

Stronger Futures Juggernaut Hits a Few Potholes

A juggernaut is a force that is regarded as mercilessly destructive and unstoppable.

For many this is an apt metaphor for the Stronger Futures in the Northern Territory Bills which were scripted to be rubber stamped, possibly with minor changes, by the Australian Senate on March 22, 2012.

Against extraordinary odds, passage of these laws, that would see key elements of the Northern Territory Intervention that impinge on the personal rights and civil liberties of Aboriginal people living in prescribed communities extended for another 10 years, has been delayed at least until May.

Quite unexpectedly, the catalyst for the delay has been provided by a Senate Community Affairs Legislation Committee Inquiry into the three Stronger Futures Bills that has provided an all-too-rare window of opportunity for dissent.⁹⁰

Such legislation inquiries are expected to be quick and to fine-tune any unacceptable elements in bills; this was an inquiry scrutinising neither the policy logic nor performance of the Northern Territory Intervention since 2007, nor the prospects that its continuation for another decade would achieve any positive outcomes, let alone close any gaps.

To understand this unexpected delay in the Government's attempt to fast track new draconian measures into binding laws without proper community debate or consultation requires a revisiting of some recent history.

The Northern Territory National Emergency Response (NTER) Intervention launched by the Howard Government on June 21, 2007 was supposed to end this year with prescribed communities (and presumably their Aboriginal residents) 'stabilised' and 'normalised'; an orderly exit was to take place to allow individuals to get on with their lives without overbearing state regulation.

The Rudd Opposition, and then Government, acquiesced to this scenario. But constant statistical surveillance has indicated that the Intervention, now semantically reframed as the National Partnership Agreement to Close the Gap in the Northern Territory, was not succeeding.

And so in June 2011 the Gillard Government announced that the Intervention would continue: a suite of ongoing and new special measures were needed and

⁹⁰ Senate Committee, Parliament of Australia, *Senate Committees: Stronger Futures in the Northern Territory Bill 2011 [Provisions]* (2011)
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_cte/strong_future_nt_11/report/index.htm>.

needed fast if additional special investments were to be appropriated in the 2012–13 Budget.

A discussion paper, *Stronger Futures in the Northern Territory*, was fashioned outlining the issues that the Canberra-based political and bureaucratic classes believed to be self-evident priority areas for action: school attendance and educational achievement; economic development and employment; tackling alcohol abuse; community safety and the protection of children; health; food security; housing; and governance.⁹¹

With the clever semantic glide to *Stronger Futures* it was hoped that the opprobrium of the *Intervention* and the failure to close gaps could be discursively swept away.

But *Stronger Futures* has always had a strong whiff of *Intervention Mark II*, if only because key controversial measures like income management were not on the table for elimination.

Input on the Discussion Paper was not broadly sought.

Instead, fast, expensive and intense consultations were undertaken with members of prescribed communities between late June and early August to check if any of the Government's priorities matched those of the subjects of the proposed ongoing project of improvement.

Considerable effort was made to have these consultations on the state's predetermined agenda 'independently' monitored by government-engaged consultants and statistically verified to assure any who cared in the Australian and global communities that these were special beneficial measures desired by most members of prescribed communities.

In November 2011 a series of Bills magically appeared from this process and were introduced into the Parliament purportedly reflecting the majority wishes of Aboriginal people consulted.

The focus of the Bills is on alcohol management, land reform, food security, customary law, income management and school attendance.

The speed of introduction can be variably interpreted. The official view is that these laws were needed quickly so that new financial commitments could be made in a tight 2012–13 Budget when the *Intervention* laws had expired.

⁹¹ FaHCSIA, 'Stronger Futures in the Northern Territory discussion paper', (2011) <<http://www.fahcsia.gov.au/our-responsibilities/Indigenous-australians/publications-articles/closing-the-gap-in-the-northern-territory/stronger-futures-in-the-northern-territory-discussion-paper>>, 5 November 2012.

Another interpretation is that the Government was keen to table the Bills in November 2011 and so bypass the provisions of the new *Human Rights (Parliamentary Scrutiny) Act* that will require all domestic laws tabled after December 2011 to comply with international human rights standards.⁹²

It was expected that these Bills would be quickly passed into law because of the neoliberal consensus among the major Australian political parties that draconian measures still need to be paternalistically imposed to address the ‘Aboriginal problem’ in the Northern Territory, even though there is no clear evidence that this approach has worked since 2007.

The Bills, however, hit a minor speed hump. The Senate Selection of Bills Committee immediately referred the Bill for legislative inquiry, noting that there was need to examine the effects of the measures; whether there was evidence of community awareness/acceptance of them; and to assess intended and unintended consequences.

Unfortunately these ‘terms of reference’ contained in an obscure appendix were poorly highlighted in the subsequent Senate Community Affairs Legislation Committee Inquiry.⁹³

The Committee called for submissions and received a torrent of 454—including one from me (no. 360)⁹⁴ to openly declare my interest in this process.

