some impact when it was first introduced, its effectiveness was diminished by rapid technological advancements such as smart phones and internet availability that increased access to prohibited materials in remote areas. Although charges were made for offences under the Classification Act and the NT Classification Act, the legislative framework and enforcement methods were not equipped to respond to the rapid increase in internet access in remote communities.

*The Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* inserted section 114 into Part 10 of the Classification Act, requiring a review into the effectiveness of the provisions within the first seven years of operation. A review of the effectiveness of Part 10 was commissioned by the Department of the Prime Minister and Cabinet and conducted by Minter Ellison in 2015. The desktop review concluded there was insufficient evidence to determine the effectiveness or otherwise of the measures in Part 10 of the Classification Act.<sup>198</sup> It further noted the Australian Government provisions supported the seizure of relevant prohibited material and therefore may, if sufficiently enforced, reduce the risk of inappropriate supply and viewing of that material.<sup>199</sup>

Since 2007, persons charged with offences against the Classification Act and NT Classification Act has resulted in 75 cases, with 83 per cent of cases involving an Aboriginal or Torres Strait Islander person.<sup>200</sup> The number of offences charged in individual cases suggests the majority of offences during the period reported relate to possession rather than supply.

The impact of Part 10 of the Classification Act over time should be considered in light of the changing landscape of access to technology to view and disseminate prohibited material and the relationship of these changes to the enforceability of these provisions. At the time the provisions were introduced, they were primarily directed at hard copy materials or material accessed on public internet access points in remote communities.

The provisions pre-dated and could not have foreseen the availability of smart phones and other internet enabled mobile devices, which were introduced in Australia from 2007. To illustrate the shifts in technology since 2007, a June 2013 Joint Select Committee on Cyber-Safety Inquiry Issues Surrounding Cyber-Safety for Indigenous Australians reported that in 2007, internet access by 'remote' and 'very remote' Aboriginal and Torres Strait Islander households was at 25 per cent and 8 per cent, respectively.<sup>201</sup> The Australian Bureau of Statistic 2016 Census, in comparison, demonstrates the growth in internet usage in households. The 2016 Census found 75.3 per cent of Aboriginal and Torres Strait Islander households are accessing the internet, with 82.8 per cent in major metropolitan areas accessing the internet, 73.2 per cent in regional areas, 61.3 per cent in remote areas, and 49.9 per cent in very remote areas.<sup>202</sup> Most prescribed prohibited material areas in the NT are in 'very remote areas.'

Issues with access and quality of internet connections in remote communities has not prevented a significant uptake and reliance on mobile devices in remote communities.<sup>203</sup> This comes with related challenges in terms of cyber-security issues. In particular, sharing of devices and connections is common. This can create issues relating to online safety and cyberbullying such as one person bearing costs of other users, young people dominating use of a device, inappropriate text or social media messages being sent from another person's account and the inability to tailor user settings.

While the Stronger Futures legislation and associated funding measures enabled early resourcing for policing of the use of publicly funded computers, rapid uptake of personal mobile devices has superseded publicly available computers in terms of

<sup>198</sup> Minter Ellison (2015) *Classification (publications, Films and Computer Games) Act 1995*, Australian Government, 4.

<sup>199</sup> *Ibid.*, 14.

<sup>200</sup> Department of the Attorney-General and Justice [Unpublished data provided to the National Indigenous Australian Agency], Northern Territory Government.

<sup>201</sup> Australian Bureau of Statistics (ABS) (2007) *Patterns of Internet Access in Australia, 2006*, ABS, 57.

<sup>202</sup> Rennie E, Thomas J, Wilson C (2019) '[Aboriginal and Torres Strait Islander people and digital inclusion: what is the evidence and where is it?](#)', *Communication Research and Practice*, 5(2): 66.