Almost all the submissions, including mine, opposed the Intervention and the three Stronger Futures Bills, overlooking the procedural nicety that the Senate Inquiry was about the minutiae of the complex laws, not about the Government’s policy framework.

Many black and white Australians previously denied a say on Stronger Futures clearly wanted one. The mobilisation of a political campaign by anti-Intervention groups also saw the Committee receive 560 oppositional letters.

The Senate Committee took evidence in the Northern Territory, travelling to prescribed communities, Ntaria in central Australia and Maningrida in the Top End, as well to Alice Springs and Darwin. Not to have done so would have undermined its legitimacy.

⁹² Australian Government, *Human Rights (Parliamentary Scrutiny) Act 2011, No. 186* (2011) <<http://www.comlaw.gov.au/Details/C2011A00186>>.

⁹³ Senate Committee, Parliament of Australia, ‘Senate Committee’, (2011) http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=selectio nbills_ctte/reports/2011.htm, 5 November 2012.

⁹⁴ Parliament of Australia, ‘Senate Committees, Stronger Futures in the Northern Territory Bill 2011 and two related Bills, Submissions received by the Committee’, (2011) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_c te/strong_future_nt_11/submissions.htm> 5 November 2012.

In each location evidence was recorded in *Hansard* verbatim and the form of engagement allowed for free-flowing discussion.⁹⁵

This was in marked contrast to the Stronger Futures consultations that were conducted with a clearly predetermined agenda without transcripts of procedures.

The *Hansard* transcripts suggest that the Stronger Futures proposals, and the subsequent Stronger Futures Bills, were poorly understood. The former is hardly surprising; for example, it was revealed that the Stronger Futures in the Northern Territory Discussion Paper was only handed to members of the Maningrida community minutes before Minister Macklin arrived to participate in the consultation. The latter reflects the extraordinary complexity of the three Bills.

There is a ferocious documented opposition to the Intervention and the conduct of consultations. These transcripts ‘unplugged’ seriously challenge the credibility of the Stronger Futures consultations’ reportedly broad support for continuation of Intervention measures.

Others who had independently monitored the consultation process had made similar observations. A recent example is the Report *Listening but not Hearing* based on observing nine public consultations. But such critiques have been demeaned and dismissed by the Government and its supporters as unrepresentative and biased. The official *Hansard* cannot be so easily dismissed.⁹⁶

The Committee’s Report tabled in mid-March was divided between a majority Report supporting the legislation with some procedural amendments; some additional comments by Coalition Senators; and a strongly dissenting Report by the Australian Greens.

The majority Report is unsurprising as the Stronger Futures Bills had already been passed in the House of Representatives. It was unlikely that Government and Opposition Senators would seriously challenge their party platforms irrespective of what was recorded and what they saw, heard and read.

The dissenting Report did justice to the evidence and was equally unsurprising.

⁹⁵ Commonwealth of Australia, ‘Senate, Proof Committee Hansard’, (2011) <[http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/toc_pdf/Community per cent20Affairs per cent20Legislation per cent20Committee_2012_02_20_817.pdf;fileType=application per cent2Fpdf#search= per cent22committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/0000 per cent22](http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/toc_pdf/Community%20Affairs%20Legislation%20Committee_2012_02_20_817.pdf;fileType=application%20pdf#search=per%22committees/commsen/a3d14c82-bef1-434e-843d-366547f63678/0000%22)> 5 November 2012.

⁹⁶ Jumbunna House of Learning, *Listening but not Hearing: A response to the NTER Stronger Futures Consultations June to August 2011*, (2011) <<http://www.jumbunna.uts.edu.au/researchareas/ListeningButNotHearing8March2012.pdf>>.

The Australian Greens have always opposed the Intervention and the Stronger Futures legislation. The dissenting Report reflects views from Aboriginal people, their representative organisations and the community sector that the top-down punitive nature of the Intervention is actually undermining and disempowering Aboriginal people and communities, is risky and is poorly understood.

Australia's liberal democratic institutions do not serve the interests of small marginal groups, like Aboriginal people in the Northern Territory, well. But on this occasion, the processes of a Senate Committee of Inquiry have been effectively co-opted to articulate defiance to the Australian state in its hegemonic drive to impose Stronger Futures laws.

The support of the Canberra consensus for the Intervention is so deeply ideologically and politically entrenched that there seemed little doubt that the Stronger Futures Bills would pass through the Senate on March 22, 2012.

But surprisingly they have been unexpectedly delayed.

Evidently, to borrow from Leonard Cohen's Anthem: 'There is a crack, a crack in everything. That's how the light gets in—the light of opposition'. Paradoxically, the Senate Community Affairs Legislation Committee process that recommended the fine-tuning of the Stronger Futures Bills for passage through the Parliament has inadvertently created possibilities for new hurdles of dissent to be erected in the path of the Stronger Futures juggernaut.

2 April 2012