<sup>203</sup> Featherstone D (2020) [Remote Indigenous Communications Review: Telecommunications Programs and Current Needs for Remote Indigenous Communities](#), Australian Communications Consumer Action Network (ACCAN), 55-56, 67.

the mode of internet access. In 2018 it was reported that households likely to have internet access at home for remote or very remote parts of Australia was 77 per cent compared to 88 per cent for major cities.<sup>204</sup>

## Finding

Extension of Australian Government regulation of classified material in prohibited material areas under Part 10 of the Classification Act is not warranted. The NT Government, through its classifications scheme can regulate classified material in the jurisdiction. Since the provisions commenced, the Australian Government has established the Office of the E-Safety Commissioner in 2015. The Commissioner's remit is enhancing online safety for Australian children.

The Australian Government continues to consider child safety in remote communities a major priority and this focus is reflected through the work of National Office for Child Safety, the Department of Social Services, the Office of the E-Safety Commissioner, and the Department of Home Affairs on the development of the 'National Strategy for the Prevention of Child Sexual Abuse' (National Strategy). The National Strategy will focus on encouraging cultural change, supporting victims and survivors of child sexual abuse, law enforcement, and developing initiatives aimed at offenders. The National Indigenous Australian Agency's focus is ensuring the strategy recognises and prioritises Aboriginal and Torres Strait Islanders as a key cohort and supports culturally appropriate and sensitive interventions, including those related to exposure to harmful online material. The National Strategy is anticipated to be delivered in 2021. The *Online Safety Act 2021* further enhances powers for the E-Safety Commissioner to combat this issue.<sup>205</sup>

## Recommendation

### Part 10 of the Classification Act recommendations

7. The Australian Government allows Part 10 of the Classification (Publications, Films and Computer Games) Act 1995 to sunset.
8. The Australian and NT Governments collate and share regional and community level data on children, young people, and family outcomes with each other and with communities, to assess the effectiveness of child-safety, including e-safety measures, in accordance with the recommendations in the Productivity Commission's report on 'Expenditure on Children in the Northern Territory' 2020.

<sup>204</sup> Australia Bureau of Statistics (ABS) (2018) *Household use of information technology, 2016-17*, ABS, accessed 21 April 2021.

<sup>205</sup> *Online Safety Act 2021*.



## Conclusion

This review recommends the Australian Government allows the *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) and Part 10 of the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act) to sunset. This will return legislative responsibility for these matters to the Northern Territory Government (NT Government). It will also align the NT Government's jurisdictional responsibility with other Australian states and territories.

There is ongoing recognition the Australian Government and the NT Government have a mutual interest in improving outcomes for Aboriginal peoples land tenure and food security, reducing harm related to alcohol misuse and classified materials. Both Governments should continue to work together to achieve outcomes and ensure programs and services benefit Aboriginal peoples across the NT.

# Attachment A

## Stronger Futures package of legislation

### Acts:

- *Stronger Futures in the Northern Territory Act 2012*
- *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*
- *Social Security Legislation Amendment Act 2012*
- *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012*

### Legislative instruments:

- Social Security (Administration) (Penalty Amount) (FaHCSIA) Determination 2012 (No. 1) F2012L01335
- Social Security (Administration) (Penalty Amount) (DEEWR) Determination 2012 (No. 1) F2012L01338
- Social Security (Administration) (Declared income management areas) Determination 2012 F2012L01371
- Social Security (Administration) (Declared voluntary income management areas - New South Wales, Queensland, South Australia, and Victoria) Determination 2012 F2012L01374
- Social Security (Administration) (Declared child protection State - New South Wales, Queensland, South Australia, and Victoria) Determination 2012 F2012L01377
- Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2012 F2012L01379
- Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2012 F2012L01380
- Stronger Futures in the Northern Territory Proclamation 2012 F2012L01543
- Social Security (Administration) (Specified income management Territory - Northern Territory) Specification 2012 F2012L01613
- Social Security (Administration) (Vulnerable income management areas) Specification 2012 F2012L01614
- Social Security (Administration) (Declared income management area - Anangu Pitjantjatjara Yankunytjatjara lands) Determination 2012 F2012L01943
- Social Security (Administration) (Recognised State or Territory - Northern Territory) Determination 2012 F2012L01979
- Social Security (Administration) (Recognised State/Territory Authority - NT Alcohol and Drugs Tribunal) Determination 2012 F2012L01980
- Stronger Futures in the Northern Territory (Food Security Areas) Rule 2012 F2012L02073
- Social Security (Administration) (Schooling Requirements - Person Responsible) Specification 2012 F2012L02179
- Social Security (Administration) (Schooling Requirement) Amendment Determination 2012 (No. 1) F2012L02182
- Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 F2013L00290
- Social Security (Administration) (Declared income management areas –Ngaanyatjarra Lands and Laverton) Determination 2013 F2013L00652
- Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2012 F2012L02581
- Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 F2013L00290

# Attachment B

## List of community living areas (CLAs)

### Location and community names<sup>206</sup>

AILERON (Alyuen)

ALCOOTA (Alatyeye)

ALCOOTA (Engawala)

ALROY DOWNS (Gulunguru)

AMBALINDUM – (Pantharrpilenehe)

AMBURLA (Injulkama)

ANDADO

ANNINGIE (Yanginj)

ANTHONY LAGOON

ATARTINGA (Angula)

ATATINGA (Mulga Bore)

BEETALOO (Jingaloo)

BEETALOO (Lily Hole Creek)

BRUNETTE DOWNS (Corella Creek)

CALVERT HILLS (Yangulinyina)

CAMFIELD (Camfield Mudburra)

CAMFIELD (Kalumbulani)

CENTRAL MOUNT WEDGE (Karrinyarra)

CONISTON (Mamp)

DERRY DOWNS (Areyne)

DERRY DOWNS (Welere)

DNEIPER (Ngkerralye)

DULCIE RANGE NATIONAL PARK (Dulcie Range)

ELKEDRA (Imperrenth)

ELKEDRA (Tranter)

ELSEY (Jilkminggan)

<sup>206</sup> List provided by NT Department of Infrastructure, Planning and Logistics on 11 June 2021.

### Location and community names<sup>206</sup>

EPENARRA (Wutungurrurga)

ERLDUNDA (Karu Mutu)

FINNISS RANGE (Woolaning)

FITZROY (Gilwi)

GOYDER STOCK ROUTE (Doolan)

GREGORY NATIONAL PARK (Barrac Barrac)

GREGORY NATIONAL PARK (Bobs Yard)

HENBURY (Ilpurla/Ilperle)

HODGSON DOWNS (Minyeri)

HODGSON RIVER (Flicks Hole)

HUCKITTA (Dempsey & Blue)

HUCKITTA (Inelye)

HUMBERT RIVER (Lingara)

JERVOIS (Orrtipa Thurra)

KEEP RIVER NATIONAL PARK (Binjen  
Ningguwung)

KEEP RVR NATIONAL PARK (Bucket Springs)

KINGS CANYON (Lilla)

KINGS CANYON (Ulpanyali)

KINGS CANYON (Wanmarra)

KIRKIMBIE (Mount Maiyo)

KOOLPINYAH (Durduga Tree Point)

KOOLPINYAH (Humpty Doo)

LAKE NASH (Alpurrurulum)

LEGUNE (Marralum)

LIMBUNYA (Blue Hole)

LIMBUNYA (Swan Yard)

LOVES CREEK (Aluralkwa)

LUCY CREEK (Maperte)

LYNDAVALE (Staines)

LYNDAVALE (White)

MACDONALD DOWNS (Irrerlirre)

MANANGOORA (Wonmurri)

### Location and community names<sup>206</sup>

MANBULLO (Binjari)

MARYVALE (Titjikala)

MCARTHUR RIVER (Gurdangi)

MCARTHUR RIVER (Ijarri)

MCARTHUR RIVER (W Lagoon)

MISTAKE CREEK (Moondabijerra)

MOUNT CAVENAGH (Waju)

MOUNT DENISON (Kurripi)

MOUNT DOREEN (Meercantie)

MOUNT EBENEZER

MOUNT RIDDOCK was HARTS Range (Atitjere)

MOUNT SKINNER (Atneltyey)

MULGA PARK (Wanarkula)

MURRAY DOWNS (Imangara)

NAPPERBY (Laramba)

NARWIETOOMA (Mbungara)

NEUTRAL JUNCTION (Akwerrnge)

NEUTRAL JUNCTION (Tara)

NEWHAVEN (Jungarrayiwarnu)

NEWRY (Dumbral aka Bubble Bubble)

OORATIPPRA (Barber)

ORANGE CREEK (Pwerte Marnte Marnte)

PHILLIP CREEK (Frank)

PHILLIP CREEK (Nupurrurla)

PHILLIP CREEK (Pawuwa)

PINE HILL (Anyungyumba)

POWELL CREEK (Benson Benson)

POWELL CREEK (Jangirrurlu)

ROCKHAMPTON DOWNS (Wogyala)

ROPER VALLEY (Bringung)

ROSEWOOD (Marurrum)

SPIRIT HILLS (Boombi)

SPRING CREEK (Doolgarina)

### Location and community names<sup>206</sup>

STIRLING (Wilora)

TEMPE DOWNS (Ukaka)

THE GARDEN (S Mulladad)

TOBERMOREY (Urlampe)

UMBEARA (Ulballa)

UMBEARA (Wirrmalyanya)

URAPUNGA (Rittarangu)

VICTORIA RIVER DOWNS (Yarralin)

VICTORY DOWNS (Wapirrka)

WATERLOO (Bamboo Springs)

WEST MACDONNELL National Park (Irtnwere  
Tyewelkere)

WEST MACDONNELL National Park (Menge)

WEST MATHISON (Djarrung)

WILLEROO (Wurrkleni)

WOLLOGORANG (Jungalina)

WURRUNBURRU (Wada Warra)

YAMBAH (McMillan)

# Attachment C

## Australian Government leases since 2013

Following the Stronger Futures in the Northern Territory Regulation 2013, the Australian Government entered into a number of leases in CLAs. The following lists are examples. It is not a comprehensive list of all Australian Government leases.

It is likely the NT Government, service providers and other stakeholders have also entered into primary leases or licences in CLAs.

### Public housing leases

CLA	Land council	Primary housing lease holder	Primary lease commencement	Sublease holder
Alpurrurulam	CLC*	EDTL*	April 2014	NT Government*
Atitjere	CLC	EDTL	July 2014	NT Government
Engawala	CLC	EDTL	June 2016	NT Government
Epenarra	CLC	EDTL	September 2013	NT Government
Imangara	CLC	EDTL	September 2013	NT Government
Imanpa	CLC	EDTL	September 2013	NT Government
Laramba	CLC	EDTL	November 2013	NT Government
Tara	CLC	EDTL	November 2013	NT Government
Titjikala	CLC	EDTL	November 2013	NT Government
Wilora	CLC	EDTL	November 2013	NT Government
Minyerri	NLC*	CTH*	November 2015	NT Government
Rittarangu (Urapunga)	NLC	CTH	November 2015	NT Government
Binjarri		EDTL	March 2017	NT Government

### Government staff housing leases

CLA	Lease holder	Commencement date
Alpurrurulum	EDTL	March 2016
Atitjere	EDTL	August 2013
Engawala	EDTL	August 2013
Imanpa	EDTL	August 2013
Minyerri	EDTL	July 2013
Jilkminggan	CTH	November 2015
Titjikala	CTH	August 2013



CLA	Lease holder	Commencement date
Wutungurra	CTH	November 2013

### Childcare centre leases

CLA	Lease holder	Commencement date
Atitjere	EDTL	July 2013
Jilkminggan	DESE*	February 2014
Laramba	EDTL	June 2016
Minyerri	EDTL	September 2018
Titjikala	EDTL	May 2016

\*CLC – Central Land Council, NLC – Northern Land Council, EDTL – Executive Director of Township Leasing, NT Government – Northern Territory Government, DESE – Department of Education, Skills and Employment.

# Attachment D

## Community store upgrades

### Works under the ABA Stores Infrastructure Project in community living areas

CLA	Works	Date completed
Engawala	New Store & House Upgrade	Store completed June 2015
Jilkminggan	Store Upgrade	Store completed August 2015
Bulla	New Store & House Upgrade	Store completed October 2016
Epenarra	New Store & House Upgrade	Store completed February 2016

# Attachment E

## Definitions

### Alcohol-related harm

Alcohol-related harm is any harm flowing from risky alcohol consumption or alcohol misuse. Examples include chronic disease, assaults, domestic violence, child abuse and neglect, Foetal Alcohol Spectrum of Disorder, car crashes, suicides, and mental health issues.<sup>2</sup>

### Book-up

Book-up, also known as book-down, is an informal credit offered by stores or other traders for the purchase of goods and services, it is a wide-spread issue for remote communities and stores.<sup>207</sup>

### *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*

The CATSI Act is a law of the Australian Government that is a special measure for the benefit of Aboriginal and Torres Strait Islander peoples. The CATSI Act is a regulatory framework which enables Aboriginal and Torres Strait Islander bodies to be incorporated and regulated by the Registrar of Aboriginal and Torres Strait Islander Corporations.

### Community living areas (CLAs)

A CLA is a small portion of land excised from a pastoral lease and granted to an Aboriginal community as conditional freehold.<sup>208</sup> There are over 100 CLAs in the NT where Aboriginal peoples with historical connections to pastoral lands reside.<sup>209</sup>

### Community store

The SFNT Act defines a community store as a business that consists wholly, or partly, of selling food, drink or grocery items at premises located in the food security area.

### Food security

Food security is defined in the SFNT Act as 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.

### Food security area

The food security area is the whole area of the Northern Territory except the urban areas of Darwin and Palmerston and the regional centres of Katherine, Tennant Creek, Alice Springs, and Nhulunbuy.

### Healthy Food Basket

The Healthy Food Basket a term used by the NT Government in the NT Market Basket Survey. 'The HFB is based on foods recommended in the Australian Guide to Healthy Eating.'<sup>210</sup> The HFB contain sufficient food to feed a hypothetical family of six for a fortnight.<sup>211</sup>

<sup>207</sup> ANAO, [Food Security in Remote Indigenous Communities](#), 8.

<sup>208</sup> FaHCSIA, [Discussion paper on community living area land reform](#), 1.

<sup>209</sup> Jenny Macklin MP and Warren Snowdon MP, [Discussion paper on community living area land reform](#) 1.

<sup>210</sup> NT Department of Health, [2019 NT Market Basket Survey](#), 4.

<sup>211</sup> Ibid.



### Town camps

Town camps are communities in the NT situated around towns and cities including Darwin, Alice Springs, Tennant Creek, Adelaide River, Pine Creek, Katherine, Elliot, Mataranka, and Borroloola.<sup>212</sup> They were originally established by people who had barriers to permanent accommodation after arriving in a town, eventually developing into permanent dwellings. There are 43 town camps held under different land tenure arrangements. Twenty-one are special purposes leases in perpetuity, 16 are crown leases in perpetuity, three are on Aboriginal freehold land under the *Aboriginal Land Rights (Northern Territory) Act 1976* and three are freehold.<sup>213</sup> The SFNT Act only deals with the town camps held through special purposes leases and crown leases.

---

<sup>212</sup> Territory Families, Housing and Communities (2021) [About Town Camps](#), Northern Territory Government, accessed 23 April 2021.

<sup>213</sup> *Ibid.*, 32.